

## DIRECTOR'S DECISION

- Proposal:** The Columbia River Gorge Commission received an application to place a 66 x 28 ft manufactured home, construct a 36 X 36 ft garage as a hardship dwelling unit and connect the two uses with a 36 X 10 ft covered breezeway with paved surface below.
- Applicant:** Thomas Cowell
- Landowner:** Mr. & Mrs. Thomas Cowell
- Location:** The subject parcel is located north of Old Highway 8 in the SE ¼ of Section 28, Township 3 North, Range 12 East, W.M., also known as Lot 2 of Greydigger Heights, Klickitat County, Washington (Parcel No. 03122852000200).
- Case File:** C14-0007
- Zoning:** The 4.75-acre is located in the General Management Area and is designated Residential.

### DECISION:

Based upon the findings of fact in the Staff Report for Director's Decision C14-0007, the land use application by Thomas Cowell to site a manufactured home (measuring 66 feet long by 28 feet wide) with connections to the existing utilities for water, sewer and electricity and to build a pole garage (measuring 36 feet long by 36 feet wide) and connect both uses with a breezeway (measuring 36 feet long by 10 feet wide) 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. Compliance with them is required. **This decision must be recorded in county deeds and records to ensure notice of the conditions to all successors in interest** (Management Plan, Review Uses Guideline 1, pg. II-96).

#### *Overall Conditions*

1. To ensure notice of the conditions to successors in interest, this Director's Decision, Staff Report for C14-0007, and approved site plan and elevation, shall be recorded in county deeds and records at the Klickitat County Assessor's Office. **Once recorded, the applicants shall submit a copy of the recorded documents to the Executive Director.**
2. This decision does not exempt the proposal from other non-Scenic Area rules and regulations. It is the

applicant's responsibility to ensure the use complies with all other applicable federal, state, and county laws.

3. The development shall be constructed as shown on the approved project description, site plan and elevation drawings. Any changes must be reviewed and approved by the Executive Director before the changes are implemented.
4. The applicant agrees to schedule a post construction inspection with the Columbia River Gorge Commission before the dwelling unit is occupied to ensure compliance with all conditions of this Director's Decision.

#### *Land Use Conditions*

5. The home may only be used as a hardship dwelling unit as defined by Rule 350-81, Land Use Ordinance, Columbia River Gorge Commission and is subject to the following conditions as a hardship dwelling unit:
  - i) this hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling only and it shall never be connected to a separate sewage disposal system; and
  - ii) this hardship dwelling unit is to be occupied only by one or both of the disabled sons; and
  - iii) the owner will renew this permit through the Gorge Commission every two years for as long as one or both of the disabled sons is occupying this hardship dwelling; and
  - iv) that this hardship dwelling will be removed from the property no later than 30 days after the use ceases as a hardship dwelling, as defined with this application.

#### *Scenic Resource Conditions*

6. The applicant has selected the following dark earth tone colors for the exterior building surfaces:
  - a. House - Behr Paint Double Espresso, BNC-21
  - b. Garage and Breezeway - Taylor Metal Products, Weathered Copper SRI-25These colors shall be used for the all exterior building surfaces consistent with Commission Rule 350-81-520(2)(l) including, but not limited, to all siding, all trim, all stone/rock/brick, eaves and any building appurtenances excluding window surfaces.
7. There will be one exterior light only and that will be placed in the breezeway per the site plan. The light must be directed downward and hooded and the exterior surface must be either one of the following colors: Behr Paint Double Espresso, BNC-21 or Taylor Metal Products, Weathered Copper SRI-25.
8. The exterior surface of the home shall be rough textured to reduce reflectivity.
9. The roofing material of the dwelling unit shall be composed of textured, low-reflectivity materials consistent with Commission Rule 350-81-520(2)(m). Alternative materials shall be submitted to the Director for approval prior to commencement of construction.
10. Any existing trees that are removed from the date of the Director's Decision onward must be replaced consistent with the requirements of Rule 350-81-350, and the Pastoral Landscape setting requirements (To address 350-81-520(3)(a)(B)(i)).
11. Any landscaping must be native plants consistent with the Pastoral landscape setting.

12. Permanent shading structure(s) for the windows, such as awnings, must be installed on the south side of the house to ensure the mid-day sun doesn't reflect off the windows located on this side. The awnings will be either one of the following colors: Behr Paint Double Espresso, BNC-21 or Taylor Metal Products, Weathered Copper SRI-25.

*Cultural Resource Conditions*

13. If cultural resources are discovered during construction activities, all activities within 100 feet of the cultural resources shall immediately cease and the applicants shall notify the Gorge Commission within 24 hours of discovery. 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 immediately 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 20th day of July, 2015 at White Salmon, Washington.

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Krystyna U. Wolniakowski  
Executive Director (Interim)

**EXPIRATION OF APPROVAL:**

Commission Rule 350-81-044 governs the expiration of this Director's Decision.

***This decision of the Executive Director becomes void on the 20th day of July, 2017 unless construction has commenced in accordance with Commission Rule 350-81-044(4).***

Commission Rule 350-81-044(4) specifies that commencement of construction means actual construction of the foundation or frame of the approved structure.

Construction must be completed within two years of the date that the applicant commenced construction. The date of the Executive Director's preconstruction inspection to confirm the location of the proposed structural development as required by this decision shall be considered the date the applicant commenced construction, unless the applicant demonstrates otherwise.

Once the applicant has commenced construction of one element in this decision, the applicant will need to complete all elements in this decision in accordance with Commission Rule 350-81-044. The Commission does not use different "commencement of construction" dates for different elements in this decision.

The applicant may request one 12-month extension of the time period to commence construction and one 12-month extension to complete construction in accordance with Commission Rule 350-81-044(6). The applicant must submit the request in writing prior to the expiration of the approval. If the applicant requests an extension of time to complete construction after commencing construction, the applicants shall specify the date construction commenced. The Executive Director may grant an extension upon determining that conditions, for which the applicants were not responsible, would prevent the applicants from commencing or completing the proposed development within the applicable 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 August 19, 2015.***

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 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.

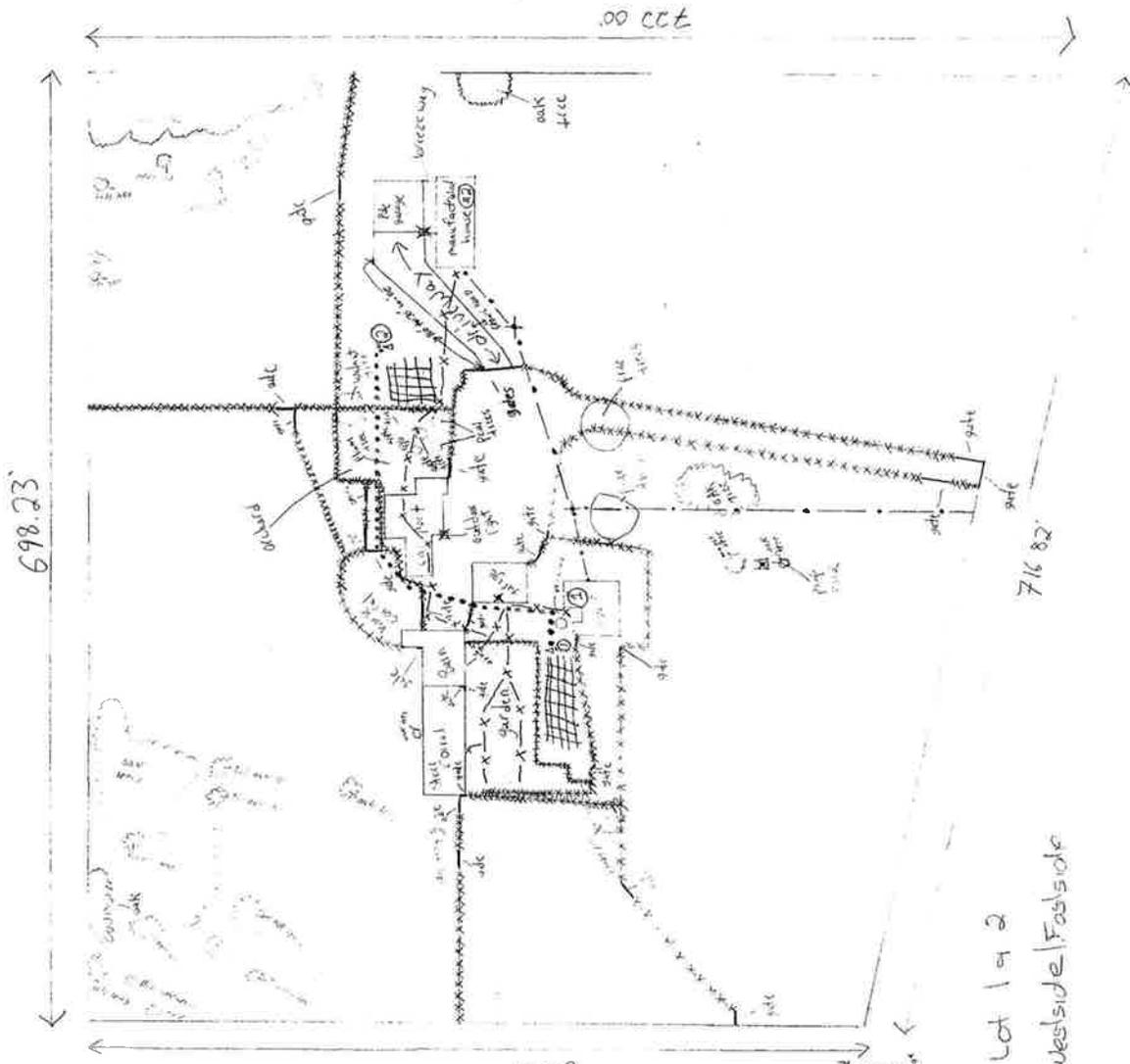
Attachments:

Staff Report for C14-0007

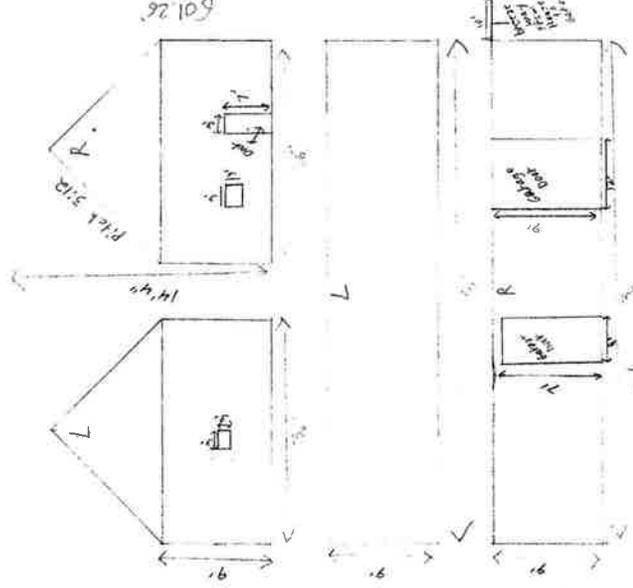
Approved site plan and elevations

DEC0014.07

C14-05  
TCE  
7/20/15



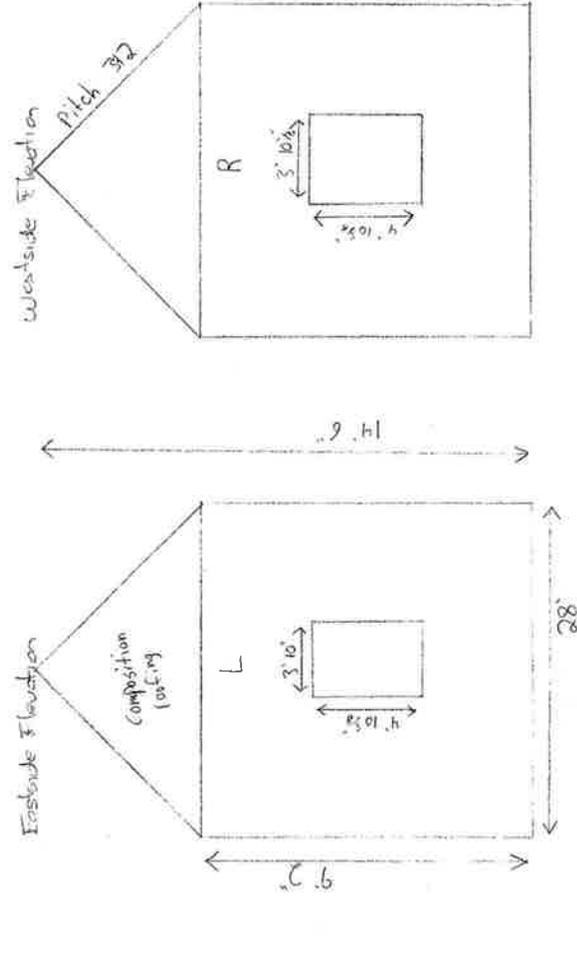
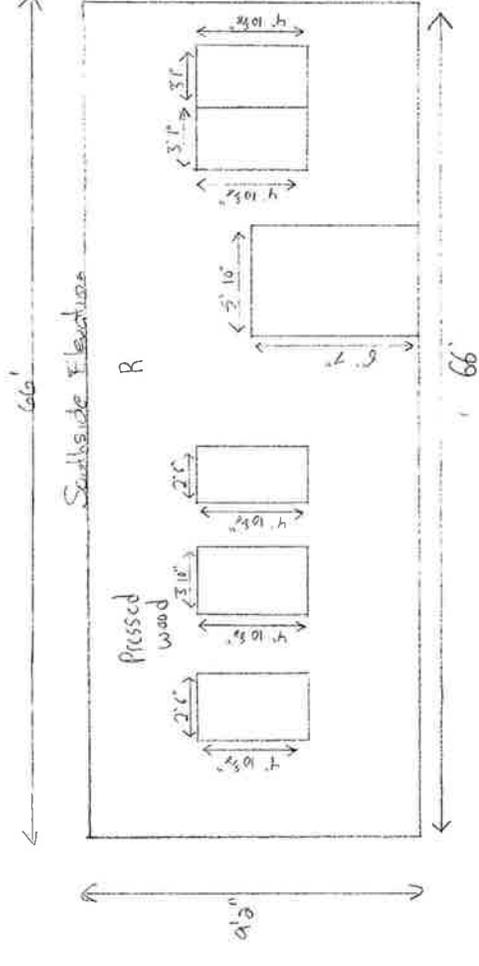
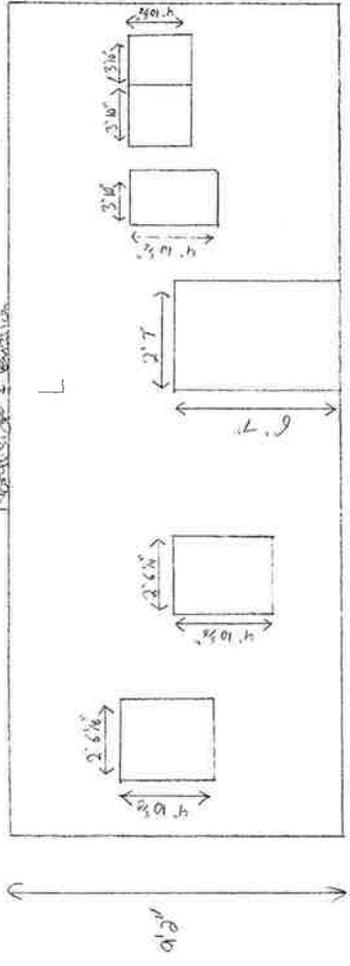
- Legend
- Pave driveway
  - Wells
  - Fire well
  - Electric tank
  - Captive tank
  - Down field
  - Across limits
  - Active power line
  - Pipe lines
  - Connecting line
  - From Captive
  - Captive tank
  - Water lines



Lot 192  
Westside/Fasistole

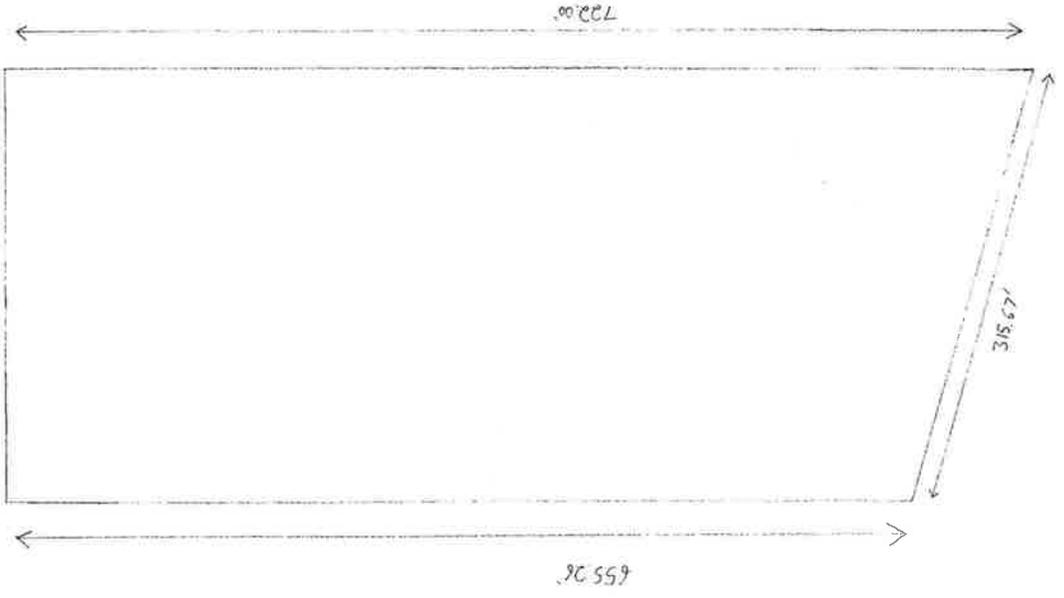
Scale  
1" = 40'

Manufactured Home (to be located east of existing home)



Lot 2  
East 1/4  
307.74

1 Square = 40 ft



CK4-05  
2 of 2  
7/20/15

## FACTS AND FINDINGS

### COLUMBIA RIVER GORGE COMMISSION STAFF REPORT

**APPLICANT:** Thomas Cowell

**LANDOWNER:** Same

**FILE NO.:** C14-0007-K-G-11

**REQUEST:** To place a 66 x 28 ft manufactured home and construct a 36 X 36 ft garage with a connecting 36 X 10 ft breezeway as a hardship dwelling unit.

**LOCATION:** The subject parcel is located north of Old Highway 8 in the SE ¼ of Section 28, Township 3 North, Range 12 East, W.M., also known as Lot 2 of Greydigger Heights, Klickitat County, Washington (Parcel No. 03122852000200).

**LAND USE DESIGNATION:** The 4.75-acre is located in the General Management Area and is designated Residential-10.



*Figure 1-A view from the site to the southeast.*

**HISTORY:** No prior development review actions have been taken by the Columbia River Gorge Commission for the subject property.

**SCOPE OF REVIEW:** This development review application, C14-07, has been reviewed for consistency with the Columbia River Gorge Commission Chapter 350, Division 81 Land Use Ordinance.

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

350-81-630 requires that notice of application for all full review uses must include be sent to the Tribes, USFS, County and State and landowners within 500 feet (for proposed single family residential development in the GMA Residential-10 Land Use Designation adjacent to GMA Agriculture – this requirement is applicable to C14-07) and to State Department of Wildlife (for all full review uses within 1000 feet of a sensitive wildlife area or site – this requirement is applicable to C14-07 too).

The notice of application for C14-07 was sent to the landowners within 500 feet of the subject property, as identified by the petitioner, and also to the following:

- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs Reservation of Oregon
- Friends of the Columbia Gorge
- Klickitat County Planning Department
- Klickitat County Building Department
- Klickitat County Health Department
- Klickitat County Assessor
- Nez Perce Tribe
- U.S. Forest Service National Scenic Area Office
- Washington Department of Fish and Wildlife
- Washington State Historic Preservation Office
- White Salmon Library

Written comment period ended on May 4, 2015. Written comment was received from Washington State Department of Fish and Wildlife. Written comment was also received by the Friends of the Columbia Gorge on June 2, 2015, after the comment period had ended.

**DATE THIS REPORT WAS FINALIZED:** July 18, 2015.

**STAFF PERSON THAT PREPARED THIS REPORT:** *Terry Cullen, AICP, Principal Planner, Columbia River Gorge Commission*

**HOW/WHERE TO OBTAIN FURTHER INFORMATION:** Questions and comments should be directed to Terry Cullen, AICP, Principal Planner, Columbia River Gorge Commission, 57 NE Wauna Ave, PO Box 730, White Salmon WA 98672, (509) 493-3322 Ext 223, [terry.cullen@gorgecommission.org](mailto:terry.cullen@gorgecommission.org). A copy of this report may be obtained online at [www.gorgecommission.org](http://www.gorgecommission.org) or by contacting Terry Cullen at any of the above listed contacts.

## Contents

<b>PURPOSE AND APPLICABILITY</b> .....	4
<b>DEFINITIONS</b> .....	4
<b>APPLICATIONS AND PROCEDURES</b> .....	4
<b>EXPEDITED DEVELOPMENT REVIEW PROCESS</b> .....	6
<b>EMERGENCY/DISASTER RESPONSE ACTIONS</b> .....	6
<b>GENERAL POLICIES AND GUIDELINES</b> .....	7
<b>USES AND STRUCTURES ALLOWED IN VARIOUS LAND USE DESIGNATIONS</b> .....	8
<b>LAND DIVISIONS AND LOT LINE ADJUSTMENTS</b> .....	10
<b>LAND USE DESIGNATIONS</b> .....	11
<b>RESOURCE PROTECTION GUIDELINES</b> .....	15
350-81-520 General Management Area Scenic Review Criteria .....	15
350-81-540 General Management Area Cultural Resource Review Criteria .....	42
350-81-560 General Management Area Wetland Review Criteria .....	59
350-81-580 General Management Area Sensitive Wildlife Review Criteria .....	65
350-81-590 General Management Area Rare Plant Review Criteria .....	67
350-81-610 General Management Areas Recreation Resource Review Criteria .....	72
350-81-630 Notice of Application Requirements .....	78

**USE, AS PROPOSED BY THE APPLICANT, AND STAFF FACTS AND FINDINGS OF CONSISTENCY WITH CHAPTER 350-81-LAND USE ORDINANCE, COLUMBIA RIVER GORGE COMMISSION**

<b>PURPOSE AND APPLICABILITY</b>
Columbia River Gorge Commission Administrative Rules 350-81-010 through 350-81-018 describe the purpose and applicability of the Chapter 350-81-Land Use Ordinance.

<b>DEFINITIONS</b>
Columbia River Gorge Commission Administrative Rule 350-81-020 sets forth the definitions of words and word derivations used throughout Chapter 350-81-Land Use Ordinance.
Findings of Fact-The definitions were consulted and used as part of the review of this development review application.
Conclusions of Law – In the staff’s best professional opinion, the staff review and report for development review application C14-07 is consistent with the definitions in Chapter 350-81-Land Use Ordinance.

**APPLICATIONS AND PROCEDURES**

Columbia River Gorge Commission Administrative Rules 350-81-030 through 350-81-046 specifies the standards for applications, the application, pre-application conference, acceptance of application, notice of development review, comment period, decision of the executive director, expiration of approvals and changes or alterations to an approved action.

<b>350-81-030 Standards for Applications</b> Findings of Fact: To current staff’s best knowledge, development review application C14-07 was accepted on behalf of the Executive Director as a complete application. The file contains a complete application form, a complete site plan and all the applicable information specified in the various sections of this land use ordinance. Development review application C14-07 is a complete application and staff is able to review it in accordance with Rule 350-81-030.  Conclusions of Law: Development review application C14-07 is consistent with this rule requirement.
<b>350-81-032 Application for Review and Approval</b> Findings of Facts: Development review application C14-07 was completed pursuant to this rule (350-81-032(1)). A Columbia River Gorge Commission planner, on behalf of the Executive Director, accepted development review application C14-07 and reviewed the application for consistency with guidelines specified in Rules 350-81-030 through 350-81-046 (350-81-032(2)). The Columbia River Gorge Commission may charge a fee to review development review applications after a public hearing (350-81-032(3)). No fee has been charged. Standard application forms are available at Commission’s offices and provided to county and city planning offices and the Forest Service (350-81-032(4)). The applicant obtained a development review application from the Commission’s offices and submitted it as part of the overall application. There are multiple information needs that are required as part of the application and they are identified in 350-81-032(5). The applicant has submitted all necessary and applicable information per this rule.  Conclusions of Law: Development review application C14-07 is consistent with this rule requirement.
<b>350-81-034 Pre-Application Conference</b> Findings of Fact: An applicant may request a pre-application conference prior to submitting an application for development review. This is discretionary, not mandated and at the request of the applicant. Staff met with the applicant several times to provide guidance to the applicant for submitting a complete application. Those meeting dates included: 11/24/14; 12/1/14; 12/10/14; 1/14/15; 1/28/15; 2/9/15; 3/27/15; and 4/8/15.

Conclusions of Law: Development review application C14-07 is consistent with this rule requirement.

**350-81-036 Acceptance of Application**

Findings of Fact: A Columbia River Gorge Commission planner, on behalf of the Executive Director, has reviewed development review application, C14-07, has determined it is complete and has accepted the application (350-81-036(1)). Development review application, C14-07, does not propose any uses that are explicitly prohibited by this ordinance (350-81-036(2)). The land use ordinance sets a goal for the Executive Director to accept the application as complete within 14 days of receipt or notify the applicant of any deficiencies.(350-81-036(3)). The application was delivered to the office on 6/19/14. It was incomplete. It took many meetings to guide the applicants through the process of completing the application. The application was deemed complete on April 13, 2015.

Conclusion of Law: Development review application C14-07 is consistent with this rule requirement.

**350-81-038 Notice of Development Review**

Findings of Facts: Staff, on behalf of the Executive Director, issued a notice of a proposed development review on April 13, 2015. The notice did contain the name of the applicant, general and specific location of the subject property, a brief description of the proposed action and a deadline for filing comments on the proposed action (350-81-038(1)(a)(b)(c)(e)). It did not include a deadline for issuing a decision (350-81-038(1)(d)). The notice did state the application and supporting documents are available for inspection at the Commission's office during normal working hours. The notice was mailed to the Forest Service, the applicable state, the four Treaty Tribal Nations (Yakama, Umatilla, Warm Springs and Nez Perce), the applicable city or county planning office (Klickitat County Planning Dept.), owners within a radius as determined by 350-81-630 (determined to be 500 feet; eleven different land owners as provided by the applicant); and other agencies and interested parties which request a notice or the Executive Director determines should be notified (1 interested party, Friends of the Columbia Gorge, has a standing request to be notified of all development review applications) (350-81-038(4)(a)(b)(c)). A copy of the notice was posted on the Commission's website (350-81-038(5)).

Conclusion of Law: Development review application C14-07 is consistent with this rule requirement, with the exception of 350-81-038(1)(d). A deadline for issuing a decision was not included in the Notice of Development Review.

**350-81-040 Comment Period**

Findings of Fact: Interested parties were given 21 days from the date the notice was sent to submit written comments to the Executive Director relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-81. The notice was sent April 13, 2015 and the public comment deadline was established to be May 4, 2015. Written comments were received by: Amber Johnson, Washington State Department of Fish & Wildlife on April 20, 2015. Comments were also submitted by the Friends of the Columbia Gorge, however, they were received (June 2, 2015) after the public comment period closed. Initial review of data in-house indicated the presence of a sensitive wildlife area (within 1000 feet of deer and elk winter range). Data did not indicate the presence of any sensitive plant buffer zone (pursuant to Rules 350-81-580(5) and 350-81-590(5)). Notice of Development Review was sent to the Washington State Department of Fish and Wildlife (WDFW) because of the site's proximity to deer and elk winter range. WDFW responded that the proposed development would not compromise the integrity of this habitat. The Commission's Principal Planner, on behalf of the Executive Director, determined that a wildlife management plan nor a rare plant protection and rehabilitation plan was required for development review application, C14-07 (350-81-040(1)).

Marge Dryden, (Heritage Resources Program Manager, USFS) acting as a resource expert for the Columbia River Gorge Commission made the determination that a cultural resources survey (reconnaissance or historic) was required (350-81-040(2)). A Heritage Resource Inventory Report for the Cowell Hardship

Dwelling Project was prepared by Ms. Dryden. The Commission's Principal Planner, on behalf of the Executive Director, forwarded the Report to the Washington State Historic Preservation Officer and the four Indian tribal governments pursuant to 350-81-540(1)(b) on June 18, 2015 with comments requested or, or before, July 19, 2015. No comment was received.

Conclusions of Law: Development review application C14-07 is consistent with this rule requirement.

**350-81-044 Expiration of Approvals**

Findings of Fact: Development review application, C14-07, is not the subject of a prior approval issued pursuant to the Management Plan.

Findings of Fact: This rule requirement is not applicable to this development review application.

**350-81-046 Changes or Alterations to an Approved Action**

Findings of Fact: Development review application, C14-07, is not a change or alteration to a development action approved by the Executive Director.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**EXPEDITED DEVELOPMENT REVIEW PROCESS**

**350-81-050 Development Eligible for Expedited Review**

Findings of Fact: Development review application, C14-07, proposes a manufactured home to be sited as a hardship dwelling and construct a garage. This does not meet any of the development identified as a use that may be considered for expedited review (350-81-050(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-052 Resource and Treaty Rights Protection Guidelines**

Findings of Fact: Development review application, C14-07, proposes a manufactured home to be sited as a hardship dwelling and construct a garage. This does not meet any of the development identified as a use that may be considered for expedited review (350-81-050(1)). This rule requirement applies only to those proposed development reviewed using the expedited review process.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-054 Procedures for Expedited Review Process**

Findings of Fact: Development review application, C14-07, proposes a manufactured home to be sited as a hardship dwelling and construct a garage. This does not meet any of the development identified as a use that may be considered for expedited review (350-81-050(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

**EMERGENCY/DISASTER RESPONSE ACTIONS**

**350-81-060 Emergency/Disaster Response Actions**

Findings of Fact: Development review application, C14-07, is not an application being filed as an action in response to an emergency/disaster, as defined in Columbia River Gorge Commission Rule 350-81-020(54). (350-81-060(1)(a))

Conclusions of Law: This rule requirement is not applicable to this development review application.

## GENERAL POLICIES AND GUIDELINES

### **350-81-070 Exempt Land Uses and Activities**

Findings of Fact: Development review application, C14-07, does not propose any use which is considered to be exempt from review (350-81-070(1) and Section 17, Columbia River Gorge National Scenic Area Act).

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-072 Prohibited Land Uses and Activities**

Findings of Fact: Development review application, C14-07, does not propose any use that is prohibited per this rule requirement (350-81-072(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-074 Uses Allowed Outright**

Findings of Fact: Development review application, C14-07, does not propose any uses which may be considered as use(s) allowed outright (350-81-074(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-076 Agricultural Buffer Zones in the General Management Area**

Findings of Fact: The development review application, C14-07, proposes that a manufactured home and a garage be placed on property adjacent to lands in the General Management Area that are designated as Residential-10. Lands abutting the east, south and west property boundaries are also in the General Management Area and are designated Residential-10. The property has land abutting on the north side that is designated Large-Scale Agriculture. The distance between the location of the proposed development and the northern property line is more than 400 feet, exceeding the maximum distance of any buffer requirement as described in 350-81-076.

Conclusions of Law: This rule is only applicable to this development review application along the northern boundary. No additional buffer is needed between the subject property and the property to the north. The development application, C14-07, is consistent with this rule.

### **350-81-078 Variances**

Findings of Fact: This rule allows for setbacks and buffers to be varied when the protection of agricultural and other types of resources overlap or conflict.

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-080 Applying New Less-Stringent Regulations to Development Approved Under Prior Scenic Area Regulations**

Findings of Fact: This development review application, C14-07, does not alter conditions of approval for an existing use or structure approved under prior Scenic Area regulations.

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-082 Existing Uses and Discontinued Uses**

Findings of Fact: This development review application, C14-07, includes an existing single family home, and other appurtenant structures such as garages, shops, barns and sheds. These uses may continue as long as it is used in the same manner and for the same purpose (350-81-082(1)(a)).

The development review application does not include replacement of existing structures either damaged or destroyed by disaster, or not (350-81-082(2)(3)); any changes to existing uses and structures (350-81-082(4)); or the re-establishment of any discontinued existing uses and structures (350-81-082(5)(6)).

Conclusions of Law: Rules 350-81-082(2)(3)(4)(5)(6) are not applicable to this development review application

**350-81-084 Indian Tribal Treaty Rights and Consultation**

Findings of Fact: These rule requirements address Tribal Government Notice, Tribal Government Consultation, Conclusion of the Treaty Rights Protection Process and Treaty Rights and Consultation in the Special Management Area.

These requirements are triggered when a new use is located in, or providing recreation river access to, the Columbia River or its fish bearing tributaries. The proposed use is not located in either of these locations.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-086 Buffers from Existing Recreation Sites**

Findings of Fact: The subject property in development review application, C14-07, does not abut any established recreation sites, and its off-site impacts are not expected to detract from the use and enjoyment of any established recreation sites.

Conclusions of Law: The development application, C14-07, is consistent with this rule requirement.

**USES AND STRUCTURES ALLOWED IN VARIOUS LAND USE DESIGNATIONS****350-81-090 Agricultural Buildings**

Findings of Fact: The use requested in this development review application is for placement of a manufactured home as a hardship dwelling and to construct a garage. No agricultural building is proposed, and as such, the requirements of 350-81-090 Agricultural Buildings do not apply to this development review application.

Conclusions of Law: Rule 350-81-090 is not applicable to this development review application, C14-07.

**350-81-092 Temporary Use-Hardship Dwelling**

Findings of Fact: The use requested in this development review application is for the placement of a manufactured home and construction of a garage as a hardship dwelling. Temporary use hardship dwelling is called out specifically as a review use in the residential land use plan categories (350-81-370(d)). That rule requirement references additional criteria as established in 350-81-092. A permit for the temporary placement of a mobile home may be granted under the following circumstances:

1. A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirmed or aged.
2. The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling.
3. The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural, and recreation resources.

The proposed hardship dwelling is for Mr. and Mrs. Cowell's two disabled sons. Klickitat County issued approval for a septic system for the hardship dwelling without realizing that it was part of a development proposal that would require a development review from the Columbia River Gorge Commission first. The Cowells began building the septic system and then discovered they required another review and approval first.

Klickitat County Health Department reviewed and approved the modification to the existing on-site sewage system, which resulted in adequate capacity to handle both the primary and the hardship dwelling. A condition of approval will be placed in the Director's Decision that only 1 subsurface sewage disposal system will be used per this rule provision. The consistency analysis of the protection of scenic, cultural, natural and recreation resources are discussed under other sections of this report. Conditions will be imposed that upon expiration of the permit or cessation of the hardship (whichever comes first), the manufactured home

shall be removed within 30 days. A permit may be issued for a 2-year period, and a new permit may be granted upon a Findings of Fact that a family hardship continues to exist.

Conclusions of Law: The development application, C14-07, is consistent this rule requirement, if the following conditions are included in the Director's Decision:

- i) this hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling only and it shall never be connected to a separate sewage disposal system; and
- ii) this hardship dwelling unit is to be occupied only by one or both of the disabled sons; and
- iii) the owner will renew this permit through the Gorge Commission every two years for as long as one or both of the disabled sons is occupying this hardship dwelling; and
- iv) that this hardship dwelling will be removed from the property no later than 30 days after the use ceases as a hardship dwelling, as defined with this application.

**350-81-094 Sewer and Water Services**

Findings of Fact: Sewer lines are not being extended from an Urban Area to serve this use (350-81-094(1)). The hardship dwelling in this application will be connected to an existing well and septic facilities located onsite, built and maintained privately. 350-81-094(2) allows for consideration of new uses to be connected into existing water lines.

Conclusions of Law: Rule 350-81-094(1) is not applicable to this development review application, C14-07. The development review application, C14-07, is consistent with Rule 350-81-094(2).

**350-81-096 Docks and Boathouses**

Findings of Fact: There are no new private docks or boathouses or public docks requested as part of this development review application, C14-07.

Conclusions of Law: Rule 350-81-096 is not applicable to this development review application, C14-07.

**350-81-098 Home Occupations and Cottage Industries**

Findings of Fact: There are no home occupations nor cottage industries proposed in this development review application, C14-07.

Conclusions of Law: Rule 350-81-098 is not applicable to this development review application, C14-07.

**350-81-100 Bed and Breakfast Inns**

Findings of Fact: No bed and breakfast inn is proposed in this development review application, C14-07.

Conclusions of Law: Rule 350-81-100 is not applicable to this development review application, C14-07.

**350-81-102 Small-Scale Fishing Support and Fish Processing Operations**

Findings of Fact: There are no small-scale fishing support nor fish processing operations proposed in this development review application, C14-07.

Conclusions of Law: Rule 350-81-102 is not applicable to this development review application, C14-07.

**350-81-104 Resource Enhancement Projects**

Findings of Fact: No resource enhancement project is proposed in this development review application, C14-07.

Conclusions of Law: Rule 350-81-104 is not applicable to this development review application, C14-07.

**350-81-106 Disposal Sites for Spoil Materials from Public Road Maintenance Activities**

Findings of Fact: There are no disposal sites for spoil materials from public road maintenance activities proposed in this development review application, C14-07.

<p>Conclusions of Law: Rule 350-81-106 is <u>not</u> applicable to this development review application, C14-07.</p> <p><b>350-81-108 Commercial Events</b></p> <p>Findings of Fact: There are no commercial events proposed in this development review application, C14-07.</p> <p>Conclusions of Law: Rule 350-81-108 is <u>not</u> applicable to this development review application, C14-07.</p>
<p><b>350-81-110 Columbia River Bridge Replacement</b></p> <p>Findings of Fact: No bridge replacements are proposed in this development review application, C14-07.</p> <p>Conclusions of Law: Rule 350-81-110 is <u>not</u> applicable to this development review application, C14-07.</p>
<p><b>350-81-112 Signs</b></p> <p>Findings of Fact: There are no signs proposed in this development review application, C14-07.</p> <p>Conclusions of Law: Rule 350-81-112 is <u>not</u> applicable to this development review application, C14-07.</p>
<p><b>350-81-114 Special Uses in Historic Buildings</b></p> <p>Findings of Fact: There are no historic buildings on site or part of this development review application, C14-07. Special Uses are not defined in the code. Nonetheless, it would not apply because it applies only to 'special uses' in historic buildings.</p> <p>Conclusions of Law: Rule 350-81-114 is <u>not</u> applicable to this development review application, C14-07.</p>

**LAND DIVISIONS AND LOT LINE ADJUSTMENTS**

<p><b>350-81-120 Consolidation of Lots</b></p> <p>Findings of Fact: This development review application does not contain or propose any consolidation of lots.</p> <p>Conclusions of Law: Rule 350-81-120 is <u>not</u> applicable to this development review application, C14-07.</p>
<p><b>350-81-124 Land Divisions and Cluster Development</b></p> <p>Findings of Fact: This development review application does not contain or propose any land divisions or cluster development.</p> <p>Conclusions of Law: Rule 350-81-124 is <u>not</u> applicable to this development review application, C14-07.</p>
<p><b>350-81-126 Lot Line Adjustments</b></p> <p>Findings of Fact: This development review application does not contain or propose any lot line adjustments.</p> <p>Conclusions of Law: Rule 350-81-126 is <u>not</u> applicable to this development review application, C14-07.</p>

**LAND USE DESIGNATIONS**

Findings of Fact: The land use designation for the subject property is General Management Area, Residential-10. Columbia River Gorge Commission Administrative Rules 350-81-350 through 350-81-390 apply to the Residential Land Use Designations and must be considered as part of this development application. Consideration, application and findings are described below:

Land Use Designations – General Management Area (applicable Administrative Rule Criteria are listed and **bolded** below):

<u>Agriculture</u>	<u>Forest Land</u>	<u>Open Space</u>	<b>Residential Land</b>	<u>Rural Center</u>	<u>Commercial Land</u>	<u>Recreation</u>
350-81-170 Agricultural Land Designations	350-81-250 Forest Land Designations	350-81-330 Open Space Designations	<b>350-81-350 Residential Land Designations</b>	350-81-400 Rural Center	350-81-430 Commercial Land	350-81-470 Recreation Land Designation
350-81-180 Uses Allowed Outright	350-81-260 Uses Allowed Outright	350-81-335 Uses Allowed Outright	<b>350-81-360 Uses Allowed Outright</b>	350-81-410 Uses Allowed Outright	350-81-440 Uses Allowed Outright	350-81-480 Uses Allowed Outright
30-81-182 Uses Allowed Through the Expedited Development Review	350-81-262 Uses Allowed Through the Expedited Development Review	350-81-338 Uses Allowed Through the Expedited Development Review	<b>350-81-365 Uses Allowed Through the Expedited Development Review</b>	350-81-415 Uses Allowed Through the Expedited Development Review	350-81-445 Uses Allowed Through the Expedited Development Review	350-81-485 Uses Allowed Through the Expedited Development Review
350-81-182 Review Uses	350-81-270 Review Uses	350-81-340 Review Uses	<b>350-81-370 Review Uses</b>	350-81-420 Review Uses		350-81-490 Review Uses
350-81-200 Review Uses with Additional Approval Criteria – Large Scale or Small Scale Agriculture	350-81-280 Review Uses with Additional Approval Criteria – Commercial Forest Land, or Large or Small Woodland Designations		<b>350-81-380 Review Uses with Additional Approval Criteria – Residential Land</b>		350-81-450 Review Uses with Additional Approval Criteria – Commercial Land	
350-81-210 Approval Criteria for Life Estates- Large Scale or Small-Scale Agriculture Designations	350-81-290 Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land		<b>350-81-390 Approval Criteria for Specified Review Uses on Lands Designated Residential</b>		350-81-460 Approval Criteria for Review Uses on Lands Designated Commercial	350-81-500 Approval Criteria for Non-Recreational Uses in GMA Public Recreation Designations

	or Large or Small Woodland					
350-81-220 Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture	350-81-300 Approval Criteria for Fire Protection in GMA Forest Designations					350-81-510 Approval Criteria for Non-Recreational Uses in GMA Commercial Recreation Designations
350-81-230 Uses Allowed Outright for Lands Designated Agriculture – Special	350-81-310 Approval Criteria for Siting of Dwellings on Forest Land in the GMA					
350-81-231 Uses Allowed through the Expedited Development Review Process – Agriculture – Special	350-81-320 Approval Criteria for Life Estates in Commercial Forest Land Or Small or Large Woodland					
350-81-232 Review Uses for Lands Designated Agriculture – Special						
350-81-234 Approval Criteria for Review Uses on Lands Designated Agriculture - Special						
350-81-236 Uses Prohibited on Lands						

Designated Agriculture – Special						
350-81-240 Range Conservation Plans						

**350-81-170 Agricultural Land Designations**

Findings of Fact: The development review application does not contain any properties with an Agricultural Land Designation.

Conclusions of Law: Rule requirements 350-81-170 up to, and including 350-81-240, which pertain to Agricultural Land Designations are not applicable to this development review application.

**350-81-250 Forest Land Designations**

Findings of Fact: The development review application does not contain any properties with a Forest Land Designation.

Conclusions of Law: Rule requirements 350-81-250 up to, and including 350-81-320, which pertain to Forest Land Designations are not applicable to this development review application.

**350-81-330 Open Space Designations**

Findings of Fact: The development review application does not contain any properties with an Open Space Land Designation.

Conclusions of Law: Rule requirements 350-81-330 up to, and including 350-81-340, which pertain to Open Space Land Designations are not applicable to this development review application.

**350-81-350 Residential Land Designations**

**350-81-360 Uses Allowed Outright**

Findings of Fact: Placement of a manufactured home and construction of a garage as a hardship dwelling is not considered a use allowed outright.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**30-81-365 Uses Allowed Through the Expedited Development Review**

Findings of Fact: Placement of a manufactured home and construction of a garage as a hardship dwelling is not consider a use allowed through the expedited development review process.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-370 Review Uses**

Findings of Fact: 350-81-370(1)(d) allows for the temporary use of a mobile home in the case of a family hardship, subject to guidelines for hardship dwellings in “Temporary Use-Hardship Dwelling”(350-81-092). See analysis under Rule 350-81-092.

Conclusions of Law: This proposed development, C14-07, is consistent with this rule requirement.

**350-81-380 Review Uses with Additional Approval Criteria – Residential Land**

Findings of Fact: The development review application does not propose any uses that are listed or considered as review uses with additional approval criteria.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-390 Approval Criteria for Specified Review Uses on Lands Designated Residential**

Findings of Fact: The development review application does not propose any uses that are specified review uses on lands designated residential.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-400 Rural Center Designations**

Findings of Fact: The development review application does not contain any properties with a Rural Center Designation.

Conclusions of Law: Rule requirements 350-81-400 up to, and including 350-81-420, which pertain to Rural Center Land Designations are not applicable to this development review application.

**350-81-430 Commercial Land Designations**

Findings of Fact: The development review application does not contain any properties with a Commercial Land Designation.

Conclusions of Law: Rule requirements 350-81-430 up to, and including 350-81-460, which pertain to Commercial Land Designations are not applicable to this development review application.

**350-81-470 Recreation Land Designations**

Findings of Fact: The development review application does not contain any properties with a Recreation Land Designation.

Conclusions of Law: Rule requirements 350-81-470 up to, and including 350-81-510, which pertain to Recreation Land Designations are not applicable to this development review application.

## RESOURCE PROTECTION GUIDELINES

### 350-81-520 General Management Area Scenic Review Criteria

The following scenic review guidelines shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

(1) All review uses:

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

Findings of Fact: A manufactured home and a garage are proposed as a hardship dwelling in this development application. The overall slope of the property rises from the south to the north. Sampling shows the slope at 11.3% by the Old Highway 8 (southern boundary line) to 53% at the northern boundary line. The lower 2/3rds of the property are in a slope range of 10 to 30% and the northern 1/3 of the property has slopes greater than 30%. The portion of the property where the manufactured home will be located appears relatively flat and the slopes sampled ranged from 17% to 19%, a 2% difference. Site inspection confirmed that most of the elevation change on this area of the site is further north of the house site. The housing site will require minimal grading. No new roads are being proposed as part of this development application.

Conclusions of Law: This development application, C14-07, is consistent with the rule requirement.

- (b) 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.

Findings of Fact: A one story manufacturing home 66 feet long x 28 feet wide, and a one story garage 36 feet long x 36 feet wide with a covered breezeway measuring 36 feet long by 10 feet are proposed as part of this development application. The combined foot print of both structures are 3,504 square feet in size. The subject property is approximately 4.85 acres in size. This parcel is described as Lot 2 of the Greydigger Heights subdivision.

A study area was drawn around the subject site to analyze the compatibility of the proposed development to the general building scale of existing nearby development. The study area is rectangular in shape, measures approximately 75.69 acres in size. Generally described, the land use pattern is single family homes and is planned General Management Area – Residential-10. This area was chosen because it represents a cluster of residential development, similar to a neighborhood, centered on Old Highway 8.

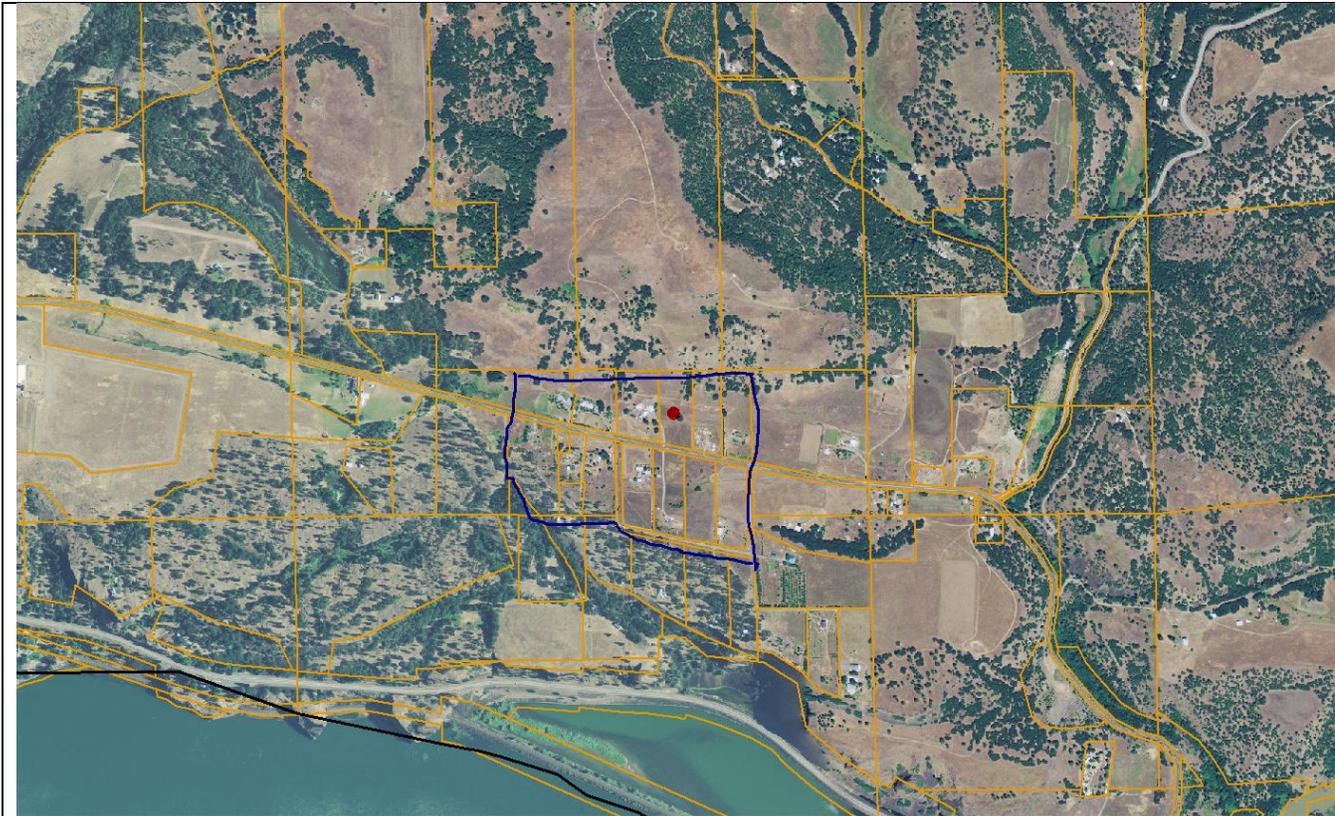


Figure 2 - C14-07 Land Use Study Area

The proposed development is deemed compatible with the general scale (height, dimensions and overall mass [measured in square footage]) of existing nearby development if one existing development has one or more of the 3 components of scale that is equal to or greater than what is proposed. For example, if there is an existing development in the study area that has an overall mass of 3000 SF and the proposed development will be 2000 SF, then the proposed development is considered with the existing development in the area as it relates to overall mass, one of the components of scale. From a scenic resource, if the scale of the proposed development is less than what is found in the existing area, then the scenic resource impact is less than what preceded it. The following table describe two nearby like land uses that have aspects of scale equal to or greater than what is being proposed in this application.

The proposed development will have a combined footprint of 2524 SF (home 66 ft X 28 ft + garage 26 ft X 26 ft), 1 story in height and the longest developed line will be 66 feet (home).

Lot #	Acreage	Development Pattern	Scale of Development (height, dimensions, overall mass)
TLID_03122853000200 Lester Haarstad	5.0	Single family detached residential, 1 story, 1848 SF finished area with two wood decks (280 SF and 35 SF), + 1238 SF detached garage + 864 detached pole building + 120 SF storage shed. Total footprint = 4385 SF. Maximum continuous linear footage, any plane 102 ft long; 10+28+10+36 ft = 912 ft width.	This existing development exceeds 2 components of scale in the proposed

			development – mass and dimensions
TLID_03122852000100	5.46	Lot 1 is consists of general purposes buildings, a wood pole frame carport and a single family residence. The combined footprint of all the buildings are about 4600 square feet (1200+280+1120+216+648+364+220+64+168+280+40)	This existing development equals 1 component of scale in the proposed development – height. You cannot go any lower than 1 story for a habitable structure.

\*Important point to note. The site where this temporary hardship dwelling unit is part of a buildable lot that already has buildings on it that have a large foot print (estimated to be 5000 SF MOL with a single family home, garage, carport, lean-to, utility building). The addition of this temporary hardship dwelling unit would make the overall scale of the building mass on this buildable lot larger than anything else in the study area. Normally, that would not be allowed, however, the proposed house is a temporary hardship dwelling. It is intended and expected, that this home is only temporary, and that once the hardship is gone, this home and accessory structure will be removed. It was not counted in with the overall scale of the existing development on the buildable lot. That will be written in as a condition of development in the Director’s Decision.

Conclusions of Law: The proposed development application, C14-07 is consistent with this rule provision if a condition of development is written into the Director’s Decision as described above.

- (c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in this chapter.

Findings of Fact: No planted vegetation is needed, required or provided in this application.

Conclusions of Law: This rule provision is not applicable to this petition.

- (d) A site plan and land use application shall be submitted for all new buildings, except for buildings smaller than 60 square feet in area and less than or equal to 10 feet in height, as measured at the roof peak. The site plan and application shall include all information required in the site plan guidelines in "Review Uses" 350-81-032(5). Supplemental requirements for developments proposed on lands visible from key viewing areas are included in the key viewing areas guidelines in this chapter.

Findings of Fact: The proposed development is greater than 60 square feet in area, and a site plan with elevation has been provided as part of this development review application.

Conclusions of Law: This development review application is consistent with this rule provision.

- (e) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

Findings of Fact: This rule requirement is a directive for staff as the reviewing party. The applicant has been advised and has provided information on the site plan in which to make a determination of compatibility with the landscape

setting. The guidelines for determining that compatibility are contained in Rule 350-81-520(3) which are contained further along in this report.

Conclusions of Law: This development review application is consistent with this rule provision.

- (f) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable. At a minimum, such reclamation plans shall include:
  - (A) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-mining existing grades and post-mining final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing, and equipment areas employed for the duration of the use.
  - (B) Cross-sectional drawings of the site showing pre-mining and post-mining grades.
  - (C) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.
  - (D) Description of drainage/erosion control features to be employed for the duration of the use.
  - (E) A landscaping plan providing for re-vegetation consistent with the vegetation patterns of the subject landscape setting, indicating the species, number, size, and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

Findings of Fact: This development review application does not propose any new production and/or development of mineral resources nor any expansion of existing quarries.

Conclusions of Law: These rule requirements are not applicable to this development review application.

- (g) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to submit written comments on the proposal. State agency comments shall address the following:
  - (A) Whether the proposed mining is subject to state reclamation permit requirements;
  - (B) If subject to state jurisdiction, whether an application has been received for a state reclamation permit and, if so, the current status of the application; and
  - (C) For uses subject to state jurisdiction, any issues or concerns regarding consistency with state reclamation requirements, or any suggested modifications to comply with state reclamation requirements. The Executive Director may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction.

Findings of Fact: This development review application does not propose any new production and/or development of mineral resources nor any expansion of existing quarries.

Conclusions of Law: These rule requirements are not applicable to this development review application.

(2) Key Viewing Areas

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

Findings of Fact: The subject property has been identified in a Gorge Commission data base as being visible from the key viewing areas:

<u>Key Viewing Area</u>	<u>Foreground</u>	<u>Middle Ground</u>	<u>Background</u>	<u>Distance KVA to Site<sup>^</sup></u>
Rowena Plateau		X	X	9700 to 12700 feet
Columbia River			X	19000 to 29000 feet
Historic Columbia River Highway		X	X	12200 to 13600 feet
Interstate 84		X	X	14220 to 14700 feet
State Route 14			X	7200 to 8775 feet
CR 1230 (Old Hwy 8)*	Not applicable	Not applicable	Not applicable	Not applicable

\*A key viewing area for SMA (Special Management Area) only portions of CR 1230 per Rule 350-81-020(91) Definitions

<sup>^</sup>2 Sample points selected at the longest potential view lines of a triangular view shed with the subject property at the apex of the triangle.

Figure 2 shows the generalized location of the key viewing areas 1:50000 in yellow and the directional view line and breadth of a composite view shed.

Theoretically, existing views from various locations in the vicinity of the proposal would be altered as a result of the placement of the manufactured home and appurtenances. To investigate the potential visual impacts of this Project, a view shed or “line-of-sight” analysis was conducted.

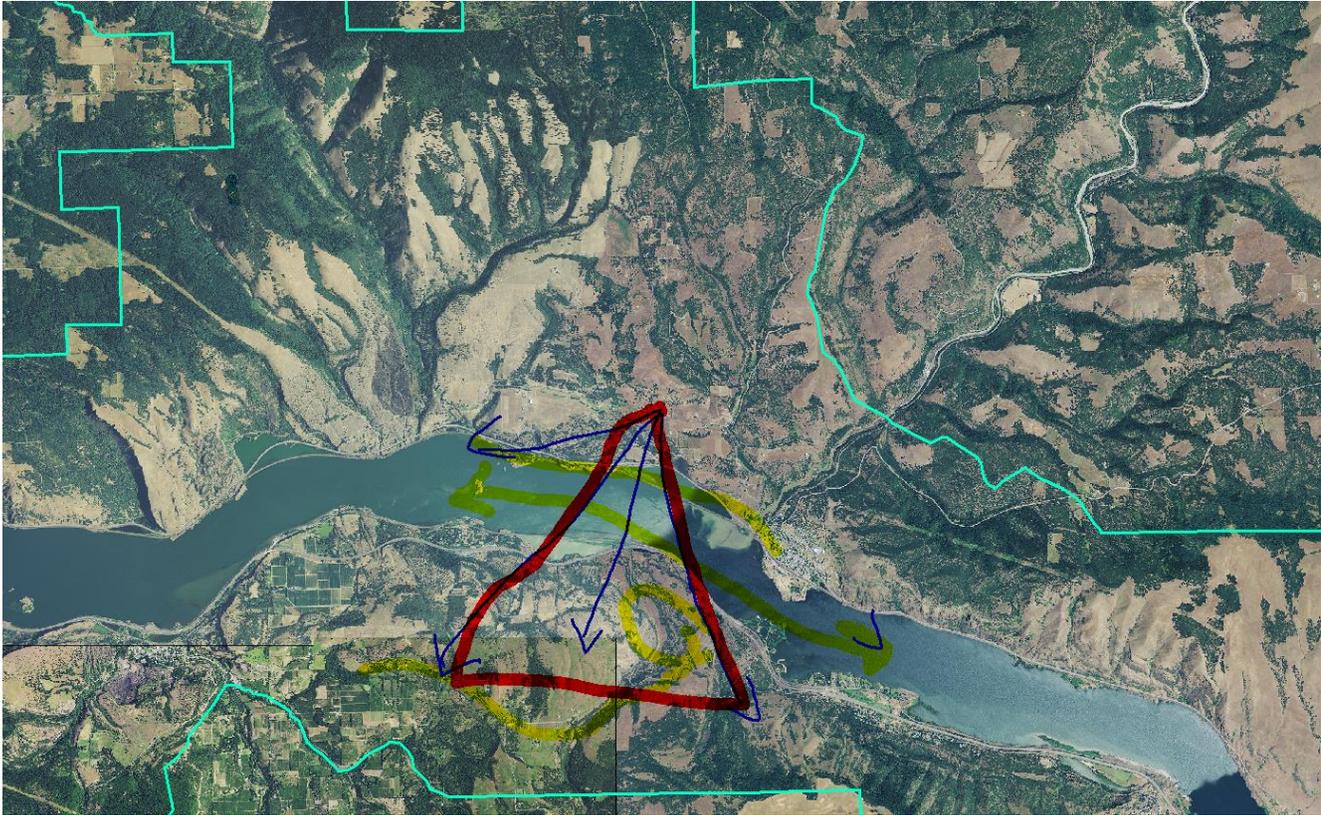
The visual impacts of a proposed action depend, in general upon the degree of contrast with the existing landscape introduced by the visible aspects of the action, the distance at which those changes would be viewed, the number of viewers affected, and the sensitivity of the viewers to those changes. The degree of contrast introduced by an action depends on the context or the existing visual character within the changed would be viewed.

The elevation of the proposed house site is approximately 610 feet, elevation is about 110-120 feet at that portion of Highway 14 and Highway 84, and about 670 feet at Rowena Plateau. The visibility analysis takes into account an observer’s viewpoint, direction of sight and distance of sight to the project area. Assuming the average line-of-sight extends from an approximately eye height of 5 feet to all other points on the terrain surface that are in a direct line with a given observation point. The analysis is based on terrain alone and does not account for attenuating factors such as distance, haze, humidity, background landscape, or weather; any one of these factors could make the proposal undetectable or barely visible from certain locations under a variety of conditions.

In lieu of a definition, the following can help explain it. The foreground, middle ground, and background in a composition are generally divided into three planes. The foreground of a composition is the visual plane that appears closest to the viewer, while the background is the plane in a composition perceived furthest from the viewer. The middle ground is the visual plane located between both the foreground and background. The scale of these components often correlates to the dominance in an image. The foreground is often the most dominant due to the larger perceived scale of the images objects. This is not always the case, however, as definition and other factors can shift the dominance of the composition. Grouping elements in the landscape by size and distance is one way of visualizing this. Middle ground objects are further away in the landscape than foreground objects and smaller in size

but not as small or far away as background.

Field work at multiple points at each key viewing area verified that the subject property could be seen from 1 key viewing area – Rowena Plateau.



*Figure 3-The generalized location of the key viewing areas 1:50000 in yellow and the direction view line and breath of a composite view shed in blue. Red shows the view shed for the Rowena Plateau, the only visible key viewing area.*

Conclusions of Law: The guidelines in this section of Rule 350-81 are applicable to this development review application, C14-07.

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

Findings of Fact: Visually subordinate development is a scenic standard in the Columbia River Gorge National Scenic Area. Scenic standards describe how well a development blends with the landscape.

As defined in Rule 350-81. Visually subordinate: A description of the relative visibility of a structure or use where that structure or use 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.

Additionally, visually subordinate development is visible but not what you see first or remember best about the landscape. Visual subordination for the purposes of this analysis is a function of:

- Structure location and orientation;
- Structure size, color, height, shape and exterior materials;
- Plantings to help screen or shade new development; and

- Grading necessary to accommodate structures and circulation on the site.

It is important to note that the garage will be located close to, and parallel to, the house on the north side and because it is smaller than the house, it will not be visible from Rowena Plateau to the south, the only key viewing area field verified with which this site was visible. The analysis below reflects calculations for the house only.

Let's look at each one individually:

Structure location and orientation. The proposed development that could potentially be seen in the key viewing area is a manufactured home 66 feet long by 28 feet wide by 14 ½ feet high (center pitch roof, 3/12 pitch), located among a group of single family residences in a residential neighborhood. The proposed house will be oriented lengthwise east/west. Notwithstanding any foreground screening, the only consistent exposure one would see from various points on the Rowena Plateau would be the south length. It is on the north side of the study area defined for this case. The elevation rises south to north and this exposes the broad side of the home on some of the highest visible elevations in the study area. It will be one home located amongst many homes in the study area. As a residential use, it will not stand out by itself.

The elevation of the proposed house is located at similar elevations found on the Rowena Plateau. The visual plane is almost 0 degrees. That is, the viewer would not have to look up or down to potentially see the house from certain points on the Rowena Plateau.

The potential 2 dimensional 'seen' mass from the Rowena Plateau will be the south side length (66 feet X 28 feet = 1848 square feet) + south side roof (1/2 X 66 feet base X 5 1/3 feet height = 175.89 square feet) = 2023.89 square feet in the middle ground and background. That is the amount of potentially visible surface that might be consistently seen from Rowena Plateau. The nearest distance from Rowena Plateau is +9000 feet MOL. The two dimension mass of the view shed (A triangular area defined by the distance between the furthest points of site visibility along the key viewing area converging to a point at the development site) conservatively drawn to include a middle line bisect of the plateau is 1891 acres or 82,371,960 square feet. (The ratio of visible developed mass to visible landscape mass is 0.0000245701 (2023.89 divided by 82,371,960). Rationally, the visual mass of the proposed development will equal about 2/1,000,000th of the view shed total viewing area. In other words the development will be very small in the landscape; very small, but still potentially visible.

What does this mean? How do I understand if this is visible or not?

Perhaps this perspective might help. Considering the absolute threshold, the brightness of a candle flame, and the way a glowing object dims according to the square of the distance away from it, vision scientists conclude that one could make out the faint glimmer of a candle flame up to 30 miles away.

But how far away can we perceive that an object is more than just a twinkle of light? For something to appear spatially extended rather than point-like, light from it must stimulate at least two adjacent cone cells — the elements in our eyes that produce color vision. Under ideal conditions, an object must subtend an angle of at least 1 arcminute, or one sixtieth of a degree, in order to excite adjacent cones. (This angular measure stays the same regardless of whether an object is nearby or far away; distant objects must be much larger to subtend the same angle as near objects). The full moon is 30 arcminutes across, whereas Venus is barely resolvable as an extended object at around 1 arcminute across.

Human-scale objects are resolvable as extended objects from a distance of just under 2 miles (3 km). For example, at that distance, we would just be able to make out two distinct headlights on a car. (Source - <http://www.livescience.com/33895-human-eye.html>)

Structure size, color, height, shape and exterior materials. The proposed house will be 1848 SF in size. This is in a size range that is consistent with other homes in the study area. It will be located on one of the highest elevations in the study area but the volume of the house is so small compared to the view shed, the conclusion has been made that will not be visually dominant in the landscape because of its size. The home is not new. It is pre-owned. The original color of the exterior walls is white. The applicant will repaint it dark earth tone color, Behr Paint Double Espresso, BNC-21. The roof is a composition roof, dark brown. The color specification is unknown because the applicant is the original owner. A picture has been included in the file to verify the roof is a dark brown. Generally, both colors are darker than the rock landscape in the area. The height is 1 story and that is consistent with other homes in the study area. It will be located on one of the highest elevations in the study area but the height of the house (14 ½ feet) is so small compared to the view shed and there are other features in the landscape, mostly trees, that are taller than the proposed house and that will cause visual distraction in the view shed. The conclusion has been made that this house will not be visually dominant in the landscape because of its height. The shape is rectangular. Similar shapes are found in the landscape though not as symmetrical as a built home. The shape is similar to other built structures in the study area, and this home won't create a visually dominant condition. The exterior material for the home is pressed wood. This will be low reflective and the fenestration of the south side of the home will have multiple types of exterior materials that create diversity that help to make the house visually subordinate in the landscape. The proposed garage will be built in the shadow of the home on the Northside and will be out of sight from the key viewing area to the south. The garage will be Taylor Metal Products, Weathered Copper SRI-25. It appears to be a dark earth tone color.

Plantings to help screen or shade new development. No landscaping is proposed as part of this development. Screening and shading is not necessary for this to be visually subordinate on its own, from points along the Rowena Plateau.

Grading necessary to accommodate structures and circulation on the site. Development that requires grading can have an impact on visual dominance in the landscape. In this case, no significant grading is necessary to locate the home in its proposed location. There will be a gravel or crushed rock driveway leading up from the main driveway to the proposed garage. It will range in width from 20 feet to 30 feet wide and be approximately 130 feet in length. Approximately 6 inches of soil running approximately halfway up the driveway on the eastern side of the driveway will be removed during the driveway construction. This is estimated to be 30.1 cubic yards.  $(6 \text{ inches of soil} \times (.5)(130)(12) \text{ half-length of driveway in inches} \times .5((20+30)^2) \times 12 \text{ average driveway width in inches} = 1,404,000 \text{ cubic inches} / 46,656 \text{ (# of cubic inches in 1 cubic yard)} = 30.1 \text{ cubic yards})$ . This is well below the minimum threshold of 200 cubic yards for which a grading plan must be submitted. The gravel will be an earth tone color, not as dark as the house color to provide small visual contrast in the landscape.

Conclusions of Law: The proposed development in C14-07, must be visually subordinate to SR 141, the key viewing area. The development application, as proposed, is visually subordinate from the Rowena Plateau, the key viewing area for which this proposed development may be potentially visible.



*Figure 4-View from the site looking south to the Rowena Plateau*

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

Rule 350-81 defines cumulative effects as the combined effects of two or more activities. The effect may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

Cumulative impacts are addressed in the assessment because it is necessary to consider the visual effects of the proposed project within the context of other past, present and future changes to the local landscape.

The methodology for this analysis includes an assessment of the existing development in a defined view shed and its present visual effect and then an assessment with the incremental change of the proposed development.

The view shed used for this analysis is the study area used for the building scale compatibility. Rule 350-81 does not define maximum square footages for all uses allowed. Often the size of a proposed building is based on its compatibility of scale with the nearby existing developments. That is the case for a single family dwelling unit. The size of other types of buildings is dictated by a demonstrated need, such as farm labor housing. As such, the

calculation of development potential is not based on the existing uses. It is an average size that may be typically found in similar areas and it is a gross calculation for illustrative purposes only.

Characteristics/Assumptions:

- All the lots are planned GMA Residential-10 (characteristic).
- All lots not meeting the minimum lot size (10 acres) are considered to be buildable lots (assumption).
- Adjoining lots under one ownership are consolidated lots (assumption).
- There is no maximum square footage for residential uses in GMA Residential-10 (characteristic).
- The average sized home is 2600 SF in size (assumption – US Census 2014)
- The combined total maximum square footage allowed for all accessory structures per buildable lot is 1500 SF (characteristic).
- Lots owned by a public entity, such as the State, but planned with land use plan categories that permit development are counted into the development potential calculation for purposes of this analysis only. (Assumption).

Lot #	Acreage	Plan Category	Development Potential
03122852000400	5.1	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122852000300	4.55	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122852000200 and 03122852000100*	4.9+5.56=10.46	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122810040100	5.06	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
HITCHMAN, JACK	5.18	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122851000300	4.54	GMA Residential-10	1 primary dwelling unit – 2600 SF

			Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122851000300	15.26	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122855000200 and 03122855000100*	0.56+2.11=2.67	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122800001900	1.49	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122800002100	4.77	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122853000100	5.02	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122853000200	5.03	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122853000300	5.01	GMA Residential-10	1 primary dwelling unit – 2600 SF Accessory buildings not to exceed 1500 SF Total development = 4100 SF
03122853000400	4.95	GMA Residential-10	1 primary dwelling unit – 2600 SF

			Accessory buildings not to exceed 1500 SF Total development = 4100 SF
Total	79.09		14 lots X 4100 SF = 57,400 SF (1.32 acres) Floor area ratio (ratio of building to land) is a measure of building intensity = $1.32/79.09 = 0.017$ . Density = # of dwelling units/# of acres = $0.172$ dwelling units/acre.



*Figure 5-A typical residential typology in the existing environment.*

Findings of Fact: The development potential floor area ratio in the view shed (cumulative effect), a measure of development intensity in the landscape, could be 0.017 if fully developed. This is considered to be a very low intensity and consistent with rural development intensities. The build out density, another measure of building mass per area, is 0.172 dwelling units/acre or approximately 1 for every 5 ½ acres. The land use plan category requires a

minimum of 10 acres/dwelling unit but the existing development in the study area is sited on lots less than 10 acres in size.

Conclusions of Law: The predominant lot size in most of the study area is less than the minimum required. The resulting build-out of the study area will result in a land development pattern that is more intense and denser than was originally envisioned with the plan category. It is important then that new development applications provide visual subordination treatment that incrementally applied, will maintain and enhance an existing and future maintenance of the rural residential plan category.

The findings of fact above is consistent with part of this rule which requires 'consideration of the cumulative effects of proposed developments'. The remainder of this rule requires that potential visual effects and compliance with visual subordination policies shall consider the findings of fact made above. Those aspects of the Administrative Rule 350-81 which address this are contained below and the facts and findings of each are based, in part, on the findings of fact for this rule requirement. As such, the requirements of this part of Rule 350-81 have been addressed, and the process in which this development application, C14-07, has analyzed is consistent with it.

- (d) 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).
  - (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.

Findings of Fact: The potential visual impact of this proposed development is very small. The amount of building area site exposed to key viewing areas is minimal, if any. Natural vegetation is limited to screen the site. The distance from the building site to the key viewing area is far. The site is not visible from any key viewing areas. The proposed development will be a dark earth tone (Behr Paint Double Espresso BNC-21.) The maximum height of the house will

be 14 ½ feet. The garage will be 14 feet 4 inches tall, level with the house on the north side. This will make it completely hidden from the key viewing area to the south.

Conclusions of Law: This development review application, C14-07, is consistent with this rule requirement.

- (e) 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.

Findings of Fact: The property slope upwards south to north. The specific location is one of the most level portions of the site and is about 60% of the distance from front to back lot line. It will blend in with the rural landscape of the neighborhood. There are no buffers for wetlands, riparian corridors, sensitive plants or sensitive wildlife sites that preclude it being sited in this location. The proposed location does not conflict with cultural resource guidelines.

Conclusions of Law: This development review application, C14-07, is consistent with this rule requirement.

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

Findings of Fact: The slope of the property rises from the south side near Old Hwy 8 to the north side. 20 ft contour line maps reveal that there are no dips or depressions in the slope of any significance and field research verified this. Topographically though there is a location on the site that appears to be somewhat level, and this is where the applicant proposes to put the new home and garage. This minimizes the need for grading, at least for the home and garage. There is one large mature tree located south of the proposed home site. The existing vegetation (one tree) that could be used for screening is very limited and siting the home and garage closer would likely require more grading of the site. Also, the connection to the existing sewerage system would be more challenging because the connection further south of the proposed home/garage location would create a level or upward slope connection problem and the connecting pipes would have to be placed deeper into the ground to offset it. The proposed location will use gravity to create an easier and safer connection to the existing sewerage system, located to the west side of the existing house.

Aerial maps and field reconnaissance verify large stands of trees on properties due south of the subject property that provide significant screening for not only this proposed development but other homes in this small neighborhood.

Conclusions of Law: This development review application, C14-07, is consistent with this rule requirement.

- (g) 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 of Fact: The reference to 350-81-520(3) refers to the 'Landscape Settings'. Contained within each landscape setting are design guidelines. Findings of fact for the applicable landscape design guidelines are made further into this report and the reader is referred to that section of the report.

Conclusions of Law: This administrative rule requirement is contained within a larger and more comprehensive set of guidelines addressing landscape settings. The Conclusions of Law are drawn in that section of the staff report.

- (h) The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas. Variances to this guideline may be granted if application of the guideline would

leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.

Findings of Fact: The elevation of the site rises from south to north. The nearest 20 ft contour isocline at the furthest north end of the property is 740 ft. The elevation continues to increase up to 1040 feet northeast of the property on the lot located north of the subject property. The proposed house and garage will be built at the 640 ft elevation MOL. The new buildings will remain below the skyline of the bluff to the north.

Conclusions of Law: This development application, C14-07, is consistent with this rule requirement.

- (i) An alteration to a building built before November 17, 1986, that already protrudes above the skyline of a bluff, cliff, or ridge as seen from a key viewing area, may itself protrude above the skyline if:
  - (A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration, and
  - (B) There is no practicable alternative means of altering the building without increasing the protrusion.

Findings of Fact: The proposed development in application C14-07 is new development, not changes to existing development.

Conclusions of Law: This administrative rule requirement is not applicable to this development review application.

- (j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:
  - (A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-81-520 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

Findings of Fact: No new landscaping is proposed as part of this development review application. Applications of other guidelines (explained in detail in preceding sections of this report) are sufficient to make the development visually subordinate from SR141, the key viewing area.

Conclusions of Law: This development review application, C14-07, is consistent with this rule requirement.

- (B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction.

Findings of Fact: No new landscaping is required as part of this proposed development to achieve visual subordination.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (C) Unless as specified otherwise by provisions in 350-81-520, landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for

the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

Findings of Fact: No new landscaping is required as part of this proposed development to achieve visual subordination.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (A) The *Scenic Resources Implementation Handbook* shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-81-520(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

Findings of Fact: No new landscaping is required as part of this proposed development to achieve visual subordination.

Conclusions of Law: This rule requirement is not applicable to this development review application.

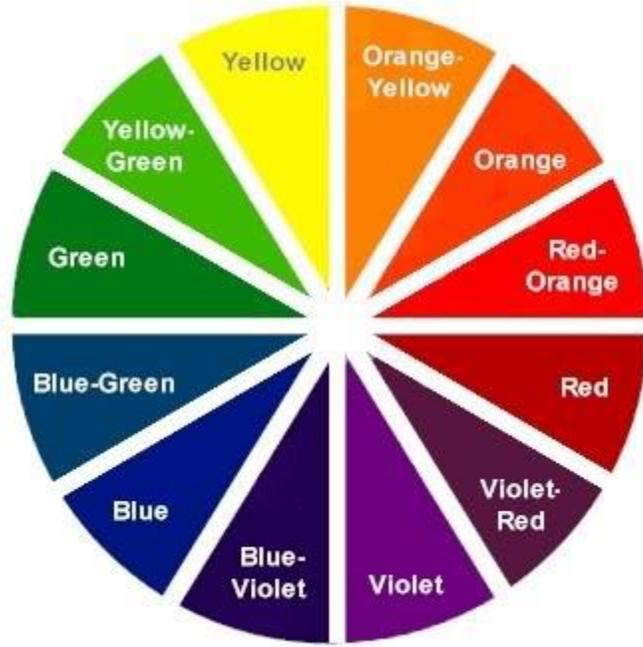
- (k) Conditions regarding new landscaping or retention of existing vegetation for new developments on lands designated GMA Forest shall meet both scenic guidelines and fuel break requirements in 350-81-300(1)(a).

Findings of Fact: The land use plan category is GMA Large Scale Agriculture, not GMA Forest.

Conclusions of Law: This rule requirement is not applicable to this development review application.

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

Findings of Fact: The application states that the home will be dark earth tone, Behr Paint Double Espresso BNC-21. This color is both complementary and analogous to colors in the surrounding landscape. The various brown colors in the landscape are mixtures of green and red (complementary or colors opposite on the color wheel) and yellow (for lighter browns). Generally, brown would be located somewhere near the center of the color wheel. This makes it analogous (or next to in location on the color wheel) to the yellow-green and greens and dark shadows in the surrounding landscape. Dark brown is a good match for many colors in the landscape.



*Figure 6-Color Wheel*



*Figure 7-Finding the colors in the landscape. Note that once the dry season is here much of this vegetation will turn brown.*

Conclusions of Law: This development review application, C14-07, is consistent with this rule requirement upon the condition that the specific dark earth tone color Behr Paint Espresso BNC-21 (selected by the applicant) be included in the Director's Decision.

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

Findings of Fact: The south, east and west sides of the house will be in the key viewing area. The Northside and the garage will not. The house is not screened by topographic features.

The house is constructed out of pressed wood and will be painted a dark earth tone color, specifically, Behr Paint Double Espresso BNC-21. There are 7 windows total on the south, east and west sides:

Elevation	Window Dimensions	Window Surface Area	% exterior wall covered
East	4' 10 5/8" X 3' 10"	4.66' X 3.625' = 16.8925 SF	East side wall = 9' 2" X 28' = 255.5 SF. % covered = 16.8925/255.5 X 100 = 6.6%
West	4' 10 5/8" X 3' 10 1/8"	4.66' X 3.625' = 16.8925 SF	West side wall = 9' 2" X 28' = 255.5 SF. % covered = 16.8925/255.5 X 100 = 6.6%
Southside (left to right)	4' 10 5/8" X 2' 6"	4.66' X 2.375' = 11.0675 SF	
	4' 10 5/8" X 3' 10"	4.66' X 3.625' = 16.8295 SF	
	4' 10 5/8" X 2' 6"	4.66' X 2.375' = 11.0675 SF	
	2 X 4' 10 5/8" X 3' 1" (side by side)	2 X 4.66' X 3.0625' = 28.5425 SF	Total South side wall = 11.0675 SF + 16.8295 SF + 11.0675 SF + 28.5425 SF = 67.507 SF. % covered = 67.507/602.25 X 100 = 11.21%

The size and location of the windows is not intrusive in the view shed. Five of the seven windows are physically separated from each other. Only two of them are placed side by side. The applicant bought the manufactured home as a pre-owned home and there is no documentation about the reflectivity of the windows.

The *Scenic Resources Implementation Handbook*, p 30 states that glass is less of a concern when it well shaded and located more than ½ mile from the Key Viewing Area. The proposed home will be more than ½ mile from the Rowena Plateau, the key viewing area and there are several stands of mature trees on lots further down slope on land to the south and partially obscures the visibility of this site from the key viewing area.

The home site is sensitive in the respect that has a southern exposure without any close screening vegetation or shading structures. There could be a lot of sun reflectivity during the day. The *Scenic Resources Implementation Handbook* requires that southern exposures require permanent shading structures, such as a trellis, overhead deck, deep eaves or lattice work to ensure mid-day sun does not reflect off windows.

Conclusions of Law: The development application will be found consistent with these rule provisions if a condition of approval that permanent shading structures be installed on the south side of the house.

- (n) In addition to the site plan requirements in 350-81-032(5), applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

Findings of Fact: This information is included as part of the Completeness Review Checklist. The Completeness Review Checklist is part of the application.

Conclusions of Law: This development review application, C14-07, is consistent with this rule requirement.

- (o) For proposed mining and associated activities on lands visible from key viewing areas, in addition to submittal of plans and information pursuant to 350-81-520(1)(f) section of this chapter, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable key viewing areas.

Findings of Fact: The development review application does not propose any uses that are mining or associated activities.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (p) 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.

Findings of Fact: One exterior light is shown on the site plan in the breezeway connecting the garage to the house on the north side of the house. A condition must be included in the development order directing all exterior lighting to be directed downward and sited, hooded and shielded and that the exterior surface must be a dark earth tone color.

Conclusions of Law: This development application, C14-07, is consistent with this rule requirement if the condition listed above is included in the development order.

- (q) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of dark earth-tone colors found at the specific site or in the surrounding landscape. The specific colors or a list of acceptable colors shall be included as a condition of approval. The *Scenic Resources Implementation Handbook* will include a recommended palette of colors.

Findings of Fact: The development review application does not propose any additions to existing buildings.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (r) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from key viewing areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.

Findings of Fact: This development review application does not include rehabilitation or modification to existing significant historic structures.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (s) New main lines on lands visible from key viewing areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.

Findings of Fact: This development review application does not include new main lines.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (t) New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas that require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

Findings of Fact: This development review application does not include any new communication facilities.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (u) New communications facilities may protrude above a skyline visible from a key viewing area only upon demonstration that:
  - (A) The facility is necessary for public service,
  - (B) The break in the skyline is seen only in the background, and
  - (C) The break in the skyline is the minimum necessary to provide the service.

Findings of Fact: This development review application does not include any new communication facilities.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (v) Overpasses, safety and directional signs, and other road and highway facilities may protrude above a skyline visible from a key viewing area only upon a demonstration that:
  - (A) The facility is necessary for public service, and
  - (B) The break in the skyline is the minimum necessary to provide the service.

Findings of Fact: This development review application does not include overpasses, safety and directional signs or any other road or highway facilities.

Conclusions of Law: This rule requirement is not applicable to this development review application.

*Editor's Note: There is no subsection "w" in the Administrative Rule. That is why there may appear to be a gap in the sequential ordering of the rule citations.*

- (x) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to this guideline may be authorized.

Findings of Fact: This development application, C14-07, is located more than 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

- (y) New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building site shall be used.

Findings of Fact: The location on site where the proposed house and garage will be located are in a slope range less than 30%.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

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

Findings of Fact: Minor grading is needed for the driveway but not the home and garage site. Six inches will be cut on the eastern side of the driveway about halfway up the length. Gravel or crushed rock will be used as surfacing. The small cut side of this grading will have a western exposure but with the gravel surfacing it shouldn't be noticeable.

Conclusions of Law: This development review application, C14-07 is consistent with this rule provision.

- (aa) 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. This plan shall be reviewed by the local government for compliance with key viewing area policies. The grading plan shall include the following:
  - (A) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:
    - (i) Existing and proposed final grades.
    - (ii) Location of all areas to be graded, with cut banks and fill slopes delineated.
    - (iii) Estimated dimensions of graded areas.
  - (B) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:
    - (i) Its purpose.
    - (ii) An estimate of the total volume of material to be moved.

- (iii) The height of all cut banks and fill slopes.
- (iv) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended.)
- (v) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings.
- (vi) A description of any other interim or permanent erosion control measures to be used.

Findings of Fact: The proposed structural developments in this application, C14-07, will not require more than 200 cubic yards of grading on sites potentially visible from key viewing areas.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

- (bb) Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest key viewing areas from which it is visible may be allowed upon a demonstration that:
  - (A) The site plan requirements for such proposals pursuant to 350-81-520 have been met.
  - (B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any key viewing areas.
  - (C) A reclamation plan to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520(1)(f) and (g).
  - (D) A written report on a determination of visual subordination has been completed, with findings addressing the extent of visibility of proposed mining activities from key viewing areas, including:
    - (i) A list of key viewing areas from which exposed mining surfaces (and associated facilities/activities) would be visible.
    - (ii) An estimate of the surface area of exposed mining surfaces that would be visible from those key viewing areas.
    - (iii) The distance from those key viewing areas and the linear distance along those key viewing areas from which proposed mining surfaces are visible.
    - (iv) The slope and aspect of mining surfaces relative to those portions of key viewing areas from which they are visible.
    - (v) The degree to which potentially visible mining surfaces are screened from key viewing areas by existing vegetation, including winter screening considerations.

- (vi) The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

Findings of Fact: This development review application does not propose any expansion of existing quarries, new production or development of new mineral resources.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

- (cc) Unless addressed by 350-81-520(2)(bb), new production and/or development of mineral resources may be allowed upon a demonstration that:

- (A) The site plan requirements for such proposals pursuant to this chapter have been met.
- (B) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc., associated with the use would be fully screened from any key viewing area.
- (C) A reclamation plan to restore the area to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520(1)(f) and (g).

Findings of Fact: This development review application does not propose any expansion of existing quarries, new production or development of new mineral resources.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

- (dd) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

Findings of Fact: This development review application does not propose any expansion of existing quarries, new production or development of new mineral resources.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

- (ee) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarrying activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

Findings of Fact: This development review application does not propose any expansion of existing quarries, new production or development of new mineral resources.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

### (3) Landscape Settings

The landscape setting rule requirements are contained in 350-81-520(3)(a-k). This is voluminous and it is not fully cited in this report. Rather, a finding of fact is made of which landscape settings are applicable to this development review petition and those applicable rule requirements are excerpted and cited below.

Findings of Fact: The landscape setting for this development review petition, C14-07, is Rural Residential in Pastoral. However, two landscape settings must be considered with this development review application because one (Rural Residential in Pastoral) references, by requirement, consideration of another (Pastoral). The following are the applicable rules (350-81-520(3)(a) and 350-81-520(3)(f) for the Rural Residential in Pastoral landscape setting and the Pastoral landscape setting.

All review uses within the following landscape settings shall comply with the following applicable guidelines:

(a) Pastoral

- (A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.
- (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:
  - (i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.
  - (ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.
  - (iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas-fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).
  - (iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.
- (C) Compatible recreation uses include resource-based recreation of a very low-intensity or low-intensity nature (as defined by 350-81-610) occurring infrequently in the landscape.

(f) Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland

- (A) New development in this setting shall meet the design guidelines described for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

- (B) In the event of a possible conflict between the two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.
- (C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

Findings of Fact:

The dominant visual feature should be agriculture such as orchards, vineyards, row crops and irrigated pasture, woodlots and scattered rural residential development. Consider that most of the development is residential, unconnected and unrelated to agricultural uses. The potential build-out land use pattern would include 14 dwelling units with accessory structures. There could be additional agriculture if some of the smaller lots start viticulture operations, a growing trend in the National Scenic Area. That is typically found in small estate lot development patterns near urban areas. The potential build-out of this view shed could change the character of this area from its rural in residential pastoral setting. It is important then that new development applications provide visual subordination treatment that when incrementally applied, will maintain and enhance an existing and future maintenance of the rural residential in pastoral landscape setting.

The accessory structure, a garage, will be clustered with the house location on the north side of the house, on what is likely to be the most naturally level piece of the lot furthest back from the Old Highway 8, the access road. That is consistent with 350-81-520(3)(a)(A). All existing tree cover on site will be retained. That is consistent with 350-81-520(3)(a)(B)(i). Any existing trees that are removed from the date of the Director's Decision onward must be replaced consistent with the requirements of Rule 350-81-350, and the Pastoral Landscape setting requirements (To address 350-81-520(3)(a)(B)(i) and maintain consistent tree coverage on site). The lot is predominantly grass/pasture/open space. This is consistent with the Pastoral landscape setting. No screening is required, however any landscaping must be native plants consistent with the Pastoral landscape setting. This is consistent with 350-81-520(3)(a)(B)(ii) and (iii) and (iv).

Conclusions of Law:

This development application, C14-07, is consistent with these rule requirements, if conditions are placed in the Director's Decision as describe in the Findings of Fact above.

(4) Scenic Travel Corridors

All review uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

- (a) For the purposes of implementing this section, the foreground of a scenic travel corridor shall include those lands within 1/4 mile of the edge of pavement of the scenic travel corridor roadway.
- (b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway. A variance to this setback requirement may be granted pursuant to 350-81-078(2). new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway, to the maximum extent practicable.
- (c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a scenic travel corridor roadway, except in a Rural Center designation (village landscape setting), shall comply with 350-81-520(4)(b) above, to the maximum extent practicable.

- (d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:
  - (A) An evaluation of potential visual impacts of the proposed project as seen from any key viewing area.
  - (B) An inventory of any rare plants, sensitive wildlife habitat, wetlands, or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable Management Plan guidelines to protect the resources.
- (e) When evaluating possible locations for undergrounding of signal wires or power lines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the *Columbia River Gorge National Scenic Area Corridor Visual Inventory* (April 1990).
- (f) New production and/or development of mineral resources proposed within 1/4 mile of the edge of pavement of a scenic travel corridor may be allowed upon a demonstration that full visual screening of the site from the scenic travel corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a scenic travel corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within timeframes specified in 350-81-520(2)(ee).
- (g) Expansion of existing quarries may be allowed pursuant to 350-81-520(2)(bb). Compliance with visual subordination requirements shall be achieved within timeframes specified in 350-81-520(2)(dd).

Findings of Fact: Rule 350-81-020(133) defines 'Scenic travel corridor' and identifies the road which are designated as such. This property is not located within any scenic travel corridors.

Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-07.

Findings of Fact: Commission Rule 350-81-520(1)(e) refers to the compatibility of the proposed development with the designated landscape setting. The Landscape Settings map in the Management Plan for the Columbia River Gorge National Scenic Area classifies the subject parcel as Rural Residential in Pastoral. 350-81-520(3)(f) contains guidelines for new development in this landscape setting. As shown on the site plan, the proposed development will be clustered near the eastern edge, towards the bottom of the south facing slope of the existing farm fields, consistent with 350-81-520(3)(a)(A). The subject parcel is not visible from any key viewing areas, and no tree will be removed due to the proposed development. No new landscaping is required to achieve visual subordination from key viewing areas.

Conclusions of Law: As proposed, the proposal is consistent with 350-81-520(1)(d).

Findings of Fact: This development review application does not contain or propose any mineral resource production and quarries.

Conclusions of Law: Rule 350-81-520(1)(f) and (g) are not applicable to this development review application, C14-07.

Findings of Fact: Commission Rule 350-81-520(2) contains additional scenic resource protection requirements for

development that will be topographically visible from key viewing areas. The subject parcel is not topographically visible from any key viewing areas.

Conclusions of Law: Rule 350-81-520(2) is not applicable to this development review application, C14-07.

Findings of Fact: The proposed development is not located on land within designated scenic travel corridors.

Conclusions of Law: Rule 350-81-520(4) is not applicable to this review application, C14-07.

Conclusion: With conditions of approval regarding siting, exterior building materials, colors, retention and maintenance of existing screening vegetation, and outdoor lighting, the proposed development is consistent with applicable guidelines in Commission Rule 350-81-520 that protect scenic resources from adverse effects.

**350-81-530 Special Management Area Scenic Review Criteria**

Findings of Fact: This development review application is for property wholly contained in the General Management Area. There are no lands in this application that are located in the Special Management Area.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

### 350-81-540 General Management Area Cultural Resource Review Criteria

#### (1) General Provisions for Implementing the Cultural Resources Protection Process.

- (a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

Findings of Fact: The cultural evaluation of this property was done by Marge Dryden, an Archaeologist and Heritage Program Manager for the US Forest Service. Marge works with the Columbia River Gorge National Scenic Area office of the US Forest Service and has served in this role since January 2003. Marge is considered a resource expert and has provided the Gorge Commission with her expertise as a cultural resource expert.

Conclusions of Law: The process used for this development review application is consistent with this rule requirement.

- (b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

Findings of Fact: The *Management Plan for the Columbia River Gorge National Scenic Area* identifies a 4 step process for protecting cultural resources:

- i) perform cultural resource reconnaissance or historic surveys before proposed uses are authorized;
- ii) evaluate the significance of cultural resources discovered during surveys;
- iii) assess the effects of proposed uses on significant cultural resources; and
- iv) prepare mitigation plans to avoid or minimize impacts to significant cultural resources.

The consultation process with Indian tribal governments and other interested parties of record includes the following:

- 1) A notice of application is sent out at the start of every development review process to Indian tribal governments and other interested parties of record. Review and comments is solicited.
- 2) A Cultural Resources Survey Determination is made to determine if a Heritage Resource Inventory Report (aka Reconnaissance Survey) should be conducted. No further notification is required if a determination is made that a Heritage Resource Inventory Report (aka Reconnaissance Survey) is not required unless written comments are received from an Indian tribal government. If a Heritage Resource Inventory Report (aka Reconnaissance Survey) is required, then it is conducted, a report is issued and it is sent to the Indian tribal governments and other interested parties of record. Review and comments is solicited and addressed in the staff report.
- 3) If the Heritage Resource Inventory Report (aka Reconnaissance Survey) concludes that cultural resources may be affected by a proposed use, then an Evaluation of Significance may be required. In this event, that Evaluation of Significance would be sent to the Indian tribal governments and other interested parties of record for review and comment. If the applicant's and Indian tribal government's Evaluations of Significance contradict, a Cultural Advisory Committee would submit a recommendation to the Gorge Commission.
- 4) If the Evaluation of Significance concludes that cultural resources are determined to be significant, then there will be a professional Assessment of the Effects of the Proposed Use and Mitigation Plans would be created. That Assessment of the Effects of the Proposed Use and any Mitigation Plans would be sent to the Indian tribal governments and other interested parties of record for review and comment.

Parts 1) and 2) of the consultation process have been completed. The Notice of Application was sent April 13, 2015. A Heritage Resource Inventory Report (aka Reconnaissance Survey) was completed and that sent out for review and comment on June 18, 2015 with a 30 day comment period ending July 18, 2015.

Conclusions of Law: This development review applications, C14-07, is consistent with this rule provision.

- (c) Reconnaissance and Historic Surveys and Survey Reports.
  - (A) Reconnaissance survey requirements and exceptions.
    - (i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-81-540(1)(c)(A)(ii) below.

Conclusions of Law: The development review application, C14-07, is consistent with this rule requirement.

- (ii) A reconnaissance survey shall be required for all proposed uses, except:
  - (I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.
  - (II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.
  - (III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.
  - (IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.
  - (V) Proposed uses that would occur on sites that have been adequately surveyed in the past.

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

- Residential development that involves two or more new dwellings for the same project applicant.
- Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
- Public transportation facilities that are outside improved rights-of-way.
- Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.
- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

Findings of Fact: Marge Dryden, Archaeologist and Heritage Program Manager for the USFS and a resource expert for the Gorge Commission on development review applications determined that a reconnaissance survey was required for this site. She completed that survey and concluded that the heritage resource inventory (reconnaissance survey) of this project discovered no prehistoric or early historic cultural resources that that would be affected by the applicant's actions. An historic survey was not required because the development on site is less than 50 years old.

Conclusions of Law: The development review application, C14-07, is consistent with this rule requirement.

(B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding

area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

Findings of Fact: The development review application, C14-07, is for new construction. No existing buildings are being affected by this application. This has been confirmed by the Gorge Commission's resource expert, Marge Dryden, Archaeologist and Heritage Program Manager, USFS.

Conclusions of Law: The development review application, C14-07, is consistent with this rule requirement.

- (C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

For 350-81-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Findings of Fact: Marge Dryden, Archaeologist and Heritage Program Manager for the USFS is a resource expert for the Gorge Commission on development review applications. The costs for this reconnaissance survey were borne by the USFS on behalf of the Gorge Commission.

Conclusions of Law: This proposed development application, C14-07, and its processing is consistent with this rule requirement.

- (D) Reconnaissance Surveys for Small-Scale Uses.

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

- (i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.
- (ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

Findings of Fact: A reconnaissance survey was completed for this application. A surface survey of the project area was conducted. The surface survey did not reveal that cultural resources may be present. Sub-surface testing was not required because the surface survey did not cultural resources may be present.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

- (E) Reconnaissance Survey Reports for Small-Scale Uses

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

- (i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.
- (ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.
- (iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

Findings of Fact: A reconnaissance survey was completed for this development review application and it met the requirements specified above.

Conclusions of Law: This development review application, C14-07, is consistent with this rule requirement.

(F) Reconnaissance Surveys for Large-Scale Uses

- (i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.
- (ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:
  - (I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.
  - (II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.
  - (III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.
  - (IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

Findings of Fact: This application is not considered to be a large-scale use.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

- (i) A description of the proposed use, including drawings and maps.
- (ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.
- (iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.
- (iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
- (v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
- (vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.
- (vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

Findings of Fact: This application is not considered to be a large-scale use.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

(H) Historic Surveys and Reports

- (i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.
- (ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.
- (iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

Findings of Fact: A historic survey is not required for this development review application, C14-07. The development is new and existing development on site is less than 50 years old. It does not meet the criteria to be deemed historic.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

- (d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

Findings of Fact: This development review application, C14-07, did require a reconnaissance survey, however, no effect was concluded, and, as such, no evaluation of significance, assessment of effect or mitigation plan is required. No responsibility nor cost has been incurred for those.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

- (e) Cultural resources are significant if one of the following criteria is satisfied:
  - (A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).
  - (B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

Findings of Fact: No cultural resources have been identified by the Gorge Commission's resource expert for this development review application, C14-07. Staff requested Washington State Department of Archaeological and Historic Preservation to review and comment (June 18 to July 18, 2015). No comment was received.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

- (e) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

Findings of Fact: The Gorge Commission does not have a standing Cultural Advisory Committee. Though this development review application, C14-07, did require a reconnaissance survey, no effect was concluded and, as such, no evaluation of significance, assessment of effect or mitigation plan was required.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

- (f) Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan.

Findings of Fact: This development review application, C14-07, did not require a cultural reconnaissance nor a historic survey, and as such, there was not determination of significance, assessment of effect nor any need for a mitigation plan. As such, there are no cumulative effects to consider.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

- (A) When written comments are submitted to the Executive Director within the comment period provided in 350-81-040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons. Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

- (B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

Findings of Fact: A cultural reconnaissance survey was required for this development review application, C14-07. No written comments were received.

Conclusions of Law: This development application, C14-07, and its processing are consistent with this rule requirement.

(b) Notice of Survey Results

- (A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

- (B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

Findings of Fact: The Gorge Commission's cultural resources expert determined the site was located in an area for which a reconnaissance (aka heritage resources inventory report) was required. That was completed and a report was issued. Gorge Commission staff sent this report to the Washington State Department of Archaeological and Historic Preservation and to the four Treaty Tribes for review and comment (June 18 to July 18, 2015). No comment was received.

Conclusions of Law: This development review application is consistent with this rule requirement.

(c) Conclusion of the Cultural Resource Protection Process

- (A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-81-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

Findings of Fact: Based on the findings presented by Marge Dryden, Archaeologist and Heritage Program Manager, USFS and cultural resource expert for the Gorge Commission, the Executive Director concludes that this development review application, C14-07, and the uses proposed are consistent with Rule 350-81-540.

Conclusions of Law: This development review application, C14-07, is consistent with this rule requirement.

- (B) The cultural resource protection process may conclude when one of the following conditions exists:
- (i) 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.
  - (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.
  - (iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism

shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(iv) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(a) 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" (36 CFR 60.4), or

(b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

Findings of Fact: The cultural resources expert for the Gorge Commission, Marge Dryden, Archaeologist and Heritage Program Manager, USFS has concluded in the reconnaissance survey that the heritage resource inventory of this project discovered no prehistoric or early historic cultural resources that would be affected by the applicant's actions. There were no comments submitted during the 21 day notice of development review period and no comments received from the State Historic Preservation Officer or Indian Tribal governments during the 30 day review period (June 18 to July 18, 2015). This meets one of the conditions listed above for which a finding that a cultural resource protection process may conclude (b.ii). Only 1 of the requirements listed above must exist in order to conclude the cultural resource protection process.

Conclusions of Law: The development review application, C14-07, is consistent with this rule requirement. The cultural resource protection process may be concluded for this development review application, C14-07.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

- (A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.
  - (B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.
  - (C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.
  - (D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.
  - (E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.
- (b) Notice of Evaluation Results
- (A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.
  - (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.
- (c) Cultural Resources are Culturally Significant
- (A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

- (B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process

- (A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.
- (B) The cultural resource protection process may conclude if the affected cultural resources are not significant.
- (C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

Findings of Fact: The cultural resources expert for the Gorge Commission, Marge Dryden, Archaeologist and Heritage Program Manager, USFS determined that a cultural resource reconnaissance survey is required for this development review application, C14-07. The report concluded that cultural resources would not be affected by the new use proposed in this development review application, and an evaluation of significance is not applicable. Though an evaluation of significance is not required at this time, it does not preclude one from being required later if cultural resources are discovered on site. A condition in the Director's Decision will be included that will require that any construction activity be stopped if cultural resources are discovered.

Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-07 at this time.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

- (A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.5) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.11.
  - (i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800. 5].
  - (ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800. 5]. Adverse effects on cultural resources include, but are not limited to:

- (I) Physical destruction, damage, or alteration of all or part of the cultural resource.
  - (II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.
  - (III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.
  - (IV) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 CFR 800.5.
- (B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.
- (C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:
- (i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.
  - (ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).
- (b) Notice of Assessment Results
- (A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.
  - (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.
- (c) Conclusion of the Cultural Resource Protection Process

- (A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.
- (B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.
- (C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

Findings of Fact: The cultural resources expert for the Gorge Commission, Marge Dryden, Archaeologist and Heritage Program Manager, USFS determined that a cultural resource reconnaissance survey is required for this development review application, C14-07. The report concluded that cultural resources would not be affected by the new use proposed in this development review application, and an evaluation of significance and an assessment of effect is not applicable. Though an evaluation of significance and assessment of effect is not required at this time, it does not preclude one from being required later if cultural resources are discovered on site. A condition in the Director's Decision will be included that will require that any construction activity be stopped if cultural resources are discovered.

Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-07 at this time.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

- (A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.
- (B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.  
  
Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.
- (C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.11, including, but not limited to:

- (i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.
- (ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.
- (iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.
- (iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.
- (v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results

- (A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.
- (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

- (A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.
- (B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.
- (C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

Findings of Fact: The cultural resources expert for the Gorge Commission, Marge Dryden, Archaeologist and Heritage Program Manager, USFS determined that a cultural resource reconnaissance survey is required for this development review application, C14-07. The report concluded that cultural resources would not be affected by the new use proposed in this development review application, and an evaluation of significance an assessment of effect and a mitigation plan is not applicable. Though an evaluation of significance and assessment of effect is not required at this time, it does not preclude one from being required later if cultural resources are discovered on site. A condition in the Director's Decision will be included that will require that any construction activity be stopped if cultural resources are discovered.

Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-07 at this time.

(6) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

- (a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- (b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.
- (c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [350-80-540(1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [350-80-540(3)(a)].

Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

- (d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

Findings of Fact: This rule requirement is in effect after the permit is issued and construction has begun. A condition will be included in the Director's Decision that will require all construction activity be stopped immediately if cultural resources are found on-site, within 100 feet of the development during construction.

Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-07 at this time.

(7) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

- (a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.

- (c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.
- (e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [350-81-540(5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [350-81-540(5)(c)] are met and the mitigation plan is executed.

Findings of Fact: The cultural resources expert for the Gorge Commission, Marge Dryden, Archaeologist and Heritage Program Manager, USFS determined that a cultural resource reconnaissance survey is required for this development review application, C14-07. The report concluded that cultural resources would not be affected by the new use proposed in this development review application, and an evaluation of significance an assessment of effect and a mitigation plan is not applicable. A condition in the Director's Decision will be included that will require that any construction activity be stopped if cultural resources are discovered. A condition in the Director's Decision will be included that will require that any construction activity be stopped if human remains are discovered.

Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-07 at this time. A condition will be included in the Director's Decision that will require all construction activity be stopped immediately if human remains are found on-site.

**350-81-550 Special Management Area Cultural Resource Review Criteria**

Findings of Fact: This development review application is for property wholly contained in the General Management Area. There are no lands in this application that are located in the Special Management Area.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

### **350-81-560 General Management Area Wetland Review Criteria**

#### (1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the wetland and the wetlands buffer zone; and

(C) a description of actions that would alter or destroy the wetland.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within wetlands and their buffer zones.

Findings of Fact: There are no wetlands identified on the subject property as shown in data provided in the National Wetlands Inventory.

Another potential indicator of wetlands is the presence of hydric soils. The Department of Agriculture, National Conservation Resource Service, Web Soil Survey identifies the subject parcel as having a soil classifications 761 (Balake very gravelly loam, 5 to 10 percent slopes-southern portion of property); 762 (Balake very gravelly loam, 10 to 15 percent slopes-most of the property extending almost to north boundary line) and 121 (at the very northern extreme of the property extending further north- Rock outcrop-Haploxerolls complex, 30 to 50 percent slopes). The National Hydric Soils List 2014 lists hydric soil types classified by State. None of these soil types is considered to have a hydric rating.

The applicant is responsible for determining the exact boundary of a wetland if the subject property is within a wetland buffer zone even if there are no wetlands on the subject property. The largest wetland buffer zone width defined in Rule 350-81 is in Rule 350-81-560(7)(c)(C). That width is 150 feet for herbaceous communities. There are no wetlands identified within 150 feet of the subject property as shown in data provided in the National Wetlands Inventory. The Department of Agriculture, National Conservation Resource Service, Web Soil Survey identifies land within 150 feet of all sides of the property as having the one or more of the same soil classifications found on the subject property, none of which have a hydric rating.

Overall, there are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

(2) Commission Rule 350-81-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge

National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

Findings of Fact: The subject property is not located in the main stem of the Columbia River.

Conclusions of Law: This rule requirement is not applicable to this development petition, C14-07.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-81-560(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of wetlands acreage or functions, and

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

(4) Uses not listed in 350-81-560(2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-81-560(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following: 200

(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;

(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; 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.

(b) 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 that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

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

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

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

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands.

Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

(i) Restoration: 2:1

(ii) Creation: 3:1

(iii) Enhancement: 4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

#### (7) Wetlands Buffer Zones

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

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

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

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

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

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

(A) Forest communities: 75 feet

(B) Shrub communities: 100 feet

(C) Herbaceous communities: 150 feet

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

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

#### (8) Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-07.

Findings of Fact: This development review application is not within a wetland or wetland buffer zone.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

#### **350-81-570 General Management Area Stream, Pond, Lake and Riparian Area Review Criteria**

- (1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas
- (a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.
  - (b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:
    - (A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;
    - (B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and
    - (C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.
  - (c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within streams, ponds, lakes, riparian areas and their buffer zones.

Findings of Fact: There are no streams, ponds or lakes on the subject property.

Findings of Fact: This development review application is not in a stream, pond, lake, or their buffer zones.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

### 350-81-580 General Management Area Sensitive Wildlife Review Criteria

#### (1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

- Bald eagle habitat
- Deer and elk winter range
- Elk habitat
- Mountain goat habitat
- Peregrine falcon habitat
- Pika colony area
- Pileated woodpecker habitat
- Pine marten habitat
- Shallow water fish habitat (Columbia R.)
- Special streams
- Special habitat area
- Spotted owl habitat
- Sturgeon spawning area
- Tributary fish habitat
- Turkey habitat
- Waterfowl area
- Western pond turtle habitat

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

- (i) listed as endangered or threatened pursuant to federal or state endangered species acts,
- (ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,
- (iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or
- (iv) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, mountain goat, and prairie falcon).

Updated lists of species included in sensitive wildlife sites can be found on the websites for the Washington Department of Fish and Wildlife (Species of Concern list) and the Wildlife Division of Oregon Department of Fish and Wildlife. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

Findings of Fact: Data from the following sources were reviewed to determine if there may be the presence of sensitive wildlife areas and/or sites on the subject property or within 1000 feet of the subject property (for cumulative effects requirements Rule 350-81-580(1)(c)). The data from these sources have been historically used by the Columbia River Gorge Commission to 'red flag' potential areas of sensitive wildlife areas and/or sites, not to pinpoint location. Development review applications are sent to the Washington Department of Fish and Wildlife should the data indicate potentially the presence of sensitive wildlife. The data from these sources are the most

current version of that data.

- Washington Natural Heritage Program (WNHP).
- Washington Department of Fish and Wildlife Priority Habitat Species.
- Original Management Plan for the Columbia River Gorge National Scenic Area habitat data.
- Original Management Plan for the Columbia River Gorge National Scenic Area Natural Areas data.
- United States Forest Service (Gifford Pinchot National Forest).
- United States Forest Service Land Cover (2006).

Below is a list of potential sensitive wildlife areas and/or sites that may be present on the subject property or within 1000 feet of the subject property boundaries:

- Deer and elk (data layer – Columbia Gorge National Scenic Area habitat plan). Located across the entire property.
- Black tail deer winter range (data layer – Washington Department of Fish and Wildlife Priority Species Habitat January 2015). On the northern most part of the subject property.
- Oregon White Oak, potential presence of western gray squirrel (a listed Washington threatened species) (United States Forest Service Land Cover 2006). Oregon White Oak is identified as a priority habitat in Rule 350-81-600(3)(d)(I). Potentially located 555 ft MOL (closest distance) to the northwest boundary point of the site.

Finding – There is a potential presence of sensitive wildlife areas and/or sites on the subject property or within 1000 feet of the property boundaries (per Rule 350-81-580(1)(c)).

- (g) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

Findings of Fact: There is a potential presence of sensitive wildlife areas and/or sites on the subject property or within 1000 feet of the property boundaries (per Rule 350-81-580(1)(c)). The applicant is required to submit a site plan at a scale of 1 inch equals 100 feet, or a scale providing greater detail. The applicant submitted a site plan with a scale of 1 inch equals 40 feet. This is greater detail than 1 inch equals 100 feet.

Conclusions of Law: This development application, C14-07, is consistent with this rule requirement.

- (h) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of sensitive wildlife areas and sites.

Findings of Fact: The Columbia River Gorge Commission staff requested Washington Department of Fish and Wildlife to review the development application and determine potential effects to significant natural resources and cumulative effects of proposed developments within 1000 feet of sensitive wildlife areas and sites. Washington Department of Fish and Wildlife reviewed this development application and responded on April 20, 2015 and stated that the proposed development on this property would not compromise the integrity of the wildlife in this area. The proposal would not require a field survey.

Conclusions of Law: The development review application, C14-07, is consistent with Rule 350-81-580.

### 350-81-590 General Management Area Rare Plant Review Criteria

#### (1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

- (a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are
- (A) endemic to the Columbia River Gorge and vicinity,
  - (B) listed as endangered or threatened pursuant to federal or state endangered species acts, or
  - (C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

- (b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
- (c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of rare plants.

#### Findings of Fact:

The following data layers were consulted to determine if there were any sensitive plants. (Note: The term 'rare' plant is used in the rule requirement title, but there is no definition in this section or the Rule 350-81 for 'rare' plant. All the references and the definition are 'sensitive plants'. The term 'rare' is used by the Washington Natural Heritage Program.

- Washington Nature Heritage Program, January 2015
- Jolley 1996 Sensitive Plant Inventory

Based on these sources, there are no sensitive/rare plants on the subject parcel or within 1000 feet. Oregon White Oak was identified within 1000 feet of the subject site. Oregon White Oak is not considered a rare plant by the State of Washington Dept. of Natural Resources, Natural Heritage Program **List** of Known Occurrences of Rare Plants in Washington, September 2014, Klickitat County.

(<http://www1.dnr.wa.gov/nhp/refdesk/lists/plantsxco/klickitat.html>)

A development proposal located within 1000 feet of a sensitive plant species must include a site plan at a scale of 1 inch equals 100 feet or greater detail. This isn't required because the site is not within 1000 feet of a sensitive plant species, however, the site plan for this development application is scaled at 1 inch equals 40 feet.

Conclusions of Law: This development review petition is consistent with these rule provisions.

#### (2) Field Survey

A field survey to identify sensitive plants shall be required for:

- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

Findings of Fact: The development proposal does not include any of the uses and/or actions listed above. A field survey is not required.

Conclusions of Law: This rule provision is not applicable to this development review petition, C14-07.

- (3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-81-590(4), and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

Findings of Fact: The review use will not be located within 1000 feet of a sensitive plant. The application has been reviewed pursuant to 350-81-590(4) [see facts/findings below] and under applicable provisions of 350-81-520 through 350-81-620. There are no sensitive plants identified within 1000 feet of the subject property.

Conclusions of Law: This rule provision is not applicable to this development review petition, C14-07.

- (4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:
  - (a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.  
  
If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.
  - (b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.
  - (c) New uses shall be prohibited within sensitive plant species buffer zones.

- (d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-81-078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-81-590(5).
- (e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.  
Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Findings of Fact: The review use will not be located within 1000 feet of a sensitive plant.

Conclusions of Law: This rule provision is not applicable to this development review petition, C14-07.

(5) Protection and Rehabilitation Plans

Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance.

Protection and rehabilitation plans shall meet the following guidelines:

- (a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.
- (b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.
- (c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

- (d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.
- (e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.
- (f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

- (g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:
  - (A) Describe the biology of sensitive plant species that will be affected by a proposed use.
  - (B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.
  - (C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.
  - (D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

Findings of Fact: The review use will not be located within 1000 feet of a sensitive plant.

Conclusions of Law: This rule provision is not applicable to this development review petition, C14-07.

- (6) Sensitive Plant Buffer Zones
  - (a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.
  - (b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.
  - (c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:
    - (A) Identifies the precise location of the sensitive plants,
    - (B) Describes the biology of the sensitive plants, and
    - (C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.
  - (d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director.  
The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.

Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Findings of Fact: This development review application is not within 1000 feet of a sensitive plant.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

**350-81-600 Special Management Areas Natural Resource Review Criteria**

Findings of Fact: This development review application is for property wholly contained in the General Management Area. There are no lands in this application that are located in the Special Management Area.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

### **350-81-610 General Management Areas Recreation Resource Review Criteria**

The following uses are allowable, subject to compliance with 350-81-610(5) and (6).

(1) Recreation Intensity Class 1 (Very Low Intensity)

- (a) Parking areas for a maximum of 10 cars for any allowed uses in Recreation Intensity Class 1.
- (b) Trails for hiking, equestrian, and mountain biking use.
- (c) Pathways for pedestrian and bicycling use.
- (d) Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating equestrian use).
- (e) Scenic viewpoints and overlooks.
- (f) Wildlife/botanical viewing and nature study areas.
- (g) River access areas.
- (h) Simple interpretive signs and/or displays, not to exceed a total of 50 square feet.
- (i) Entry name signs, not to exceed 10 square feet per sign.
- (j) Boat docks, piers, or wharfs.
- (k) Picnic areas.
- (l) Restrooms/comfort facilities.

(2) Recreation Intensity Class 2 (Low Intensity)

- (a) All uses permitted in Recreation Intensity Class 1.
- (b) Parking areas for a maximum of 25 cars, including spaces for campground units, to serve any allowed uses in Recreation Intensity Class 2.
- (c) Simple interpretive signs and displays, not to exceed a total of 100 square feet.
- (d) Entry name signs, not to exceed 20 square feet per sign.
- (e) Boat ramps, not to exceed two lanes.
- (f) Campgrounds for 20 units or less, tent sites only.

(3) Recreation Intensity Class 3 (Moderate Intensity)

- (a) All uses permitted in Recreation Intensity Classes 1 and 2.

- (b) Parking areas for a maximum of 75 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 3.
- (c) Interpretive signs, displays and/or facilities.
- (d) Visitor information and environmental education signs, displays, or facilities.
- (e) Entry name signs, not to exceed 32 square feet per sign.
- (f) Boat ramps, not to exceed three lanes.
- (g) Concessions stands, pursuant to applicable policies in Chapter 4, Part 1 of the Management Plan.
- (h) Campgrounds for 50 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 3 campgrounds may also include one group campsite area, in addition to the allowed individual campground units or parking area maximums allowed as described herein.

(4) Recreation Intensity Class 4 (High Intensity)

- (a) All uses permitted in Recreation Intensity Classes 1, 2, and 3.
- (b) Parking areas for a maximum of 250 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 4.
- (c) Horseback riding stables and associated facilities.
- (d) Entry name signs, not to exceed 40 square feet per sign.
- (e) Boat ramps.
- (f) Campgrounds for 175 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 4 campgrounds may also include up to three group campsite areas, in addition to allowed individual campsite units or parking area maximums allowed as described herein.

(5) Approval Criteria for Recreation Uses

All proposed recreation projects outside of Public or Commercial Recreation designations shall comply with the appropriate scenic, cultural, natural and recreation resource guidelines (350-81-520 through 350-81-620), and shall satisfy the following:

- (a) Compliance with 350-81-520 through 350-81-610.
- (b) Cumulative effects of proposed recreation projects on landscape settings shall be based on the "compatible recreation use" guideline for the landscape setting in which the use is located.

- (c) For proposed recreation projects in or adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland:
  - (A) The use would not seriously interfere with accepted forest or agricultural practices on surrounding lands devoted to forest or farm uses. Provision of on-site buffers may be used to partially or fully comply with this criterion, depending upon project design and/or site conditions.
  - (B) A declaration has been signed by the project applicant or owner and recorded with county deeds and records specifying that the applicant or owner is aware that operators are entitled to carry on accepted forest or farm practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland.
- (d) For proposed projects including facilities for outdoor fires for cooking or other purposes, or for proposed campgrounds, compliance with the following:
  - (A) The project applicant shall demonstrate that a sufficient quantity of water necessary for fire suppression (as determined pursuant to applicable fire codes or the county fire marshal) is readily available to the proposed facility, either through connection to a community water system or on-site wells, storage tanks, sumps, ponds or similar storage devices. If connection to a community water system is proposed, the project applicant shall demonstrate that the water system has adequate capacity to meet the facility's emergency fire suppression needs without adversely affecting the remainder of the water system with respect to fire suppression capabilities.
  - (B) To provide access for firefighting equipment, access drives shall be constructed to a minimum of 12 feet in width and a maximum grade of 12 percent. Access drives shall be maintained to a level that is passable to firefighting equipment.
- (e) Trail or trailhead projects shall comply with applicable trails policies in the Management Plan.
- (f) For proposed projects providing boating or windsurfing access to the Columbia River or its tributaries: compliance with applicable "River Access and Protection of Treaty Rights" objectives in the Management Plan.
- (g) For proposed projects on public lands or proposed projects providing access to the Columbia River or its tributaries: compliance with guidelines for protection of tribal treaty rights in 350-81-084.
- (h) For proposed projects that include interpretation of natural or cultural resources: A demonstration that the interpretive facilities will not adversely affect natural or cultural resources and that appropriate and necessary resource protection measures shall be employed.
- (i) For proposed Recreation Intensity Class 4 projects (except for projects predominantly devoted to boat access): A demonstration that the project accommodates provision of mass transportation access to the site. The number and size of the mass transportation facilities shall reflect the physical capacity of the site. This requirement may be waived upon a demonstration that provision of such facilities would result in overuse of the site, either degrading the quality of the recreation experience or adversely affecting other resources at the site.

(6) Facility Design Guidelines for All Recreation Projects

- (a) Recreation facilities that are not resource-based in nature may be included at sites providing resource-based recreation uses consistent with the guidelines contained herein, as long as such facilities comprise no more than one-third of the total land area dedicated to recreation uses and/or facilities. Required landscaped buffers may be included in calculations of total land area dedicated to recreation uses and/or facilities.
- (b) The facility design guidelines contained herein are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another.  
  
To be considered a separate facility from other developments or improvements within the same recreation intensity class, recreation developments or improvements must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).
- (c) Parking areas, access roads, and campsites shall be sited and designed to fit into the existing natural contours as much as possible, both to minimize ground-disturbing grading activities and utilize topography to screen parking areas and associated structures. Parking areas, access roads, and campsites shall be sited and set back sufficiently from bluffs so as to be visually subordinate as seen from key viewing areas.
- (d) Existing vegetation, particularly mature trees, shall be maintained to the maximum extent practicable, and utilized to screen parking areas and campsites from key viewing areas and satisfy requirements for perimeter and interior landscaped buffers.
- (e) Parking areas providing more than 50 spaces shall be divided into discrete "islands" separated by unpaved, landscaped buffer areas.
- (f) Lineal frontage of parking areas and campsite loops to scenic travel corridors shall be minimized to the greatest extent practicable.
- (g) Ingress/egress points shall be consolidated to the maximum extent practicable, providing for adequate emergency access pursuant to applicable fire and safety codes.
- (h) Signage shall be limited to that necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.
- (i) Exterior lighting shall be shielded, designed and sited in a manner which prevents such lighting from projecting off-site or being highly visible from key viewing areas.
- (j) Innovative designs and materials that reduce visual impacts (such as "turf blocks" instead of conventional asphalt paving) shall be encouraged through incentives such as additional allowable parking spaces and reduced required minimum interior or perimeter landscaped buffers. Upon a determination that potential visual impacts have been substantially reduced by use of such designs and materials, the Executive Director may allow either reductions in required minimum interior or perimeter landscape buffers up to 50 percent of what would otherwise be required, or additional parking spaces not to exceed 10 percent of what would otherwise be permitted.
- (k) A majority of trees, shrubs, and other plants in landscaped areas shall be species native or naturalized to the landscape setting in which they occur (landscape setting design guidelines specify lists of appropriate species).

- (l) All structures shall be designed so that height, exterior colors, reflectivity, mass, and siting result in the structures blending with and not noticeably contrasting with their setting.
- (m) Landscape buffers around the perimeter of parking areas accommodating more than 10 vehicles shall be provided. Minimum required widths are 5 feet for 20 vehicles or fewer, 20 feet for 50 vehicles or fewer, 30 feet for 100 vehicles or fewer, and 40 feet for 250 vehicles or fewer.
- (n) Interior landscaped buffers breaking up continuous areas of parking shall be provided for any parking areas with more than 50 spaces. The minimum width of interior landscaped buffers between each parking lot of 50 spaces or less shall be 20 feet.
- (o) Within required perimeter and interior landscaped buffer areas, a minimum of one tree of at least 6 feet in height shall be planted for every 10 lineal feet as averaged for the entire perimeter width. A minimum of 25 percent of planted species in perimeter buffers shall be coniferous to provide screening during the winter. Project applicants are encouraged to place such trees in random groupings approximating natural conditions. In addition to the required trees, landscaping shall include appropriate shrubs, groundcover, and other plant materials.
- (p) Minimum required perimeter landscaped buffer widths for parking areas or campgrounds may be reduced by as much as 50 percent, at the discretion of the Executive Director, if existing vegetation stands and/or existing topography are utilized such that the development is not visible from any key viewing area.
- (q) Grading or soil compaction within the drip line of existing mature trees shall be avoided to the maximum extent practicable, to reduce risk of root damage and associated tree mortality.
- (r) All parking areas and campsites shall be set back from scenic travel corridors, and the Columbia River and its major tributaries at least 100 feet. Required perimeter landscaped buffers may be included when calculating such setbacks. Setbacks from rivers shall be measured from the ordinary high water mark. Setbacks from scenic travel corridors shall be measured from the edge of road pavements.
- (s) Project applicants shall utilize measures and equipment necessary for the proper maintenance and survival of all vegetation utilized to meet the landscape guidelines contained herein, and shall be responsible for such maintenance and survival.
- (t) All parking areas shall be set back from property boundaries by at least 50 feet. All campsites and associated facilities shall be set back from property boundaries by at least 100 feet.
- (u) All proposed projects at levels consistent with Recreation Intensity Class 4 on lands classified Recreation Intensity Class 4 (except for proposals predominantly devoted to boat access) shall comply with 350-81-610(5)(i) in this chapter regarding provision of mass transportation access.

Findings of Fact: None of the uses listed as recreation resources in this section of Rule 350-81 are part of development review application, C14-07.

Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-07.

**350-81-620 Special Management Area Recreation Resource Review Criteria**

Findings of Fact: This development review application is for property wholly contained in the General Management Area. There are no lands in this application that are located in the Special Management Area.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-07.

### **350-81-630 Notice of Application Requirements**

#### **Step 1**

##### **All Expedited Review Uses**

Findings of Fact: This is not an expedited review use. It is a full review use.

Conclusions of Law: This rule provision regarding notification for expedited review uses is not applicable to the development review application, C14-07.

#### **Step 1**

##### **All Full Review Uses**

Findings of Fact: This development review application, C14-07, is a full review use application. Notice of application is required to Tribes, USFS, County and State. Notice of application was sent on April 13, 2015 to representatives on record for: 4 Tribes (Yakama, Warm Springs, Nez Perce, Umatilla); the USFS National Scenic Area Office; Klickitat County; Friends of the Columbia Gorge and the applicant. A notice of application and request to review and comment was sent to the State, however, requests for specific review and comment were sent to: Washington Dept. of Fish and Wildlife for wildlife habitat comment (April 14, 2015) and Washington State Department of Archaeology and Historic Preservation and 4 Treaty Tribal Nations for cultural reconnaissance survey results (June 18, 2015).

Conclusions of Law: This development review application, C14-07, is consistent with Step 1, 350-81-630.

#### **Step 2**

Requires that landowners within 500 feet be sent notice of application for applications that meet one or more of the following conditions:

- The application is a request for single family dwellings in the GMA Residential-10 Land Use Designation adjacent to GMA Agriculture or Forest Land Use Designations.
- The application is a request for commercial events and special uses in historic buildings adjacent to GMA agriculture or Forest Land Use Designations.
- The application requests non-farm single family dwellings in the GMA Large-Scale Agriculture Land Use Designation.
- The subject property of the application is located within GMA Forest Land Use Designations and is a request for one or more of the following uses: utility facilities, railroads, home occupations, fruit & produce stands, wineries, wine sales/tasting rooms, agricultural product processing and packaging, mineral resources, geothermal resources, aquaculture, boarding of horses, temporary asphalt/batch plants, expansion of non-profit camps/retreats/conference centers, B&Bs, non-profit learning/research facilities, fish processing operations, road spoils disposal sites.

#### **Findings of Fact**

- The subject property for this development review application is a request for a single family dwelling in GMA Residential-10 adjacent to GMA Large-Scale Agriculture Land Use designated properties; and
- This application is not a request for commercial events and special uses in historic buildings adjacent to GMA agriculture or Forest Land Use Designations; and
- This application is not a request for a non-farm single family dwelling in the GMA Large-Scale Agriculture Land Use Designation; and
- The subject property is not located on lands within a GMA Forest Land Use Designation nor is it a request for any one or more of the uses listed above pertaining to this rule requirements; and as such
- This rule requirement is not applicable to this development review petition, C14-07.

Findings of Fact: This development review application meets the qualifications in Step 2, 350-81-630 to have notice send out to landowners within 500 feet of the subject site. Notice of application was sent on April 13, 2015 to all properties of record identified and by the applicant in their application as being within 500 feet of the subject

property of this development review application, C14-07.

Conclusions of Law: This development review applications, C14-07 is consistent with this rule requirement.

Step 2 continued

Requires that notice of application for all other Full and Expedited Review Uses must be sent to landowners within 200 feet.

Findings of Fact: The use doesn't qualify as one the 'all other full and expedited review uses' based on criteria and findings above.

Conclusions of Law: This rule requirement is not applicable to this development petition, C14-07.

Step 3

Requires that notice of application be sent to:

- The State Department of Wildlife for all Full and Expedited Review Uses within 1000 feet of a sensitive wildlife area or site;
- The State Natural Heritage Program for all Full and Expedited Review Uses within 1000 feet of a rare plant; and
- The State Natural Heritage Program for all Full and Expedited Review Uses with Agriculture-Special Land Use Designation.

Findings of Fact: The subject property is within 1000 feet of a sensitive wildlife area or site. The subject property is not located within 1000 feet of a rare plant. The subject property does not have a plan designation, Agriculture-Special Land Use Designation. A notice of application and request for review and comment was sent to the Washington State Department of Fish and Wildlife.

Conclusions of Law: This development review application, C14-07, is consistent with this rule provision.

cc: Confederated Tribes and Bands of the Yakama Indian Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of Warm Springs Reservation  
Nez Perce Tribe  
Klickitat County Planning Department  
Klickitat County Building Department  
Klickitat County Public Works Department  
Klickitat County Health Department  
Klickitat County Assessor  
Friends of the Columbia Gorge  
Washington Department of Fish and Wildlife  
Washington Department of Archaeology and Historic Preservation  
US Forest Service National Scenic Area Office

END OF STAFF REPORT