

DIRECTOR'S DECISION

**APPLICANT/
LANDOWNER:** Thomas Nicolai

FILE NO.: C15-0007

REQUEST: To construct a detached garage and detached covered walkway between the proposed garage and the existing single-family dwelling.

LOCATION: The subject parcel is located about 300 yards east of Bates Road in the NW $\frac{1}{4}$ of Section 11, Township 3 North, Range 11 East, W.M., Klickitat County, Washington (Klickitat County Assessor's ID 03-11-1100-0004/00).

**LAND USE
DESIGNATION:** The subject parcel is in the Special Management Area and is 20.36 acres in size. Note: According to Section 8(o) of the Scenic Area Act, the Forest Service designated the subject property General Management Area (GMA) Commercial Forest (U.S. Forest Service, Klickitat County Section 8(o) Offers Status, dated March 31, 2004). Subsequently, pursuant to the approval of Plan Amendment PA-05-01, the subject property was given a split designation of GMA Small-Scale Agriculture and GMA Open Space. For Purposes of this development review, the SMA guidelines no longer apply to the subject parcel. The proposed development will be reviewed according to the applicable General Management (GMA) land use and resource protection guidelines.

DECISION:

Based upon the following findings of fact, the land use application by Thomas Nicolai to construct a detached garage and detached covered walkway as described above 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 with conditions**.

This decision does not modify conditions of approval in prior development review decisions.

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 the Columbia River Gorge National Scenic Area Act, and the Management Plan and approvable under Commission Rule 350-81. **This decision must be recorded in county deeds and records to ensure notice of the conditions to all successors in interest.**

Overall Conditions

1. **To ensure notice of the conditions to successors in interest, this Director’s Decision, Staff Report for C15-0007, and approved site plan and elevation, shall be recorded in county deeds and records at Klickitat County Assessor’s Office. Once recorded, the applications shall submit a copy of the recorded document to the Executive Director.**
2. The development shall be constructed as shown on the approved project description, site plan and elevation drawings. Any changes shall be reviewed and approved by the Executive Director before the changes are implemented. Please contact the Columbia River Gorge Commission staff prior to construction for a pre-construction staking inspection.
3. The applicant shall notify the Gorge Commission within 30 days of project completion to arrange for an inspection to confirm compliance with conditions of approval. Project completion means completion of all work on exteriors of structures (including painting).
4. No cooking facilities shall be installed in the approved detached garage. The use of the garage shall be incidental and subordinate to that of the dwelling.

Land Use Conditions (none specified)

Scenic Resources Conditions

5. The proposed garage will match the color and material of the existing single-family dwelling, being dark brown Haida Skirl wood siding (or alternatively, a HardiPlank siding of like color) and have dark grey composition shingles. If there is a change in the proposed color or materials, they must be submitted to the Gorge Commission prior to construction for approval.

Recreational Resources Conditions (none specified)

Natural Resources Conditions (none specified)

Cultural Resources Conditions

6. If cultural resources are discovered during construction activities, all activities within 100 feet of the cultural resources shall cease and the applicants shall notify the Gorge Commission within 24 hours. The cultural resources shall remain as found; further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.
7. If human remains are discovered during construction activities, all activities shall cease upon their discovery. Local law enforcement, the Executive Director, Indian Tribal governments and the Washington State Department of Archaeology and Historic Preservation and the Washington State Anthropologist shall be contacted immediately. Further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.

DATED AND SIGNED THIS 28th day of March 2016 at White Salmon, Washington.

Krystyna U. Wolniakowski
Krystyna U. Wolniakowski, Executive Director

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 28th day of March, 2018 unless construction has commenced in accordance with the 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 (2) 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 (1) 12-month extension of time period to commence construction and one (1) 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, the applicant shall specify the date construction commenced. The Executive Director may grant an extension upon determining that conditions, for which the applicant 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 recreational resources in the National Scenic Area.

Appeal Process:

The appeal period ends April 27, 2016

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 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 or other accessory structures; or alterations not included in the approved application or site plan will require a new application and review.

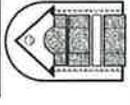
Attachments:

Staff Report C15-0007
Approved Site Plan

RM
DEC0007.15

APPROVED

3/11/18



KRAUSE ARCHITECT PC
1000 W. 10TH AVENUE
DENVER, CO 80202

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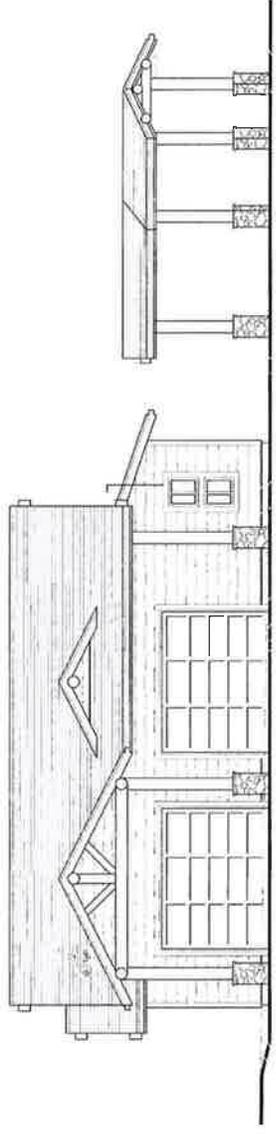
1000 W. 10TH AVENUE
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EXTERIOR ELEVATIONS
NICOLA GARAGE / SHOP
TOM NICOLI
OWNER

DATE: 5-10-18
SCALE: 1/4" = 1'-0"
PROJECT NO: 18-010
SHEET NO: 1

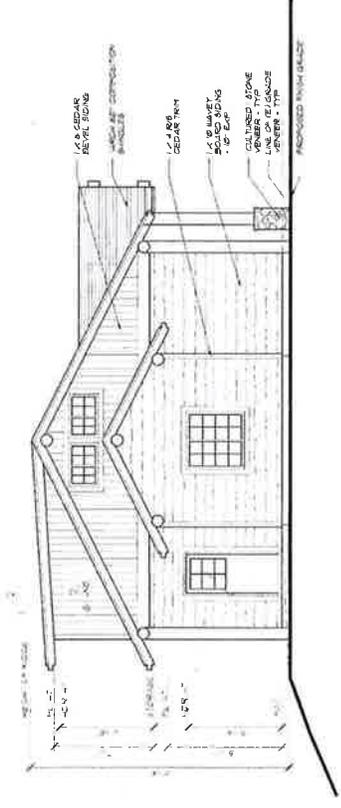
1
OF THREE

1. ALL MATERIALS TO BE APPROVED BY THE ARCHITECT AND THE CLIENT. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.



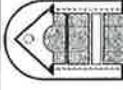
FRONT ELEVATION
SCALE 1/4" = 1'-0"

NOTE:
ALL GRADES SHALL BE APPROPRIATE
EXISTING AND FINISH GRADES.



LEFT-SIDE ELEVATION
SCALE 1/4" = 1'-0"

APPROVED

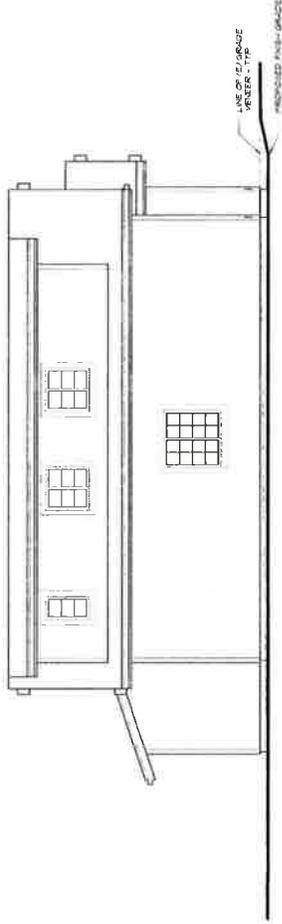


KRAUSE
ARCHITECT PC

1000 S. GARDEN ST.
SUNNYVALE, CA 94086
TEL: 415.335.1100
WWW.KRAUSEARCHITECT.COM

PROJECT NO. 18-001
DATE: 01/15/2018
DRAWN BY: T. NICOLLI
CHECKED BY: T. NICOLLI
SCALE: AS SHOWN
SHEET NO. 2 OF 3

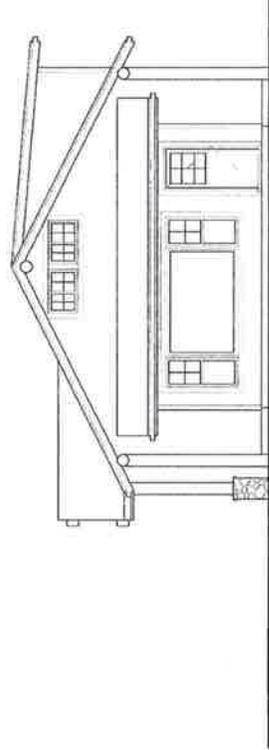
18-001-02
NICOLLI GARAGE / SHOP
EXTERIOR ELEVATIONS
TOM NICOLLI
01/15/2018



REAR ELEVATION
SCALE: 1/4" = 1'-0"

NOTE:
ALL DIMENSIONS ARE APPROXIMATE
BASED ON THE 2018 IBC
18-001-02

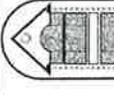
NOTE:
ALL DIMENSIONS ARE APPROXIMATE
BASED ON THE 2018 IBC
18-001-02



RIGHT-SIDE ELEVATION
SCALE: 1/4" = 1'-0"

18-001-02
NICOLLI GARAGE / SHOP
EXTERIOR ELEVATIONS
TOM NICOLLI
01/15/2018

APPROVED



KRAUSE
ARCHITECT PC
1100 WOOD
LANSING, MI 48201
TEL: 313.963.1100
WWW.KRAUSEARCHITECTPC.COM

DATE: 06/15/2011
PROJECT: NICOLA GARAGE / SHOP
DRAWN BY: J. BATES
CHECKED BY: T. NICOLI

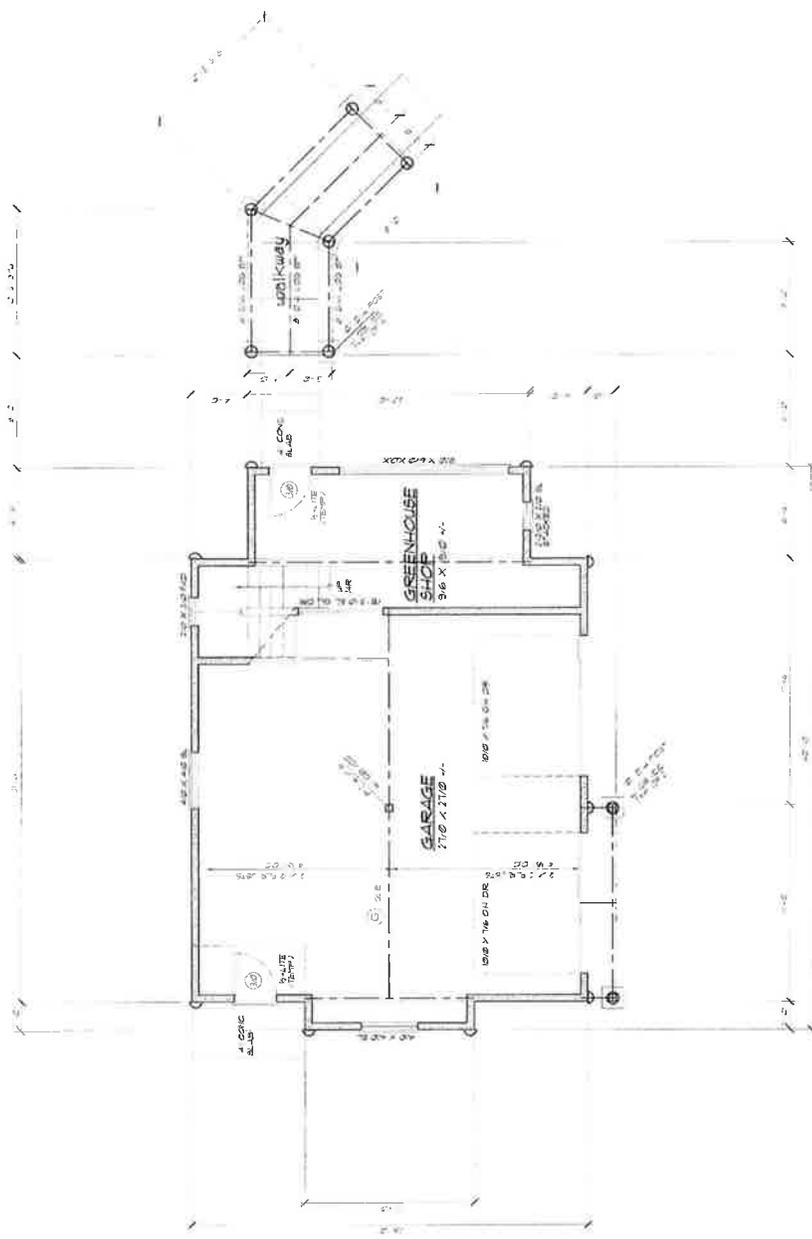
1100 WOOD

MAIN FLOOR PLAN
SUBJECT: NICOLA GARAGE / SHOP
DATE: 06/15/2011
DRAWN BY: J. BATES
CHECKED BY: T. NICOLI

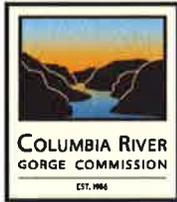
SCALE: 1/4" = 1'-0"

3
OF THREE

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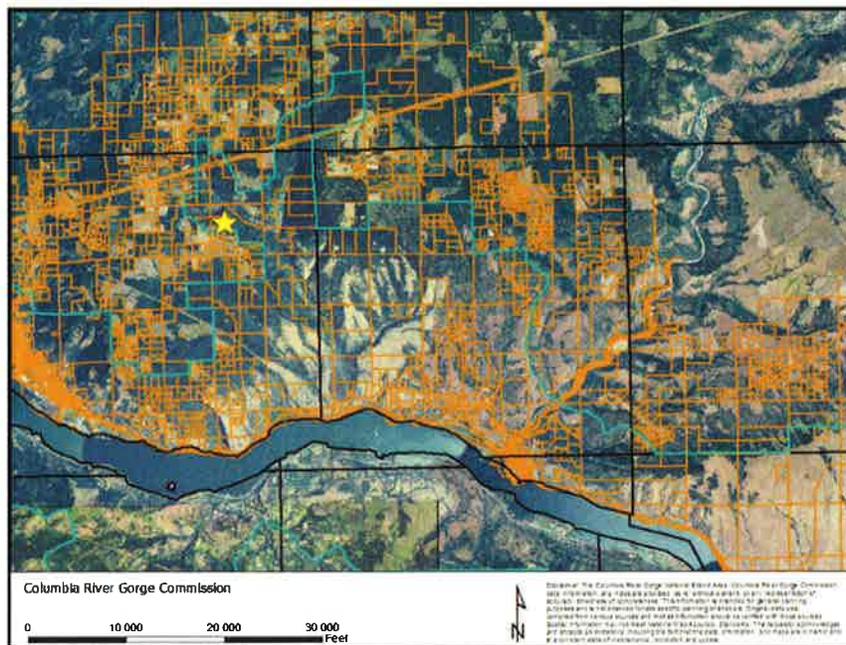


MAIN FLOOR PLAN
SCALE: 1/4" = 1'-0"



FACTS AND FINDINGS COLUMBIA RIVER GORGE COMMISSION STAFF REPORT

- APPLICANT:** Thomas R. Nicolai
- LANDOWNER:** 320 Bates, LCC c/o Thomas R. Nicolai
- FILE NO.:** C15-0007
- REQUEST:** To establish a 1,036 sq. ft. detached garage and a detached covered walkway between proposed garage and existing single-family dwelling.
- LOCATION:** The subject 20.36-acre parcel is located about 300 yards east of Bates Road in the NW 1/4 of Section 11, Township 3 North, Range 11 East, W.M., Klickitat County, Washington (Klickitat County Parcel No. 03111100000400). The address is 320 Bates Road, White Salmon, WA 98672.
- DESIGNATION:** The subject parcel is located in the General Management Area and is designated Small-Scale Agriculture and Open Space. All proposed development will occur only on the Small Scale Agriculture portion.



Aerial View of C15-0007

PRIOR PERMITTING: In 2006, the Columbia River Gorge Commission approved a request to construct a single-family dwelling, detached garage, and gravel driveway; to remove an existing 1,670 square foot agricultural building; and to legalize an existing 1,080 square foot agricultural building.

SCOPE OF REVIEW: This development review application, No. C15-0007, has been reviewed for consistency with the Columbia River Gorge Commission Chapter 350, Division 81 Land Use Ordinance.

COMMENTS FROM OTHER INDIVIDUALS/AGENCIES/GOVERNMENTS:

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

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

DATE THIS REPORT WAS FINALIZED: March 28, 2016.

STAFF PERSON THAT PREPARED THIS REPORT:

Riley Marcus, Klickitat County planner for the Columbia River Gorge Commission

HOW/WHERE TO OBTAIN FURTHER INFORMATION: Questions, comments, and a copy of this report can be obtained at the Columbia River Gorge Commission, located at 57 NE Wauna Ave, P.O. Box 730, White Salmon WA 98672, (509) 493-3322.

**FACTS AND FINDINGS OF CONSISTENCY WITH CHAPTER 350-81-LAND USE ORDINANCE,
COLUMBIA RIVER GORGE COMMISSION**

PURPOSE AND APPLICABILITY

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.

DEFINITIONS

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.

APPLICATIONS AND PROCEDURES

Columbia River Gorge Commission Administrative Rules 350-81-030 through 350-81-046 specifies the standards for 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.

350-81-030 Standards for Applications

Complete Application Required: Any proposed use, development or structure shall be reviewed according to the standards in effect on the date an applicant submitted a complete land use application. A complete application is one that the Executive Director determines meets this Land Use Ordinance's requirements for: (1) a complete application form; (2) a complete site plan; and (3) all applicable information specified in the various sections of this land use ordinance. Incomplete applications shall not be reviewed.

Findings of Fact: Development review application C15-0007 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 C15-0007 is a complete application and staff was able to review it in accordance with Rule 350-81-030.

Conclusions of Law: Development review application C15-0007 is consistent with this rule.

350-81-032 Application for Review and Approval

This land use ordinance sets forth all the information requirements for a Development Review Application.

Findings of Fact: Development review application C15-0007 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 C15-0007 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)). The Commission has not done so. As such, no fee is charged to the applicant for this development review application. 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 C15-0007 is consistent with this rule requirement.

350-81-034 Pre-Application Conference

An applicant may request a pre-application conference prior to submitting an application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of Commission Rule 350-81, to discuss the principle elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action.

Findings of Fact: Staff has consulted with the applicant in person and by telephone.

Conclusions of Law: Development review application C15-0007 is consistent with this rule requirement.

350-81-036 Acceptance of Application

The Executive Director shall review the application for completeness and if complete, shall accept the application for review.

- (1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing. The Executive Director shall review supplemental application materials to determine if the application is complete.
- (2) No application for a proposed use, which is explicitly prohibited by this ordinance, shall be accepted.
 - (a) The application shall be returned to the applicant.
 - (b) A letter, signed by the Executive Director, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.
 - (c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.
- (3) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental materials within 14 days of receipt. The 14-day time periods in this rule are effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

Findings of Fact: A Columbia River Gorge Commission planner, on behalf of the Executive Director, has reviewed development review application, C15-0007, has determined it is complete and has accepted the application (350-81-036(1)). Development review application, C15-0007, 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. Staff is unable to determine if this goal was met. Planning staff working at the time this application was received are no longer working at the Commission. This is a goal and not a mandated requirement (350-81-036(3)).

Conclusions of Law: Development review application C15-0007 is consistent with this rule requirement.

350-81-038 Notice of Development Review

(1) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

- (a) The name of the applicant;
- (b) The general and specific location of the subject property;
- (c) A brief description of the proposed action;
- (d) The deadline for issuing a decision; and
- (e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(4)¹ The notice shall be mailed to:

- (a) The Forest Service, the applicable state, the four Indian tribal governments, and the applicable county or city planning office; and
- (b) Owners of property within a radius of the subject parcel(s) as determined by 350-81-630; and
- (c) Other agencies and interested parties which request a notice or which the Executive Director determines should be notified.

(5) A copy of the notice shall be posted on the Commission's website.

Findings of Fact: Staff, on behalf of the Executive Director, issued a notice of a proposed development review on November 19, 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)). 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 Indian tribal nations (Yakama, Umatilla, Warm Springs and Nez Perce) plus one other (Cowlitz), the applicable city or county planning office (Klickitat County Planning Department), owners within a radius as determined by 350-81-630 (determined to be 200 feet); 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)).

Conclusions of Law: Development review application C15-0007 is consistent with this rule requirement.

350-81-040 Comment Period

Interested persons shall have 21 days from the date which the notice is 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:

- (1) Based on comments received and other applicable information, the Executive Director shall determine if a wildlife management plan pursuant to 350-81-580(5), or a rare plant protection and rehabilitation plan pursuant to Commission Rule 350-81-590(5) is required.
- (2) For proposed uses or developments where a cultural resources survey (reconnaissance or historic) is required and where the Commission is performing the survey, the survey shall be completed by the close of

¹ Note: No section (3) in filings to Oregon Bulletin and Washington State Register.

the comment period. Upon receipt of the completed survey, the Executive Director shall forward the survey to the applicable State Historic Preservation Officer, and the four Indian tribal governments pursuant to 350-81-540(1)(b) and (2)(b)(A).

- (3) The State Historic Preservation Officers and the four Indian tribal governments shall have 30 days to submit comments on the cultural resources survey. Based on the survey results, comments received, and other applicable information, the Executive Director shall determine if an evaluation of significance pursuant to 350-81-540(3) is required.

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 November 19, 2015 and the public comment deadline was established to be December 10, 2015. Comments received were from Richard Till of Friends of the Columbia Gorge on December 10, 2015.

Conclusions of Law: Development review application C15-0007 is consistent with this rule requirement.

350-81-042 Decision of the Executive Director

- (1) In making a decision on a proposed use or development the Executive Director shall:
- (a) Consult with the applicant and such agencies as the Executive Director deems appropriate;
 - (b) Consider information submitted by the applicant and all other relevant information available;
 - (c) Consider all comments submitted pursuant to Commission Rule 350-81-040; and
 - (d) Solicit and consider the comments of the Forest Service.
- (2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.
- (a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.
 - (b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.
- (3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81. As a goal, the Executive Director shall attempt to issue a decision within 72 days after acceptance of the application.
- (4) The Executive Director shall send a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-81-040. The decision shall set forth the rights of appeal under Commission Rule 350-70.
- (5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.
- (6) The 72-day time period in this rule is effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

Findings of Fact: Gorge Commission Staff, on behalf of the Executive Director, has consulted with the applicant and reviewed all relevant information (350-81-042(1)(a) and (b)). All comments have been reviewed and considered by the Executive Director (350-81-042(1)(c)). Marge Dryden submitted a report on December 1, 2015

to the Gorge Commission and concluded that neither a Cultural Resource Reconnaissance Survey or Historic Survey were required (350-81-042(1)(d)).

Conclusions of Law: Development Review application C15-0007 is consistent with this rule requirement.

350-81-044 Expiration of Approvals

- (1) Notice Not Required: Expiration of any land use approval issued pursuant to this Management Plan shall be automatic. Failure to give notice of expiration shall not affect the expiration of a land use approval.
- (2) Land Use Approvals without Structures: Any land use approval issued pursuant to this Management Plan for a use or development that does not include a structure shall expire two years after the date the land use approval was granted, unless the use or development was established according to all specifications and conditions of approval in the land use approval. For land divisions, "established" means the final deed or plat has been recorded with the county recorder or auditor.
- (3) Land Use Approvals with Structures: Any land use approval issued pursuant to this Management Plan for a use or development that includes a structure shall expire as follows:
 - (a) When construction has not commenced within two years of the date the land use approval was granted, or;
 - (b) When the structure has not been completed within two years of the date of commencement of construction.
- (4) Commencement of Construction: As used in subsection 3(a) above, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.
- (5) Completion of Structure: As used in subsection 3(b) above, completion of the structure shall mean (1) completion of the exterior surface(s) of the structure and (2) compliance with all conditions of approval in the land use approval.
- (6) Extension of Validity of Land Use Approvals: A request for extension of the time frames in subsections 2, 3(a) or 3(b), above, shall be submitted in writing before the applicable expiration date.
 - (a) A reviewing agency may grant one 12-month extension to the validity of a land use approval if it determines that events beyond the control of the applicant prevented commencement of the use or development (applicable to section 2 above) or commencement of construction (applicable to subsection 3(a) above) within the original two-year time frame.
 - (b) An agency may also grant one 12-month extension if it determines that events beyond the control of the applicant prevented completion of the structure (applicable to subsection 3(b) above) within the original two-year time frame.
 - (c) A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.
 - (d) Approval or denial of a request for extension shall be considered an administrative decision.
- (7) Vested Rights: The laws of the states of Oregon and Washington concerning vested rights shall not apply in the National Scenic Area. A person has a vested right for as long as the land use approval does not expire.

Findings of Fact: This rule applies to the expiration of approvals; review of this application results in approval, not expiration of the approval.

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

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

Any change to a development action approved by the Executive Director shall be processed as a new action, except that the Executive Director may approve minor changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-81 and the findings and conclusions for the original action. If the Executive Director approves a minor change, the Director shall notify all of the parties that would have standing to appeal the change, including the applicant, the Forest Service, the four Indian tribal governments, the county planning department, and anyone who submitted comments during the comment period on the original land use application. The change itself (not the original decision) would be subject to appeal under the same time frames applicable to the original decision.

Findings of Fact: The proposed development is not considered to be a minor change or alteration and therefore is not applicable (350-81-046).

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

This land use ordinance sets forth all the review criteria for an expedited review.

Findings of Fact: Development review application, C15-0007, 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

This land use ordinance sets forth expedited review process guidelines for protecting resources and treaty right.

Findings of Fact: Development review application, C15-0007, proposes to construct a detached garage and detached covered walkway between the proposed garage and existing single family dwelling. 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 applies only to proposed development reviews 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

This land use ordinance establishes the procedures for the Expedited Review Process.

Findings of Fact: This application is proposing to construct a detached garage and detached covered walkway between the proposed garage and existing single family dwelling. 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 is not applicable to this development review application.

EMERGENCY/DISASTER RESPONSE ACTIONS

350-81-060 Emergency/Disaster Response Actions

This land use ordinance sets forth all the information requirements for an emergency/ disaster response application.

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

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

GENERAL POLICIES AND GUIDELINES

350-81-070 Exempt Land Uses and Activities

- (1) These policies repeat and respond to direction in Section 17 of the Scenic Area Act that the Management Plan not affect certain uses that take place in the Scenic Area.
- (a) The Gorge Commission and Forest Service shall, in the Management Plan and in the implementation actions, protect treaty and other rights of Indian tribes. Nothing plan may interfere with the exercise of those rights.
 - (b) Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu" fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the exemption shall commence upon selection by the U.S. Army Corps of Engineers.
 - (c) Rights to surface or ground water shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.
 - (d) Water transportation activities on the Columbia River or its tributaries shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. The term "activities" includes those facilities necessary for navigation.
 - (e) The operation, maintenance, and modification of existing transmission facilities of the Bonneville Power Administration shall be exempt from regulation under the Management Plan or land use ordinances adopted by the counties or the Gorge Commission pursuant to the Scenic Area Act.
 - (f) Neither the Management Plan nor land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act may affect laws, rules, or regulations pertaining to hunting or fishing.
 - (g) Neither the Forest Service nor the Gorge Commission may establish any buffer zones or protective perimeters outside the boundaries of the Scenic Area.
 - (h) The operation, maintenance, and improvement of navigation facilities at Bonneville Dam pursuant to federal law, except for the offsite disposal of excavation material, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission under the Scenic Area Act.
 - (i) In the GMA, the rights and responsibilities of non-federal timber landowners under the Forest Practices Acts of Washington and Oregon, or under county regulations that supersede those acts, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

Findings of Fact: This application does not propose any uses that are 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 is not applicable to this development review application.

350-81-072 Prohibited Land Uses and Activities

- (1) The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:
- (a) Solid waste disposal sites or sanitary landfills within the Special Management Area.
 - (b) New industrial development in the Scenic Area outside of the Urban Areas.

Findings of Fact: This application does not propose any uses that are prohibited by this rule (350-81-072(1)).
Conclusions of Law: This rule is not applicable to this development review application.

350-81-074 Uses Allowed Outright

This land use ordinance sets forth all the information requirements for uses allowed outright.
Findings of Fact: This application does not propose any development that may be considered as a use allowed outright (350-81-074(1)).
Conclusions of Law: This rule is not applicable to this development review application.

350-81-76 Agricultural Buffer Zones in the General Management Area

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

SETBACK GUIDELINES			
Type of Buffer (Size in Feet)			
Type of Agriculture	Open or Fenced	Natural or Created Vegetation Barrier	8-foot Berm of Terrain Barrier
Orchards	250	100	75
Row crops/ Vegetables	300	100	75
Livestock grazing Pasture, haying	100	15	20
Grains	200	75	50
Berries, vineyards	150	50	30
Other	100	50	30

- (2) Earth berms may be used to satisfy, in part, the setback guidelines. The berm shall be a minimum of 8 feet in height, and contoured at 3:1 slopes to look natural. Shrubs, trees, and/or grasses shall be employed on the berm to control erosion and achieve a finished height of 15 feet.
- (3) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback guidelines. Trees shall be at least 6 feet high when planted and reach an ultimate height of at least 15 feet. The vegetation screen shall be planted along the appropriate parcel line(s), and shall be continuous.
- (4) The necessary berming and/or planting shall be completed during the first phase of development and maintained in good condition.
- (5) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.
- (6) A local government may grant a variance to the buffer guidelines upon a demonstration that the variance guidelines in 350-81-078 have been satisfied.

Findings of Fact: This application is not proposing any new buildings with agricultural uses. The proposed garage and covered walkway will be accessory buildings.

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

350-81-078 Variances

- (1) In the GMA, when setbacks or buffers specified in the guidelines for the protection of scenic, cultural, natural, recreation, agricultural, or forestry resources overlap or conflict, the setbacks or buffers may be varied upon a demonstration that both of the following conditions exist:
 - (a) A setback or buffer specified in Commission Rule 350-81 to protect one resource would cause the proposed use to fall within a setback or buffer specified in the plan to protect another resource.
 - (b) Variation from the specified setbacks or buffer would, on balance, best achieve the protection of the affected resources.

- (2) In the GMA, a setback or buffer specified in the guidelines for protection of scenic, cultural, natural, recreation, agricultural, or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that all of the following conditions exist:
 - (a) The land use designation otherwise authorizes a residence on the tract.
 - (b) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer.
 - (c) The variance from the specified setback or buffer is the minimum necessary to allow the residence.

- (3) In the GMA, the Executive Director may grant a variance to the setback and buffer requirements contained in 350-81-610 upon a finding that all of the following conditions exist:
 - (a) The proposed project is a public-use, resource-based recreation facility providing or supporting either recreational access to the Columbia River and its tributaries, or recreational opportunities associated with a scenic travel corridor.
 - (b) All reasonable measures to redesign the proposed project to comply with required setbacks and buffers have been explored, and application of those setbacks and buffers would prohibit a viable recreation use of the site as proposed.
 - (c) Resource impacts have been mitigated to less than adverse levels through design provisions and mitigation measures.
 - (d) The variance is the minimum necessary to accommodate the use.

- (4) In the GMA, the Executive Director may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that all of the following conditions exist:
 - (a) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from Scenic Area recreation demand studies shall be relied upon to meet this criterion in the absence of current applicable studies.
 - (b) The proposed use is dependent on resources present at the site.
 - (c) Reasonable alternative sites offering similar opportunities, including those in nearby Urban Areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.
 - (d) The proposed use is consistent with Chapter 4, Part I of the Management Plan.
 - (e) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural, or cultural resources and adjacent land uses.
 - (f) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

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. A variance is not required for this application.

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

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

(1) A landowner may submit a land use application to alter conditions of approval for an existing use or structure approved under prior Scenic Area regulations (e.g., *Columbia River Gorge National Scenic Area Final Interim Guidelines*, original *Management Plan*), subject to the following standards:

- (a) The applicant shall apply for the same development that was reviewed in the original decision.
- (b) The development shall remain in its current location.
- (c) The agency that currently has jurisdiction over the applicant's property shall review the application and send notice of the application to agencies and other parties entitled to receive notice under the current rules.
- (d) The agency shall review the entire development to ensure that it would fully comply with all the current guidelines (i.e., land use, treaty rights, scenic resources, cultural resources, recreation resources and natural resources).
- (e) The agency shall issue a new decision that supersedes the original decision.
- (f) The new decision may remove or revise original conditions of approval or add new conditions of approval to ensure full compliance with all the current guidelines.

Findings of Fact: This application does not alter any conditions of approval for existing uses or structures approved under prior Scenic Area regulations.

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

350-81-082 Existing Uses and Discontinued Uses

This land use ordinance sets forth all the information requirements for Existing and Discontinued Uses.

Findings of Fact: The development review application does not include any existing uses or structures (350-81-082(1)); 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: This rule is not applicable to this development review application.

350-81-084 Indian Tribal Treaty Rights and Consultation

(1) Indian Tribal Treaty Rights and Consultation in the General Management Area

(a) Tribal Government Notice

(A) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:

- (i) The site plan map shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.
- (ii) The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:
 - (I) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.
 - (II) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.
 - (III) List tribal ceremonial fishing seasons in the project vicinity.

(IV) Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

- (B) Notices shall include a treaty rights protection plan if new uses may affect Indian treaty rights. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.
- (C) Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the Executive Director. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

(b) Tribal Government Consultation

- (A) When substantive written comments are submitted to the Executive Director in a timely manner, the project applicant shall offer to meet with the Executive Director and the Indian tribal government that submitted comments within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the Indian tribal government.

Consultation meetings should provide an opportunity for the project application and tribal representatives to identify potential conflicts and explore options to eliminate them. The project applicant must demonstrate that the proposed use would not affect or modify treaty or other rights of any Indian tribe.

- (B) Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe.
- (C) The Executive Director shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Executive Director.

(c) Conclusion of the Treaty Rights Protection Process

- (A) The Executive Director shall decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.

The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments. If the final decision contradicts the comments, recommendations, or concerns of Indian tribal governments, the Executive Director must justify how it reached an opposing conclusion.

- (B) The treaty rights protection process may conclude if the Executive Director determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.
- (C) A finding by the Executive Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as

provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

(2) Indian Tribal Treaty Rights and Consultation in the Special Management Area

- (a) For new development and uses in the Special Management Area, the Forest Service shall determine effects on treaty rights and shall notify the Executive Director of the determination.

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

350-81-086 Buffers from Existing Recreation Sites

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

Findings of Fact: The subject property in this application does not about 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: This rule is not applicable to this development review application.

USES AND STRUCTURES ALLOWED IN VARIOUS LAND USE DESIGNATIONS

350-81-090 Agricultural Buildings

(1) The size of proposed agricultural buildings shall not exceed the size needed to serve the current agricultural use and, if applicable, the proposed agricultural use.

(2) To satisfy 350-81-090(1), applicants shall submit the following information with their land use application:

- (a) A description of the size and characteristics of current agricultural use.
- (b) An agricultural plan for any proposed agricultural use that specifies agricultural use (e.g., crops, livestock, products), agricultural areas and acreages (e.g., fields, pastures, enclosures), agricultural structures (e.g., irrigation systems, wind machines, storage bins) and schedules (e.g., plowing, planting, grazing).
- (c) A floor plan showing intended uses of the agricultural building (e.g., space for equipment, supplies, agricultural products, livestock).

Findings of Fact: This application is not proposing any new development of agricultural buildings. The proposed garage and covered walkway will be considered as accessory buildings and will not serve any agricultural purpose for the subject property.

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

350-81-092 Temporary Use-Hardship Dwelling

Findings of Fact: This application is not proposing any temporary hardship dwellings.

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

350-81-094 Sewer and Water Services

- (1) Sewer lines may be extended from an Urban Area into a rural area to serve:
- (a) Areas with a documented health hazard.
 - (b) Recreation uses open to the public, only upon a demonstration by the local government that there is no practicable alternative to providing service to the area. In such cases, the lines shall be engineered and sized solely to serve the defined area or use. Such lines shall not be relied upon as the sole justification for revision to an Urban Area boundary.
- (2) New uses authorized in Commission Rule 350-81 may hook up to existing sewer and water lines in rural areas.

Findings of Fact: Sewer lines are not being extended from an Urban Area to serve this use (350-81-094(1)). 350-81-094(2) allows for consideration of new uses to be connected into existing water lines.

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

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.

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

350-81-098 Home Occupations and Cottage Industries

Findings of Fact: There are no home occupations or cottage industries proposed in this development review.

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

350-81-100 Bed and Breakfast Inns

Findings of Fact: No bed and breakfast inn is being proposed in this development review application.

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

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.

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

350-81-104 Resource Enhancement Projects

Findings of Fact: There are no resource enhancement projects being proposed in this application.

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

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 being proposed in this development review application.

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

350-81-108 Commercial Events
Findings of Fact: There are no commercial events being proposed in this development review application. Conclusions of Law: This rule is <u>not</u> applicable to this development review application.
350-81-110 Columbia River Bridge Replacement
Findings of Fact: There are no bridge replacements being proposed in this development review application. Conclusions of Law: This rule is <u>not</u> applicable to this development review application.
350-81-112 Signs
Findings of Fact: There are no signs being proposed in this development review application. Conclusions of Law: This rule is <u>not</u> applicable to this development review application.
350-81-114 Special Uses in Historic Buildings
Findings of Fact: There are no historic buildings on site or associated with this development review application. Conclusions of Law: This rule is <u>not</u> applicable to this development review application.
LAND DIVISIONS AND LOT LINE ADJUSTMENTS
350-81-120 Consolidation of Lots
Findings of Fact: This development review application does <u>not</u> contain or propose any consolidation of lots. Conclusions of Law: This rule is <u>not</u> applicable to this development review application.
350-81-124 Land Divisions and Cluster Development
Findings of Fact: This application is <u>not</u> proposing any land divisions or cluster development. Conclusions of Law: This rule is <u>not</u> applicable to this development review application.
350-81-126 Lot Line Adjustments
Findings of Fact: This development review application is <u>not</u> proposing any lot line adjustments. Conclusions of Law: This rule is <u>not</u> applicable to this development review application.

LAND USE DESIGNATIONS

The land use designation for the subject property is General Management Area, Small Scale Agriculture. Columbia River Gorge Commission Administrative Rules 350-81-170 through 350-81-240 applies to the Agricultural Land Designations and must be considered as part of this development application.

350-81-170 Agricultural Land Designations

Commission Rule 350-81-170 through 350-81-240 shall apply to those areas designated Large-Scale or Small-Scale Agriculture, SMA Agriculture, and Agriculture-Special on the Scenic Area Land Use Designation Map.

Findings of Fact: The land use designation for the subject property is General Management Area, Small-Scale Agriculture. Columbia River Gorge Administrative Rules 350-81-170 through 350-81-240 apply to the Agricultural Land Use Designation and must be considered as part of this development application.

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

350-81-180 Uses Allowed Outright

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(1)] are allowed without review on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

Findings of Fact: This application does not propose any new developments that would be considered as uses allowed outright. However, a fence has been installed to surround the leftover foundation from an existing single-family dwelling. The fence is less than 10 feet in height and less than 500 feet in length and therefore meets the requirements for a use allowed outright.

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

350-81-190 Review Uses—Agricultural Land

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

- (a) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).
- (b) Agricultural structures, except buildings, in conjunction with agricultural use.
- (c) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).
- (d) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(e) and (f) below.
- (e) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:
 - (A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.
 - (B) The height of any individual accessory building shall not exceed 24 feet.
- (f) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

- (A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.
- (B) The footprint of any individual accessory building shall not exceed 1,500 square feet.
- (C) The height of any individual accessory building shall not exceed 24 feet.

- (g) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).
- (h) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:
 - (A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.
 - (B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy subsection (h)(C)(iv) below.
 - (C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:
 - (i) Size of the entire farm or ranch, including all land in the same ownership.
 - (ii) Type(s) of agricultural uses (crops, livestock) and acreage.
 - (iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.
 - (iv) Income capability. The farm or ranch, and all its constituent parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula:

$$(A)(B)(C) = I$$
 where:
 A = Average yield of the commodity per acre or unit of production
 B = Average price of the commodity
 C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch
 I = Income capability
- (i) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling that is included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria listed in 350-81-540(1)(e).
- (j) On lands designated Small-Scale Agriculture, a single-family dwelling on any legally existing parcel.
- (k) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative provided that all of the following conditions exist:
 - (A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister.
 - (B) The dwelling would be located on the same parcel as the dwelling of the principal operator.
 - (C) The operation is a commercial enterprise, as determined by an evaluation of the factors described in 350-81-190(1)(h)(C).
- (l) Construction, reconstruction, or modifications of roads not in conjunction with agriculture.

- (m) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).
- (n) Structures associated with hunting and fishing operations.
- (o) Towers and fire stations for forest fire protection.
- (p) Agricultural labor housing, under the following conditions:
 - (A) The proposed housing is necessary and accessory to a current agricultural use.
 - (B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months.
 - (C) The housing shall be located to minimize the conversion of lands capable of production of farm crops or livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.
- (q) On lands designated Large-Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:
 - (A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands.
 - (B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location, and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be used in conjunction with other agricultural operations in the area.
 - (C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required by 350-81-076, or designated Commercial Forest Land or Large or Small Woodland, as required in "Siting of Dwellings on Forest Land" (350-81-310).
 - (D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, Large or Small Woodland.
 - (E) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.
- (r) On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

Findings of Fact: 350-81-190(1)(f) states that accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

“(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings, (B) The footprint of any individual accessory building shall not exceed 1,500 square feet, and (C) The height of any individual accessory building shall not exceed 24 feet.”

The proposed garage is an accessory building and will have a 1,036 sq. ft. footprint. The height of the proposed garage will be approximately 18 feet in height. The proposed covered walkway will also be considered as an accessory building and the footprint will be approximately 120 sq. feet. The proposed footprints of both the garage and covered walkway will be 1,156 sq. feet, which is well under the limitation of 2,500 square feet. The main use of the garage will be used to store vehicles for the residence and to provide a greenhouse/ shop work space for the residence. The upper floor of the garage will be used for storage. A condition of approval will provide that no cooking facilities can be installed in the garage to ensure its use is incidental and subordinate to that of the dwelling.

There is an existing pole barn on the subject property. The footprint of this building will not factor into the 2,500 square foot limitation because it is an agriculture building, not an accessory building. It serves an agricultural purpose for the orchard on the property. The pole barn has a 1,080 sq. ft. footprint.

The “terrace” on the property is the remnants of a single-family dwelling’s foundation. A past condition required that this dwelling be removed to build the new and existing single-family dwelling (proposed in application no. C06-0016). The applicant tore down the roof and walls of the former single-family dwelling and left the foundation. Due to the fact that the foundation no longer supports a building, its use has been changed. The “building” that the foundation formerly supported has been discontinued. The foundation no longer supports walls or a roof because they have been removed. Any use of the foundation, except as a terrace requires new review and approval for consistency with the National Scenic Area Land Use Ordinance.

Conclusions of Law: Development Review Application C15-0001 is consistent with this rule requirement.

350-81-200 Review Uses with Additional Approval Criteria – Large-Scale or Small-Scale Agriculture

Findings of Fact: This application is not proposing any development that requires additional approval.

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

350-81-210 Approval Criteria for Life Estates – Large-Scale or Small-Scale Agriculture Designations

Findings of Fact: This application does not meet the approval criteria for a Life Estate.

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

350-81-220 Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture

- (1) The uses identified in 350-81-200, may be allowed only if they meet both of the following criteria:
- (a) The use is compatible with agricultural uses and would not force a change in or significantly increase the cost of accepted agricultural practices on nearby lands devoted to agricultural use.
 - (b) The use will be sited to minimize the loss of land suitable for the production of crops or livestock.

Findings of Fact: This application is not proposing any development that meets the criteria for a specified review use.

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

350-81-240 Range Conservation Plans

- (1) If a range conservation plan is required before a use is allowed, it shall be prepared by landowners in cooperation with range scientists from local conservation districts. Specialists from the Oregon or Washington Natural Heritage Program should be consulted while the plan is being prepared.
- (2) Range conservation plans shall ensure that new uses do not adversely affect natural areas. They shall accomplish the following goals:
 - (a) Maintain native rangeland that is in excellent or good condition; enhance rangeland that is in fair or poor condition.
 - (b) Preserve native trees and shrubs.
 - (c) Reestablish native grasses in degraded areas that have been invaded by non-native plants and weeds.
- (3) Range conservation plans shall include the following elements:
 - (a) Range inventory. This shall include existing composition, carrying capacity, and condition of rangeland; the location of rare plants and non-native weeds; and existing fences, watering ponds, and other range improvements.
 - (b) Rehabilitation plan. This shall include actions that will be taken to rehabilitate native rangeland that is in fair or poor condition, such as weed and soil erosion control, seeding, and prescribed burning.
 - (c) Livestock management plan. This shall include the grazing system that will be used, including number and size of pastures, expected livestock numbers, and grazing/deferral periods and sequence. Management plans shall project livestock movements for at least 3 years.
 - (d) Monitoring program. This shall track the annual progress of the conservation plan and condition of the range. Monitoring techniques shall be described, such as line transects or photographic plots.

Findings of Fact: The subject property in this application does not contain any rangeland.

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

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: The proposed garage and walkway will result in very little grading. The site of the proposed garage and walkway is level as confirmed by a site visit and will retain the existing topography. The applicant estimates that less than 20 cubic yards of material will be moved in the grading for the garage and walkway.
 - (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: The proposed garage will have a 1,036 square foot foundation and the covered walkway will have a 120 square foot footprint. The height of the garage is proposed to be 18 feet in height. Combined the garage and covered walkway footprint will be approximately 1,156 square feet in area. The limitations for an accessory building is 2,500 square feet and 24 feet in height and proposed

developments are below these requirements. There are approximately 6 buildings within a half-mile that are of similar size and shape.

(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: This application is not proposing any additional vegetation to be planted.

(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 applicant submitted a site plan that shows all of the required elements and their locations in sufficient detail to allow for adequate review. The notice materials for this application included a copy of the site plan.

(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: The landscape setting was determined to be Rural Residential/ Pastoral for the location of the proposed development. The site plan has been determined to be compatible with the Rural Residential/ Pastoral requirements.

(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 revegetation 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.

(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 is not proposing any new quarries or the expansion of existing quarries.

(2) Key Viewing Areas

- (a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.
- (b) Each development shall be visually subordinate to its setting as seen from key viewing areas.
- (c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.
- (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.
- (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.
- (f) New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.
- (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).
- (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.
- (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.
- (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 sub ordinance. Development shall be sited to avoid the need for new landscaping wherever possible.

- (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.
 - (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.
 - (D) 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).
- (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).
 - (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.
 - (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*.
 - (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).
 - (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.
 - (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.
 - (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.

- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (z) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.
- (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 developments are not located in an area that is visible from any key viewing areas. The proposed garage and covered walkway are topographically hidden from all key viewing areas. Although not within any key viewing areas, the proposed garage and covered walkway will still be visually subordinate to their surroundings. The garage will match the color and material of the existing dwelling, being dark brown Haida Skirl wood siding (or alternatively, a HardiPlank siding of like color) and have dark grey composition shingles.

The proposed developments will not be constructed on slopes of 30 percent or greater. No new quarries or the expansion of existing quarries are being proposed. No new main lines or communication facilities are being proposed. There will not be more than 200 cubic yards of grading occurring from the proposed developments.

(2) Landscape Settings

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.

(e) Rural Residential

- (A) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.
- (B) In portions of this setting visible from key viewing areas, and not exempt from visual subordination guidelines (see 350-81-520(3)(k)), 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) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as scenic overlooks).

(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: All new development will be taking place on lands designated as pastoral and rural residential. There are no recreational uses being proposed. The proposed development will not be visible from any key viewing areas and will be located next to the existing single-family dwelling. No screening will be required because the development is occurring in an area that is already topographically screened from any key viewing areas.

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

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).

(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.

(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.

(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.

- (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.
- (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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(f) 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.

(g) 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.

(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.

(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.

(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.
- (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.

(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.

(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.

(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: Marge Dryden, the Heritage Program Manager of the Columbia River Gorge National Scenic Area surveyed the area on June 30, 2006 for development review no. C06-0016. The field survey consisted of localized examination of an area inclusive of the new house and proposed garage as well as the surrounding open pasture and orchard. The heritage resource inventory of this project revealed no prehistoric or historic-period archaeological resources within the area of potential effect. Marge Dryden also submitted a Cultural Resources Survey Determination on December 1, 2015 for the proposed garage and covered walkway development. She again confirmed that a Cultural Resource Reconnaissance Survey and a Historic Survey were not required.

(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: Conditions will be included in the Director's Decision for any cultural resources discovered after construction begins.

(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: Conditions will be included in the Director's Decisions for any human remains discovered during the construction process.

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

350-81-560 General Management Area Wetland Review Criteria

This land use ordinance sets forth all the review criteria for wetlands within the General Management Area.

Findings of Fact: The subject property in this application does not contain any wetlands.

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

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.
- (2) Commission Rule 350-81-570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.
- (3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant 350-81-570(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, provided that such actions would not:
 - (A) Increase the size of an existing structure by more than 100 percent,
 - (B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or
 - (C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or 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.
- (4) Uses not listed in 350-81-074, 350-81-570(2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-81-570(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.
- (5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:
- (a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or 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 water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;
 - (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 local laws.
- (6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:
- (a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-81-560(6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.
 - (b) The proposed use is in the public interest as determined by 350-81-560(6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.
 - (c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

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

- (A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the

Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.

- (B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.
- (C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.
- (D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.
- (E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.
- (F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.
- (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 be located outside of stream, pond, and lake buffer zones.
- (f) The proposed use complies with all applicable federal, state, and county laws.
- (g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement guidelines shall apply:

- (A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.
- (B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.
- (C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.
- (D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.
- (E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.
- (F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.
- (G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.
- (H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.
- (I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

(7) Stream, Pond, and Lake Buffer Zones

- (a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River

above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

- (A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet
 - (B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet
 - (C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-81-560(7)(b), substituting the term pond or lake as appropriate.
- (b) Except as otherwise allowed, 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.
- (c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

(8) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

- (a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.
- (b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.
- (c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, 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 excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.
 - (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, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.
- (d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.
- (e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

Findings of Fact: According to the Gorge Commission's natural resource inventories and a field visit by a Gorge Commission planner done for past development review application no. C16-0006, there are no wetlands, ponds, or lakes near the applicant's building site. There is an intermittent stream in the southeast corner of the property. The proposed garage and covered walkway will be approximately 590 feet away from the intermittent stream on the subject parcel. All new development taking place will be outside of the buffer zone from the intermittent stream.

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

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.

(b) 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.

(c) 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.

(2) Field Survey

A field survey to identify sensitive wildlife areas or sites 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 professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

- (3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-81-580(4) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.
- (4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:
 - (a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:
 - (A) Identify/verify the precise location of the wildlife area or site,
 - (B) Ascertain whether the wildlife area or site is active or abandoned, and
 - (C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.
 - (b) The following factors may be considered when site plans are reviewed:
 - (A) Biology of the affected wildlife species.
 - (B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).
 - (C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.
 - (D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.
 - (E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.
 - (c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:
 - (A) The sensitive wildlife area or site is not active, or
 - (B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.
 - (d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the

Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

- (e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.
- (f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(5) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone.

Wildlife management plans shall meet the following guidelines:

- (a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.
- (b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.
- (c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components that are essential to maintain the long-term use and integrity of the wildlife area or site.
- (d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.
- (e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:
 - (A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground

utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(6) New fences in deer and elk winter range

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.

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

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

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

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

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

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

Findings of Fact: The subject property in this development review application is within the Deer and Elk Winter range. In a past application for the subject parcel, no. C06-0016, Bill Weiler, the Area Habitat Biologist for the Washington Department of Fish and Wildlife, recommended that 3 new native trees be planted to replace each

native tree removed for the development and that the native trees and shrubs on the eastern portion of the property (designated Small-Scale Agriculture) be retained. No trees will need to be removed for the proposed garage and covered walkway and therefore no new native trees will need to be planted.

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

350-81-590 General Management Areas Rare Plant Review Criteria

This land use ordinance sets forth all the review criteria for lands within the General Management Areas that contain rare plants.

Findings of Fact: The subject property in this application does not contain any rare plants.

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

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

This land use ordinance sets forth all the review criteria for recreational resources within General Management Areas.

Findings of Fact: The subject property in this application does not contain any recreational resources.

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

- 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
- Marge Dryden, US Forest Service National Scenic Area
- Washington Department of Fish and Wildlife
- Klickitat County Planning
- Klickitat County Building
- Klickitat County Public Works
- Klickitat County Health Department
- Klickitat County Auditor
- Friends of the Columbia Gorge

END OF STAFF REPORT