

## DIRECTOR'S DECISION

**APPLICANT:** Verizon Wireless, LLC

**APPLICANT AGENT:** Lexcom Development, Inc.

**LANDOWNER:** Barbara Sexton

**FILE NO.:** C15-0010

**REQUEST:** The Columbia River Gorge Commission received an application for an installation of 9 replacement 84" antennas, 3 new surge suppressors measuring 20.4" x 15.5" x 10.25 and one new cable run on an existing 76' lattice telecommunications tower.

**LOCATION:** The subject parcel is located in the west 1/2 of Section 28, Township 3 North, Range 12 East, W.M., Klickitat County, Washington (Klickitat County Assessor's ID 03122800000600)

**LAND USE DESIGNATION:** The subject parcel is designated Small-Scale Agriculture in the General Management Area and is 81.54 acres in size.

### ***DECISION:***

Based upon the following findings of fact, the land use application by Lexcom Development, Inc. for Verizon Wireless to replace nine antennas, 3 new surge suppressors and one new cable run is found to be consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act P.L. 99-663, and the Management Plan for the Columbia River Gorge National Scenic Area (Management Plan), and approvable under Commission Rule 350-81 and is hereby **approved**.

### ***CONDITIONS OF APPROVAL:***

The following conditions of approval are given to ensure that the subject request is consistent with the standards of Section 6 and the purposes of 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 C15-0010, 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.
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).

*Land Use Conditions (no conditions specified)*

*Scenic Resources Conditions*

4. The replacement antenna(s) shall be dark grey and have a low reflective finish consistent with Commission Rule 350-81-052(1)(a)(c). The final color selection shall be submitted to and approved by the Gorge Commission staff prior to painting.
5. No outdoor lighting is approved in this Director's Decision. Any future proposed outdoor shall be submitted for review and approval by the Executive Director prior to installation.

*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.

*Natural Resources Conditions (no conditions specified)*

*Recreation Resources Conditions (no conditions specified)*

DATED AND SIGNED THIS 24th day of February 2016 at White Salmon, Washington.

p.p.

  
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 24th day of February, 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 request 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 March 25, 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.

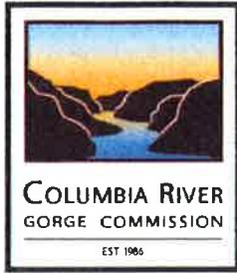
**Attachments:**

Staff Report C15-0010

Approved Site Plan

RMFEB24-0010





## FACTS AND FINDINGS COLUMBIA RIVER GORGE COMMISSION STAFF REPORT

**APPLICANT:** Verizon Wireless, LLC

**APPLICANT AGENT:** Lexcom Development, Inc.

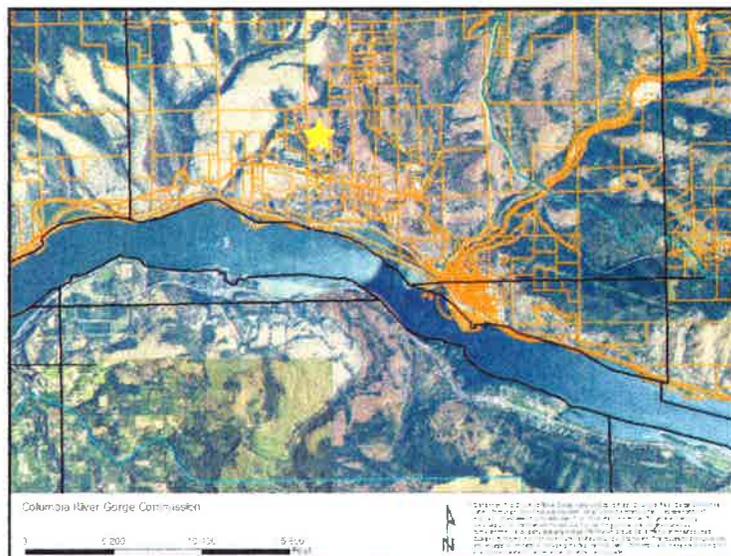
**LANDOWNER:** Barbara Sexton

**FILE NO.:** C15-0010

**REQUEST:** The Columbia River Gorge Commission received an application for an installation of 9 replacement 84" antennas, 3 new surge suppressors measuring 20.4" x 15.5" x 10.25" and one new cable run on an existing 76' lattice telecommunications tower.

**LOCATION:** The subject parcel is located in the west 1/2 of Section 28, Township 3 North, Range 12 East, W.M., Klickitat County, Washington (Klickitat County Assessor's ID 03122800000600)

**LAND USE DESIGNATION:** The subject parcel is designated Small-Scale Agriculture in the General Management Area and is 81.54 acres in size.



*Figure 1 shows Aerial view of C15-0010*

**HISTORY:** Prior development review actions have been taken by the Columbia River Gorge Commission for the subject property. C07-0015 was a request to install a wireless communication facility with antennas on an existing BPA transmission tower, a 12 foot by 26 foot concrete shelter, emergency power compound and gravel access road. The Director's Decision dated January 3, 2008 granted these developments.

**SCOPE OF REVIEW:** This development review application, C15-0010, 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 Assessor  
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:** February 24, 2016

**STAFF PERSON THAT PREPARED THIS REPORT:**

Riley Marcus, Columbia River Gorge Commission working for Klickitat County

**HOW/WHERE TO OBTAIN FURTHER INFORMATION:** Questions and comments should be directed to Ray Joseph, Senior Planner, Columbia River Gorge Commission, 57 NE Wauna Ave, PO Box 730, White Salmon WA 98672, (509) 493-3322 Ext 227, [ray.joseph@gorgecommission.org](mailto:ray.joseph@gorgecommission.org). A copy of this report may be obtained online at [www.gorgecommission.org](http://www.gorgecommission.org) or by contacting Ray Joseph at any of the above listed contacts.

**USE, AS PROPOSED BY THE APPLICANT, AND STAFF 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.

**Conclusions of Law:** In the staff's best professional opinion, the staff review and report for development review application C15-0010 is consistent with the definitions in Chapter 350-81-Land Use Ordinance.

**APPLICATIONS AND PROCEDURES**

Columbia River Gorge Commission Administrative Rules 350-81-030 through 350-81-046 specifies the standards for 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:** To current staff's best knowledge, development review application C15-0010 was reviewed as a complete application. In this respect, 'complete' is defined as containing 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 C15-0010 is a complete application and staff is able to review it in accordance with Rule 350-81-030.

**Conclusions of Law:** Development review application C15-0010 is consistent with this rule requirement.

**350-81-032 Application for Review and Approval**

This land use ordinance provision sets forth all the information requirements for a development review application.

**Findings of Fact:** Development review application C15-0010 was completed pursuant to this rule (350-81-032(I)). A Columbia River Gorge Commission planner, on behalf of the Executive Director, accepted development review application C15-0010 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 C15-0010 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.

**Findings of Fact:** A Gorge Commission planner, on behalf of the Executive Director, deemed the application complete on December 9, 2015.

**Conclusions of Law:** Development review application C15-0010 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) 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:** This application was formally accepted as complete, the application was filed and a file number was assigned on December 9, 2015. Staff, on behalf of the Executive Director, issued a notice of a proposed development review on December 9, 2015. The notice did contain the name of the applicant, general and specific location of the subject property, a brief description of the proposed action and a deadline for filing comments on the proposed action (350-81-038(1)(a)(b)(c)(e)). It included a deadline for issuing a decision on or before September 4, 2016 (350-81-038(1)(d)).

The notice did state the application and supporting documents are available for inspection at the Commission's office during normal working hours. The notice was mailed to the Forest Service, the Washington State Historic Preservation Office, four Indian tribal nations (Yakama, Umatilla, Warm Springs and Nez Perce) plus one other tribe (Cowlitz), the applicable country agencies (Klickitat County Planning, Building, Health and Assessor offices), owners within a radius determined by 350-81-630 (determined to be 200 feet) and other agencies and interested parties which request a notice of 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 C15-0010 was processed in a manner that is consistent with these rule requirements.

### **350-81-40 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 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 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. The notice was sent November 9, 2015 and the public deadline was established to be December 30, 2015. Written comments were received within this timeframe by:

- Richard Till of the Friends of the Columbia Gorge, dated December 23, 2015, received on January 5, 2016.

The Gorge Commission staff, on behalf of the Executive Director, has determined that neither a wildlife management plan or rare plant protection and rehabilitation plan are required (350-81-40(1)).

A cultural resources survey for the subject property was completed and all findings were forwarded to the applicable State Historic Preservation Officer, as well as the four Indian tribal governments (350-81-40(2)). The State Historic Preservation Officer and the four Indian tribal governments were given 30 days to submit comments. The Executive Director has determined that an evaluation of significance is not required (350-81-40(3)).

**Conclusions of Law:** This development review application, C15-0010 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:** The Executive Director has consulted with the applicant and other agencies (350-81-042(1)). The Executive Director has approved a proposed use that is consistent with the standards of section 6, the purposes of P.L. 99-663 and Commission Rule 350-81 (350-81-042(2)). A decision has been issued which include

findings of fact and conclusions of law. The 72 day time frame has been suspended (350-81-042(3)). The Executive Director will send a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, and the applicable county and/or city and each person who submitted comments (350-81-042(4)). The decision of the Executive Director shall be final unless a Notice of Appeal is filed (350-81-042(5)). The 72 day time period is not applicable and has been suspended (350-81-042(6)).

**Conclusions of Law:** This development review application, C15-0010 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:** Development review application C15-0010 is the subject of a prior approval issued pursuant to the Management Plan.

**Conclusions of Law:** This rule requirement is 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 the 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**

(1) The following developments may be reviewed using the expedited development review process, provided they comply with the resource protection and procedural guidelines contained in this section.

(a) Except in Open Space and Agriculture-Special, accessory structures between 60 and 200 square feet in area and 10 feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include signs, decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.

(b) Additions and covered decks for existing buildings, provided the existing building is at least 500 square feet in area and the addition or covered deck is no larger than 200 square feet in area and no taller than the height of the existing building. Only one addition and one covered deck per parcel may be allowed under this guideline, regardless of whether the parcel already includes an addition or covered deck.

(c) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length.

(d) Wire-strand fences other than those allowed outright, provided the fence complies with 350-81-580(6) if it is inside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency.

(e) In the General Management Area, woven-wire fences for agricultural use that would enclose 80 acres or less.

(f) Decks that are: (1) uncovered; (2) attached and accessory to existing dwellings; and (3) 500 square feet or less in area and 30 inches or less in height above existing grade.

(g) Road closure gates.

(h) Signs, other than those allowed outright.

(i) Outdoor lights.

(j) Air, weather, water and other similar research and monitoring facilities, provided the facilities are attached to existing structures or are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(k) Lot line adjustments in the General Management Area that would not result in the potential to create additional parcels through subsequent land divisions, subject to 350-81-126(1), except all lot line adjustments for parcels designated Open Space, Agriculture-Special, Public Recreation, or Commercial Recreation shall be reviewed through the full development review process.

(l) Lot line adjustments in the Special Management Area, subject to 350-81-126(2).

(m) Removal/demolition of structures that are less than 50 years old, including wells, septic tanks and fuel tanks.

(n) Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.

(o) Trail reconstruction involving up to 1,000 feet of trail re-route.

(p) The following transportation facilities, provided they are not a part of larger construction or reconstruction projects (which shall be reviewed as a whole):

(A) New guardrails and guardrail ends, other than those allowed outright, and new wire-strand and woven-wire access control fences. This category does not include jersey barriers.

(B) New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to 120 square feet in size and less than or equal to 12 feet in height. This category does not include signs.

(C) Pave existing dirt and gravel roads, provided the activity does not increase the width of the road or disturb the toe of adjacent embankments, slopes or cut banks.

(D) New weather, air, traffic or other monitoring equipment attached to existing structures or that are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(q) Except in Agriculture-Special, the following underground utility facilities:

(A) New underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no ditch for linear facilities would be more than 36 inches wide and (2) no excavation for non-linear facilities would exceed 20 cubic yards.

(r) The following aboveground and overhead utility facilities:

(A) Modify existing aboveground and overhead utility facilities or, except in Agriculture-Special, develop new aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the development would be less than or equal to 120 square feet in area and less than or equal to 12 feet in height.

(B) Replace existing aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the replacement facilities would be in the same location as and no more than 15 percent larger than the physical size of the existing facilities.

(C) New antennas and associated support structures necessary for public service on existing wireless communication poles and towers other than those allowed outright, provided the size is the minimum necessary to provide the service.

(s) Replace an existing mobile home in a mobile home space within a mobile home park, provided: (1) the mobile home to be replaced, the mobile home space and the mobile home park shall be existing, lawful uses according to the definition of *existing use or structure* and 350-81-082(1) through (4); (2) the replacement mobile home shall be in the same location as the mobile home to be replaced; (3) the height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced, and (4) the mass and footprint of the replacement mobile home shall be no more than 100 percent greater than a single-wide mobile home to be replaced or no more than 25 percent greater than a double-wide mobile home to be replaced.

(t) Retaining walls accessory to existing dwellings less than or equal to 2 feet in height and less than or equal to 100 feet in length.

(u) In the Special Management Area, wind machines for frost control in conjunction with agricultural use.

**Findings of Fact:** Development review application, C15-0010 is a modification to an existing aboveground and overhead utility facility (350-81-050(1)(r)(A)) and includes antennas and associated support structures necessary for public service on wireless communication poles and towers (350-81-050(1)(r)(C)). This development review application proposes uses that qualify it as a development review. As such, it is being processed using the rule requirements for Expedited Development Review, 350-81-050 through 350-81-054. (Please note, there are other standards in the Expedited Development Review Process that if not met, require an application be processed as full review).

**Conclusions of Law:** This development review application, C15-0010 is consistent with this rule provision.

## 350-81-052 Resource and Treaty Rights Protections Guidelines

(1) Proposed developments reviewed using the expedited review process shall comply with the following resource protection guidelines:

### **(a) Scenic Resources:**

(A) In the General Management Area, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.

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

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

(D) Outdoor lights shall be directed downward and sited, hooded, and shielded such that they are not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(E) Signs shall comply with 350-81-112.

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

***Findings of Fact:*** The proposed use is not an agricultural use, therefore the rule 350-81-052(1)(a)(A) does not apply. The proposal is to modify an existing wireless facility. The development site is located North of Balch Lake and Balch Road, near Rocky Flat, at an approximate elevation of 2,345 feet. Visually, the telecommunication facility is located in the background of the visual plane as viewed from Interstate 84 (I-84), Historic Columbia River Highway, and Rowena Plateau. The proposed development is located north of Murdock, Washington, and approximately 3,290 feet Northeast of SR-14.



In a past development review application (C07-0015), a condition of the following was made that: "The shelter (including the guardrail and condensing units) and privacy slats around the power compound shall be a dark brown color and the shelter shall be composed of concrete as proposed. The antennas shall be a dark grey color as proposed." The new antennas shall also be a dark grey color. All new equipment will match the existing site conditions. A condition of approval will be included in the Director's Decision to require a flat, low-reflective finish consistent with Commission Rule 350-81-052(1)(a)(C). No new outdoor lights are proposed (350-81-052(1)(a)(D)).

**Conclusions of Law:** Development review application C15-0010 is consistent with these rule requirements.

**(b) Cultural Resources:**

(A) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey, pursuant to 350-81-540(1)(c)(A) or historic survey, pursuant to 350-81-540(1)(c)(B).

(B) The GMA guidelines that protect cultural resources and human remains discovered during construction [350-81-540(6) and (7)] shall be applied as conditions of approval for all development approved under the expedited development review process.

**Findings of Fact:** Marge Dryden, Heritage Resources Program Manager for the Columbia River Gorge National Scenic Area, provided a cultural resources survey determination for the proposed development on January 22, 2016. Ms. Dryden determined that the proposed development does not require a reconnaissance survey 350-81-540(1)(c)(A) because:

- 1) Proposed use would involve the modification, expansion, replacement, or reconstruction of existing buildings and structures,
- 2) Proposed use would occur on sites that have been disturbed by human activities,
- 3) would occur on a site that has been adequately surveyed in the past (Ludwig 2007),
- 4) does not occur within 500 feet of a known archaeological site.

A historic survey is also not required 350-81-540(c)(B) because the proposed use:

- 5) does not alter the exterior architectural appearance of any significant buildings or structures that are 50 years old or older, and
- 6) would not compromise features of the surrounding area that are important in defining the historic or architectural character of significant buildings or structures that are 50 years old or older.

The GMA guidelines that protect cultural resources and human remains discovered during construction 350-81-540(6) and (7) shall be applied.

**Conclusions of Law:** Development review application C15-0010 is consistent with these rule requirements.

**(c) Recreational Resources:**

(A) The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

**Findings of Fact:** No established recreation sites exist on adjacent properties.

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

**(d) Natural Resources:**

(A) Wetlands, Streams, Rivers, Ponds, and Lakes

(i) The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

(B) Sensitive Wildlife and Sensitive Plants

(i) The development meets one of the following:

(I) The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range, and turkey habitat) and known sensitive plants; or

(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained; or

(III) For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines (1) the sensitive wildlife area or site is not active or (2) the proposed development 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. For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.

(ii) Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or sensitive plants [350-81-580(1)(b) and (2); 350-81-590(1)(b) and (2)].

**Findings of Fact:** The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained 350-81-052(1)(d)(A)(i). The development is a utility and is on a site that has been previously disturbed and is regularly maintained.

350-81-052(1)(d)(B)(i)(II) The development does not disturb the ground and is on an area that has been previously disturbed.

**Conclusions of Law:** Development review application C15-0010 is consistent with this rule requirement.

(2) Proposed developments reviewed using the expedited review process shall comply with the following treaty rights protection guidelines:

(a) Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.

(b) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

(c) Except as provided in 2.b above, the GMA and SMA treaty rights and consultation goals, policies and guidelines in Chapter 3, Section IV of the Management Plan shall not apply to proposed developments reviewed under the expedited review process.

**Findings of Fact:** The proposed modification of an existing tower will be within an area that has been previously disturbed and developed (350-81-052(1)(d)(2)(a)). The proposed modification will not affect or modify any treaty or other rights of any Indian tribe.

The goals, policies and guidelines highlighted in Chapter 3, Section IV of the Management Plan were not used in this development review process (350-81-052(1)(d)(2)(c)).

**Conclusions of Law:** Development review application C15-0010 is consistent with this rule requirement.

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

#### (1) Applications

(a) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-054.

(b) The Executive Director shall accept and review the application pursuant to 350-81-054 for consistency with the appropriate guidelines of this rule.

(c) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(d) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices for which this ordinance is effective and the Forest Service.

(e) Applications for uses eligible for expedited review shall include the information required for review uses listed in 350-81-032(5). They shall also include elevation drawings if the proposed development would be visible from a key viewing area. The drawing shall show natural grade and finished grade.

**Findings of Fact:** An application was completed per the requirements of this Land Use Ordinance. A Columbia River Gorge Commission Planner, on behalf of the Executive Director, has reviewed the development review application, C15-0010, and determined it complete and accepted the application on December 9, 2015.

The Columbia River Gorge Commission may charge a fee to review development review applications after a public hearing. The Commission has not done so. As such, no fee is charged to the applicant for this development review application (350-81-054(1)(c)). Standard application forms are available at Commission's offices and provided to

county and city planning offices and the Forest Service. The applicant obtained a development review application from the Commission's offices and submitted as part of the overall application (350-81-054(1)(d)). There are multiple information needs that are required as part of the application. The applicant has submitted all necessary and applicable information per this rule (350-81-054(1)(e)).

**Conclusions of Law:** Development review application C15-0010 is consistent with this rule requirement.

(2) Acceptance of Application

- (a) The Executive Director shall review the application for completeness, and if complete, shall accept the application for review.
- (b) 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.
- (c) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental application materials within 14 days of receipt of the materials.

**Findings of Fact:** A Columbia River Gorge Commission Planner, on behalf of the Executive Director, reviewed the application, made a determination it was complete, and accepted the application for review on December 9, 2015 (350-81-054(2)(a) and (b)).

**Conclusions of Law:** Development review application C15-0010 is consistent with this rule requirement.

(3) Notice of Development Review

(a) 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.

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

(d)<sup>2</sup> The notice shall be mailed to the Forest Service, the four Indian tribal governments, applicable county or city planning office(s), and other agencies and interested parties that request a notice or that the Executive Director determines should be notified.

2 Note: No subsection (c) in filings to Oregon Bulletin and Washington State Register.

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

**Findings of Fact:** Staff, on behalf of the Executive Director, accepted the application on December 9, 2015 and issued a notice of a proposed development on the same day. 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 (350-81-054(3)(a)(A)(B)(C)(D)(E)). The notice did state that the application and the supporting documents are available for inspection at the Commission's office during normal working hours. The notice was mailed to the Forest Service, the applicable state, the four Treaty Tribal Nations (Yakama, Umatilla, Warm Springs and the Nez Perce), 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 standing request to be notified of all development review applications) (350-81-054(3)(b)(d)).

**Conclusions of Law:** Development review application C15-0010 is consistent with this rule requirement, with the exception of 350-81-054(3)(D).

(4) Comment Period: Any interested person or party shall submit written comments within 10 days from the date a notice is sent.

**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 December 9, 2015 and the public comment deadline was December 30, 2015. Written comments were received by Richard Till of Friends of the Columbia Gorge, dated December 23, 2015, received on January 3, 2016. Marge Dryden, (Heritage Resource Program Manager, USFS) acting as a resource expert for the Columbia River Gorge Commission made the determination that a cultural resources survey (reconnaissance or historic) was not required (350-81-540(1)(c)(A) and (B) on January 22, 2016.

**Conclusions of Law:** The development review application C15-0010 is consistent with this rule requirement.

(5) Written Decision

(a) 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 350-81-054(4); and
- (D) Solicit and consider the comments of the Forest Service.

(b) 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.

(c) 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 30 days after acceptance of the application.

(d) 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.

**Findings of Fact:** The written decision was made in accordance with the above rule requirements.

**Conclusions of Law:** The development review C15-0010 is consistent with these rule requirements.

(6) Notice of Decision and Opportunity to Appeal

(a) The Executive Director shall send a copy of a decision issued under the expedited review process to the four Indian tribal governments, the Forest Service, landowners within 200 feet of the perimeter of the subject parcel, and anyone who submitted comments pursuant to 350-81-054(4).

(b) Any person shall be allowed to appeal a decision issued under the expedited review process in accordance with Commission Rule 350-70.

**Findings of Fact:** The approval of this development review application is consistent with the citations above. Conditions of approval are noted in the Director's Decision. One such condition is the requirement that the Director's Decision and staff report be recorded in county deeds and records. A staff report identifying findings of fact and conclusions of law was prepared for this development review application.

**Conclusions of Law:** This development review C15-0010 is consistent with these rule requirements.

(7) Expiration of Approvals. Approvals issued under the expedited review process shall expire in accordance with the standards for expiration of approvals for review uses (Commission Rule 350-81-044, above).

(8) Changes or Alterations to an Approved Action. Changes or alterations to an approval issued under the expedited review process shall be made in accordance with the standards for changes or alterations to approved actions for review uses (Commission Rule 350-81-046, above).

(9) The time periods in this rule are effective retroactively to all expedited review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

**Findings of Fact:** The decision for this development review application will be sent to the parties listed above. Information about appeals is contained in the Director's Decision.

**Conclusions of Law:** This development review C15-0010 is consistent with these rule requirements.

cc: Confederated Tribes and Bands of the Yakama Indian Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of Warm Springs Reservation  
Nez Perce Tribe  
Klickitat County Planning  
Klickitat County Building  
Friends of the Columbia Gorge

END OF STAFF REPORT