

## COLUMBIA RIVER GORGE COMMISSION DIRECTOR'S DECISION

**CASE FILE:** C18-0001

**PROPOSAL:** The Columbia River Gorge Commission has received an application for the after-the-fact review of a new garage building, accessory to an existing single-family dwelling.

**APPLICANT:** Steve Grove

**LANDOWNERS:** Stacey Baker

**LOCATION:** The subject parcel is located at 41 Windy Bluff Road, White Salmon, Washington, in the North East Quarter of Section 33, Township 3 North, Range 11 East, W.M., Klickitat County, Tax Lot Number 03-11-33-0000-34/00. The parcel is 5.10 acres in size.

### LAND USE

**DESIGNATION:** In accordance with Section 8(o) of the National Scenic Area Act, the Forest Service designated the subject property General Management Area (GMA) Small-Scale Agriculture. For the purposes of this development review, the Special Management Area (SMA) guidelines no longer apply to the subject parcel. The proposed development will be reviewed according to the applicable GMA land use and resource protection guidelines.

### DECISION:

Based upon the findings of fact in the staff report, the land use application on behalf of Stacey Baker, for the after-the-fact review of a garage is not consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Management Plan for the Columbia River Gorge National Scenic Area and Commission Rule 350-81 and is hereby **DENIED**.

The landowner shall remove or deconstruct the garage within 60 calendar days of the date of this Director's Decision. The landowner may store the deconstructed materials on site to be reused for development that may be approved in a subsequent application to the Commission. If the landowner does not submit a new application within 60 days, she shall also restore all disturbed areas to pre-existing conditions and grade and revegetate the disturbed areas, using a seed mix or plantings native to the eastern gorge. Failure to comply with this requirement to remove the garage and restore the disturbed areas will result in a Notice of Alleged Violation.

DATED AND SIGNED THIS 6<sup>th</sup> day of August 2019 at White Salmon, Washington.

Krystyna U. Wolniakowski  
Executive Director

**APPEAL PROCESS:**

***The appeal period ends on the 5<sup>th</sup> day of September 2019.***

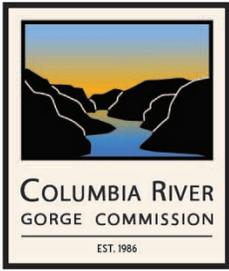
The decision of the Executive Director is final unless the applicant or any other person who submitted comment files a Notice of Intent to Appeal and Petition with the Commission within thirty (30) days of the date of this decision. Information on the appeal process is available at the Commission office

cc:

Confederated Tribes and Bands of the Yakama Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Christian Nauer, Confederated Tribes of Warm Springs Reservation of Oregon  
Nez Perce Tribe  
U.S. Forest Service National Scenic Area Office  
Washington Department of Archaeology and Historic Preservation  
Klickitat County Planning Department  
Klickitat County Building Department  
Klickitat County Public Works Department  
Klickitat County Health Department  
Klickitat County Assessor  
Washington Natural Heritage Program  
Washington Department of Fish and Wildlife  
Steve McCoy, Friends of the Columbia River Gorge

Attachments:

Staff Report for C18-0001



## COLUMBIA RIVER GORGE COMMISSION STAFF REPORT

**CASE FILE:** C18-0001

**PROPOSAL:** The Columbia River Gorge Commission has received an application for the after-the-fact review of a new garage building, accessory to an existing single-family dwelling.

**APPLICANT:** Steve Grove

**LANDOWNERS:** Stacey Baker

**LOCATION:** The subject parcel is located at 41 Windy Bluff Road, White Salmon, Washington, in the North East Quarter of Section 33, Township 3 North, Range 11 East, W.M., Klickitat County, Tax Lot Number 03-11-33-0000-34/00. The parcel is 5.10 acres in size.

### LAND USE

**DESIGNATION:** According to Section 8(o) of the Scenic Area Act, the Forest Service designated the subject property General Management Area (GMA) Small-Scale Agriculture. For the purposes of this development review, the Special Management Area (SMA) guidelines no longer apply to the subject parcel. The proposed development is reviewed according to the applicable GMA land use and resource protection guidelines.

### COMMENTS FROM INDIVIDUALS/AGENCIES/GOVERNMENTS:

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

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

Written comments were received from Steve McCoy, Friends of the Columbia River Gorge, and Christian Nauer, Confederated Tribes of the Warm Springs Reservation.

## FINDINGS OF FACT:

### A. Land Use

1. The subject parcel is in a Special Management Area and designated Small-Scale Agriculture with an 80-acre minimum parcel size. In accordance with Section 8(o) of the National Scenic Area Act, the Forest Service designated the subject property General Management Area (GMA) Small-Scale Agriculture. For the purposes of this development review, the Special Management Area (SMA) guidelines no longer apply to the subject parcel. The proposed development is reviewed according to the applicable GMA land use and resource protection guidelines.
2. The subject parcel is 5.10 acres in size and located in Klickitat County, east of White Salmon, WA, off Courtney Road, on Burdoin Mountain.
3. In late 2017, during a site visit to a neighboring property, staff became aware of the new garage building on the subject parcel. Upon further investigation, staff learned that construction of the accessory building began in fall of 2017 without required approval from the Gorge Commission. On January 18, 2018, staff notified the landowner of the Commission's discovery of the project, and on February 5, Steve Grove, acting as applicant on behalf of Ms. Baker, applied for the garage as currently constructed to the Gorge Commission for review. Upon review, the Commission determined the garage building could not be approved as designed and began working with the landowner to resolve the issue, pursuant to Commission Rule 350-30-025.

In Spring of 2018, Gorge Commission staff met with Ms. Baker and Mr. Grove at the Commission office to discuss the application. Staff explained that the development could not be approved as designed and requested a new design for the garage that was consistent with Commission Rule 350-81-520 that protects scenic resources.

In July 2018, staff sent Ms. Baker a letter by email requesting revised designs for the garage. On July 31, 2018, Ms. Baker emailed the Commission and requested more time to find an architect or provide a new design for the garage. In April 2019, after failing to respond to the Gorge Commission staff's numerous written requests and attempts to reach her by telephone over several months, Ms. Baker provided the contact information of her recently retained architect, Breff McLaughlin, with McLaughlin Design & Construction, LLC. Staff discussed the design constraints of the project with Mr. McLaughlin. Mr. McLaughlin stated he was concurrently working on a new replacement home for Ms. Baker's property which also included a new garage. He provided a video mock-up of his work to date, but he was unsure of exactly when the design work would be completed.

Staff understands that a new application for a replacement dwelling and new garage is forthcoming. However, after working with Ms. Baker for over a year to resolve a violation without receiving new design plans, the Commission is issuing this Director' Decision. As of the date of this Decision, the Commission has not received a new application or new design plans for the garage.

4. Commission Rule 350-81-190(1)(e) allows the following on lands designated Small-Scale Agriculture:

*Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel 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.*

As built, the garage is 16 feet wide, 30 feet long, and 18 feet tall. The garage has a footprint of 480 square feet and is under the 24 foot height limit. However, the building height does not comply with the applicable scenic resource provisions, as discussed in Section B below. There is an additional existing accessory building on the property that has a footprint of 544 square feet. The combined footprint of the accessory buildings is 1,020 square feet, smaller than the 1,500 square feet limit.

**Conclusion:**

The proposed development is a review use on lands designated GMA Small-Scale Agriculture provided it does not adversely affect scenic, cultural, natural, or recreation resources in the National Scenic Area. Submission of a revised plan for the unlawful building is likely to resolve the violation through design changes and implementing those changes, but the only way to know is if Ms. Baker applies.

**B. Scenic Resources**

1. On January 18, 2018, staff notified Ms. Baker that a National Scenic Area permit is required for the new construction described in this report. In response, on February 5, 2018, Mr. Grove submitted application materials on Ms. Baker's behalf. At that time, staff began an after-the-fact review and determined the building extends above the skyline as viewed from Key Viewing Areas (KVAs) and is in violation of Commission Rule 350-80-520(2)(h).

In Spring of 2018, Gorge Commission staff met with Ms. Baker and Mr. Grove at the Commission Office to discuss the alleged violation. Ms. Baker provided a new landscaping plan that included planting mature trees and constructing a berm to help screen the garage from view. Staff explained that landscaping could help to screen the structure, but that vegetative screening is a mitigation measure, to be used when the natural topography of the site is insufficient to screen the structure from view of Key Viewing Areas. Staff told Ms. Baker that the design could not be approved as built given that the silhouette of the structure extends above the skyline of the ridge when viewed from Key Viewing Areas. Staff requested a new building site or design for the garage that does not break the skyline as seen from Key Viewing Areas.

In April 2019, after failing to respond to the Gorge Commission staff's numerous written requests and attempts to reach her by telephone for several months, Ms. Baker provided the contact information of her recently retained architect, Breff McLaughlin, with McLaughlin Design & Construction, LLC. Staff discussed the design constraints of the project with Mr. McLaughlin. Mr. McLaughlin stated he was concurrently working on a new replacement home for Ms. Baker's property which also included a new garage. He provided a video mock-up of his work to date, but he was unsure of exactly when the design work would be completed.

Staff understands that a new application for a replacement dwelling and new garage is forthcoming. However, after working with Ms. Baker for over a year without receiving new design plans, the Commission is issuing this Director' Decision. At the date of this Decision, the Commission has not received a new application or new design plans for the garage.

2. Commission Rule 350-81-520(1)(a) states:

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

As built, the garage is 16 feet wide, 30 feet long, and 18 feet tall. The garage has a footprint of 480 square feet. The garage site utilizes the existing driveway, and is sited adjacent to an existing accessory building, which is also sited adjacent to the primary dwelling. The siting of the garage required the excavation of an estimated 100 cubic yards of grading because of cuts to the slope where the garage is currently sited.

3. Commission Rule 350-81-520(1)(b) states:

*New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable.*

As built, the garage is 16 feet wide, 30 feet long, and 18 feet tall. The garage has a footprint of 480 square feet and is under the 24 foot height limit guideline in Commission Rule 350-81-190(1)(e). There is already an existing accessory building on the property with a footprint of 544 square feet. The combined footprint of the accessory buildings is 1,020 square feet, under the 1,500 square feet limit guideline of Commission Rule 350-81-190(1)(e).

To determine compatibility of the proposed development, Commission staff looked at development within a study area of an approximately one-quarter mile radius surrounding the subject parcel. Staff chose one-quarter mile as the surrounding extent because tax lots within that area are in the same land use designation as the subject parcel, are within the same landscape setting, and have similar visibility from Key Viewing Areas. Of the 12 tax lots in the study area, staff identified 11 parcels with development. There are currently 29 documented buildings in the study area. These buildings include single-family homes, mobile homes, garages, agricultural buildings, and accessory buildings. The buildings range in size from approximately 64 to 1,092 square feet and one to two stories tall. The general scale of the garage – including the square footage and the height – is compatible with the general scale of existing nearby development, consistent with Commission Rule 350-81-520(1)(b).

4. Commission Rule 350-81-520(1)(c) states:

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

The applicant provided a landscape plan prepared by F.L.I. Landscape that included a large berm and six large Douglas fir trees to provide screening for the new garage. However, the proposed development is not approved in the current location, so no landscaping is required by this Decision.

5. Commission Rule 350-81-520(1)(e) states:

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

The landscape setting for the subject parcel is Oak-Pine Woodlands. Commission Rule 350-81-520(3)(c) contains the design guidelines for proposed uses in the Oak-Pine Woodlands landscape setting. A site plan was provided consistent with Commission Rule 350-81-032 (Application for Review and Approval). Findings B.20 through B.22 address the applicable guidelines in Commission Rule 350-81-520(3)(c) using information submitted in the site plan, consistent with this rule.

6. Commission Rule 350-81-520(2) contains guidelines that affect developments on sites visible from Key Viewing Areas. Staff has determined, with site visits and geospatial map tools, that the subject parcel is topographically visible from the following six Key Viewing Areas:

<u>KEY VIEWING AREAS</u>	<u>DISTANCE ZONE</u>		
	FOREGROUND	MIDDLEGROUND	BACKGROUND
	0 - 1/4 Mile	1/4 - 3 MILES	Over 3 Miles
Historic Columbia River Highway		X	X
Interstate 84		X	X
Columbia River			X
Washington State Route 14		X	X
Highway 35			X
Rowena Plateau			X

Because the development site is visible from Key Viewing Areas, the guidelines of Commission Rule 350-81-520(2) apply to the proposed development.

7. Commission Rule 350-81-520(2)(b) requires new development to be visually subordinate to its setting when viewed from Key Viewing Areas.

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

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

The proposed development breaks the skyline of a ridge of Burdoin Mountain as seen from Key Viewing Areas, noticeably contrasting with the surrounding landscape. As built, the proposed development is not visually subordinate to its setting as seen from Key Viewing Areas.

8. Commission Rule 350-81-520(2)(c) states that the determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

Commission Rule 350-81-020(40) defines “cumulative effects” as:

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

The proposed development breaks the skyline of a ridge of Burdoin Mountain as seen from Key Viewing Areas, noticeably contrasting with the surrounding landscape. The proposed development is not visually subordinate to its setting as seen from Key Viewing Areas and, creates an adverse effect on scenic resources. The proposed development is not approved in its as-built configuration in the current location.

If developments are generally allowed to violate Commission Rule 350-81-520(2)(c) or other Commission guidelines, even when the actions are individually minor, there is a cumulative effect of the collective actions over time. Taken together, these small but similar violations of Commission guidelines create adverse effects on scenic resources in the National Scenic Area.

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

*The extent and type of conditions applied to a proposed development to achieve visual subordination should 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).*

The proposed development is not approved in the current location. It could be approved if the applicant would propose to lower the overall height of the building, but the applicant has not done so. The application is denied, so no conditions are applied to ensure visual subordination, pursuant to this rule.

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

*Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from Key Viewing Areas, including but not limited to:*

- (i) Siting (location of development on the subject property, building orientation, and other elements).*
- (ii) Retention of existing vegetation.*
- (iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements).*
- (iv) New landscaping.*

The application is denied, so no conditions are applied to ensure visual subordination, pursuant to this rule.

11. Commission Rule 350-81-520(2)(e) states:

*New development shall be sited to achieve visual subordination from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.*

As discussed in Section E below, the development is not located within the sites or buffers of sensitive natural resources. Similarly, as discussed in Section C, the development does not conflict with cultural resource guidelines. Commission Rule Commission Rule 350-81-520(2)(e) does not apply.

12. Commission Rule 350-81-520(2)(f) states:

*New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from Key Viewing Areas.*

The topography of the 5-acre parcel creates design constraints as evidenced by the proposed development breaking the skyline of the ridge of Burdoin Mountain as seen from Key Viewing Areas. The topography of the subject parcel gently slopes to the south, and the parcel has very little vegetation to use as screening. The proposed garage is sited in approximately the center of the parcel near existing development, and the parcel has been leveled out around the house. The western and southern property lines of the parcel form the beginning of the steep slopes of Burdoin Mountain that head directly downhill towards the Columbia River. From the nearest Key Viewing Area from which the parcel is located, SR-14, the slopes of Burdoin Mountain are steep enough that the development is set back and does not break the skyline. From Oregon KVA I-84 however, the silhouette of the structure extends above the skyline. Staff explained that a different design or alternative location for the garage could be approved, but the structure cannot be approved as built. Staff requested a new design for the garage that did not break the skyline as seen from Key Viewing Areas.

13. Commission Rule 350-81-520(2)(g) states:

*Existing tree cover screening proposed development from Key Viewing Areas shall be retained as specified in the Landscape Settings Guidelines in 350-81-520(3).*

The subject parcel is in the Oak-Pine Woodlands landscape setting. No trees are proposed to be removed as part of this application.

14. Commission Rule 350-81-520(2)(h) states:

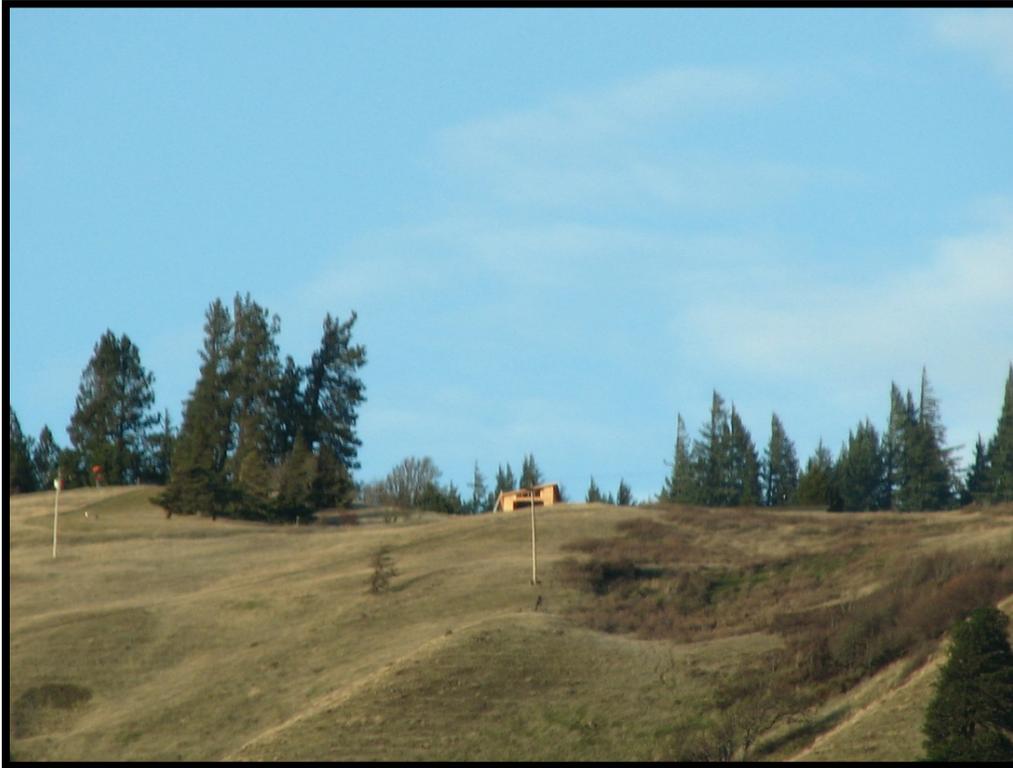
*The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from Key Viewing Areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to 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.*

Commission Rule 350-81-020(146) defines skyline as:

*The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.*

In spring of 2018, Gorge Commission staff met with Ms. Baker and Mr. Grove at the Commission Office to discuss the alleged violation. Ms. Baker provided a new landscaping plan that included planting mature trees and constructing a berm to help screen the garage from view. Staff explained that landscaping could help to screen the structure, but that vegetative screening is a mitigation measure, to be used when the natural topography of the site is insufficient to screen the structure from view of Key Viewing Areas. Staff explained that a different design or alternative location for the garage could be approved, but the structure cannot be approved as built because the silhouette of the structure extends above the skyline of the ridge when viewed from Key Viewing Areas. Staff requested a new design for the garage that did not break the skyline as seen from Key Viewing Areas.

The proposed development is not approved in the current location, because the silhouette does not remain below the skyline as seen from Key Viewing Areas. From I-84, the skyline is formed by a ridge of Burdoin Mountain (See Figure 1.) The trees do not form a continuous unbroken canopy at this site. The elevation of the development site is approximately 1,270 feet above sea level. From I-84, at approximately 100 feet elevation, the development breaks the skyline for one mile along the length of the Key Viewing Area. From I-84, the development is in the middle ground of the landscape, 1.30 miles away. The garage is not approved in its current location.



**Figure 1.** Close-Up View from I-84 Key Viewing Area (KVA).

15. Commission Rule 350-81-520(2)(j) applies to new landscaping. Ms. Baker provided a new landscaping plan that included the use of tall trees and a berm to help screen the garage from view. However, the proposed development is not approved in the current location, so no landscaping is required by this Decision.

16. Commission Rules 350-81-520(2)(l) states:

*Unless expressly exempted by other provisions in 350-81-520, colors of structures on sites visible from Key Viewing Areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval.*

The applicant provided material and color samples for the paint color, trim, garage door, and roofing materials. However, the proposed development is not approved in the current location, so no conditions are applied to ensure the colors of the garage are dark earth-tones, pursuant to this rule.

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

*The exterior of buildings on lands seen from Key Viewing Areas shall be composed of non-reflective materials or materials with low reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topographic features.*

The applicant provided material and color samples for the paint color, trim, garage door, and roofing. However, the proposed development is not approved in its current location, so no conditions are applied to ensure the buildings are composed of non-reflective materials, pursuant to this rule.

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

*Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.*

No exterior lighting is indicated in the application. However, the proposed development is not approved in the current location, so no conditions are applied to ensure exterior lighting is directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas, pursuant to this rule.

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

*Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from Key Viewing Areas.*

Using information in the application and Google Earth Pro, staff estimates the siting of the garage required the excavation of an estimated 100 cubic yards of grading because of cuts to the slope where the garage is currently sited. The proposed development is not approved in the current location, so no conditions are applied to ensure visual subordination, pursuant to this rule.

20. Commission Rule 350-81-520(2)(aa) requires all proposed structural development involving more than 200 cubic yards of grading on sites visible from Key Viewing Areas to include a grading plan containing specific plan elements.

The siting of the garage required the excavation of an estimated 100 cubic yards of grading because of cuts to the slope where the garage is currently sited. The proposed development is not approved in the current location, so no conditions are applied to ensure visual subordination, pursuant to this rule.

21. The Landscape Settings Map for Columbia River Gorge National Scenic Area classifies the subject parcel as Oak-Pine Woodlands. Commission Rules 350-81-520(3)(c)(A) and (B) contain applicable guidelines for the proposed development in this landscape setting.

22. Commission Rule 350-80-520(3)(c)(A) states:

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

The proposed development is not approved in the current location because the garage height is not below the tree canopy level and the project breaks the skyline as seen from Key Viewing Areas.

23. Commission Rules 350-81-520(3)(c)(B) states:

*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) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.*
- (ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.*

*For substantially wooded portions:*

- (iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from Key Viewing Areas shall be retained.*

*For treeless portions or portions with scattered tree cover:*

- (iv) Structures shall be sited on portions of the property that provide maximum screening from Key Viewing Areas, using existing topographic features.*
- (v) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.*
- (vi) 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.*

The applicant provided a landscape plan prepared by F.L.I. Landscape that included a large berm and six large Douglas fir trees to provide screening for the new garage. However, the proposed development is not approved in the current location.

24. GMA Scenic Resources Policy 1 (Page I-1-3 of the Management Plan) states:

*Except for production and/or development of mineral resources, nothing in the Key Viewing Areas or landscape settings guidelines in this chapter shall be used as grounds to deny proposed uses otherwise authorized by the land use designation. However, the guidelines may affect the siting, location, size, and other design features of proposed developments, and compliance with them is mandatory.*

This provision requires the Commission to approve new development where the only resource issue relates to compliance with scenic resource standards. The Commission must require design changes and impose conditions of approval to the maximum extent possible so that non-compliance with scenic resource standards is the minimum possible. Here, staff made several attempts to get the applicant to submit a new design or location, but she did not. In this factual situation, the applicant has not demonstrated compliance with this policy (or any attempt to comply with this policy), and thus this provision does not apply, and the Executive Director may and will use the key viewing area and landscape setting standards to deny the proposed development.

Conclusion:

The proposed development is not consistent with the applicable policies of the Management Plan and guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area.

### C. Cultural Resources

1. Commission Rule 350-81-540(1)(c)(A)(ii) requires a cultural resources reconnaissance survey for all proposed uses except those in 350-81-540(1)(c)(A)(ii)(I) through (VI).
2. Chris Donnermeyer, Heritage Resource Program Manager for the Columbia River Gorge National Scenic Area, reviewed the after-the-fact land use application and determined in a Cultural Resources Survey Determination, dated April 24, 2019, that pursuant to Commission Rule 350-81-540(1)(c)(A)(iii) a reconnaissance survey was not required because the proposed use would involve the modification, expansion, replacement, or reconstruction of existing buildings and structures, would occur on a site that has been determined to be located within a low probability zone, and does not occur within 500 feet of a known cultural resource.
3. Commission Rule 350-81-540(1)(c)(B) states:

*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.*

Chris Donnermeyer also determined in the Cultural Resources Survey Determination, dated April 24, 2019, that the applicant does not propose to alter any structures or 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. Therefore, a historic survey was not required for the use, pursuant to Commission Rule 350-81-540(1)(c)(B).

4. Commission Rule 350-81-540(2)(c)(B)(i) states:

*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.*

...

Neither a reconnaissance nor a historic survey is required. The Confederated Tribes of the Warm Springs Reservation of Oregon submitted comments concurring with Mr. Donnermeyer's Cultural Resources Survey Determination. The notice included a comment period of 21 days that ended on May 7, 2019. 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 cultural resource impacts were voiced by the State Historic Preservation Officer or Indian tribal governments during the comment period.

5. Commission Rules 350-81-540(6) and (7) protect cultural resources and human remains discovered during construction. They require that if cultural resources or human remains are discovered after construction begins, all construction activities within 100 feet of the discovered cultural resource shall cease; further disturbance is prohibited, and the Gorge Commission shall be notified.

Conclusion:

With conditions protecting unknown cultural resources and human remains discovered during construction, the proposed development is consistent with the guidelines in Commission Rule 350-81-540 that protects cultural resources in the National Scenic Area. However, the proposed development is inconsistent with the applicable policies of the Management Plan and guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area and is not approved.

D. Recreation Resources

1. Commission Rule 350-81-086 states:

*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.*

No recreation sites or facilities exist on parcels adjacent to the subject parcel, therefore, no buffers are required pursuant to Commission Rule 350-81-086.

Conclusion:

The proposed development is consistent with Commission Rule 350-81-086 that protects recreation resources in the National Scenic Area. However, the proposed development is inconsistent with the applicable policies of the Management Plan and guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area and is not approved.

E. Natural Resources

1. Commission Rule 350-81 provides guidelines for protecting wetlands (Section 560); streams, ponds, lakes, and riparian areas (Section 570); sensitive wildlife areas and sites (Section 580); and sensitive plants (Section 590).
2. The Gorge Commission's natural resource inventories do not show any wetlands in the project vicinity. Therefore, Commission Rule 350-81-560 that protect wetlands does not apply.
3. The Gorge Commission's natural resource inventories do not show any streams, ponds, lakes, riparian areas, or resource buffer zones in the project vicinity or on the 5-acre parcel. Therefore, Commission Rule 350-81-570 that protect streams, ponds, lakes and riparian areas does not apply.
4. The Gorge Commission's sensitive wildlife inventory does not show any sensitive wildlife sites within 1,000 feet of the proposed development. Therefore, Commission Rule 350-81-580 that protects sensitive wildlife areas does not apply.
5. The Gorge Commission's sensitive plant inventory does not show any sensitive plant sites within 1,000 feet of the proposed development. Therefore, Commission Rule 350-81-590 that protects sensitive plants does not apply.

Conclusion:

The proposed development is consistent with the guidelines in Commission Rule 350-81, Sections 560 through 590, that protect natural resources in the National Scenic Area. However, the proposed development is inconsistent with the applicable policies of the Management Plan and guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area and is not approved.

F. Treaty Rights Protection

1. Commission Rule 350-81-084(1) provides protection of tribal treaty rights from new development in the National Scenic Area.
2. Commission Rule 350-81-084(1)(a) lists additional notice materials for projects in or providing access to the Columbia River or its fish bearing tributaries or for projects that may affect Native American treaty rights and provides 20 days for tribal governments to submit comments.

The subject parcel has no access to the Columbia River, but pursuant to other noticing requirements, notice of the proposal was mailed or emailed to the four tribal governments on April 17, 2019. The notice included a comment period of 21 days that ended on May 7, 2019.

3. Commission Rule 350-81-084(1)(b) lists guidelines for tribal government consultation when those governments submit substantive written comments. No substantive comments were received.
4. Commission Rule 350-81-084(c)(B) states,

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

The subject parcel does not provide access to the Columbia River or its fish bearing tributaries. No known treaty rights are affected by this proposal and no treaty rights concerns were raised by the tribal governments. Because the proposed use does not affect or modify treaty or other rights of any Indian tribe, the treaty rights protection process may conclude pursuant to Commission Rule 350-91-084(c)(B).

Conclusion:

The proposed development is consistent with the guidelines in Commission Rule 350-81-084, which provides protection for treaty rights and any other rights of any Native American tribe. However, the proposed development is inconsistent with the applicable policies of the Management Plan and guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area and is not approved.

BG  
FIND0001\_18