

DIRECTOR'S DECISION

CASE FILE: C18-0004

PROPOSAL: The Columbia River Gorge Commission received an application for the removal of an existing residence and accessory structure.

APPLICANT: Tim Carse

LANDOWNER: Mary Kleihege

LOCATION: The subject parcel is located at 361 Canyon Rd., Lyle, WA 98635, in the West ½ of Section 3, Township 3 North, Range 12 East, West Meridian, Klickitat County Tax Lot Number 03-12-15-0000-03/00. The subject parcel is 323 acres in size.

LAND USE

DESIGNATION: The subject parcel is in the General Management Area and designated Commercial Forest.

DECISION:

Based upon the following findings of fact, the land use application by Tim Karse to remove an existing single-family dwelling is 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 (Management Plan), and approvable under Commission Rule 350-81, and is hereby **approved**.

CONDITIONS OF APPROVAL:

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

1. To ensure notice of the conditions to successors in interest, this Director's Decision, Staff Report for C18-0004, and approved site plan shall be recorded in county deeds and records at the Klickitat County Assessor's Office. Once recorded, the applicants shall submit a copy of the recorded document to the Executive Director at the Commission.
2. This decision does not exempt the proposal from other non-Scenic Area rules and regulations. It is the applicant's responsibility to ensure the use complies with all other applicable federal, state, and county laws; and obtain necessary approvals, including utility easement approvals.
3. Any new land uses or structural development such as residences; garages, workshops, or other accessory structures; additions or alterations; or grading not included in the approved application or site plan will require a new application and review.

4. If over 200 cubic yards of grading is necessary, the applicant shall submit a new land use application for grading activities including a grading plan and narrative, consistent with Commission Rule 350-81-520(2)(aa); and revised elevation drawings, including the natural grade and finished grade surrounding the proposed structures and other improvements if applicable, consistent with Commission Rule 350-81-032(5) to the Executive Director of the Gorge Commission for review and approval.
5. If cultural resources are discovered during construction activities, all activities within 100 feet of the cultural resources shall immediately cease and the applicants shall notify the Gorge Commission within 24 hours of discovery and the State Physical Anthropologist, Dr. Guy Tasa at (360) 586-3534 or guy.tasa@dahp.wa.gov. The cultural resources shall remain as found and further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.
6. If human remains are discovered during construction activities, all activities shall cease immediately upon their discovery. Local law enforcement, the Executive Director and Indian Tribal governments shall be contacted immediately. Further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.
7. 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).

DATED AND SIGNED THIS 1 day of October 2018 at White Salmon, Washington.



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 15th day of October 2020 unless construction has commenced in accordance with Commission Rule 350-81-044(4).

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

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

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

The applicant may request one 12-month extension of the time period to commence construction and one 12-month extension to complete construction in accordance with Commission Rule 350-81-044(6). The applicant must submit the request in writing prior to the expiration of the approval. If the applicant requests an extension of time to complete construction after commencing construction, the applicants shall specify the date construction commenced. The Executive Director may grant an extension upon determining that conditions, for which the applicants were not responsible, would prevent the applicants from commencing or completing the proposed development within the applicable time limitation. The Executive Director shall not grant an extension if the site characteristics and/or new information indicate that the proposed use may adversely affect the scenic, cultural, natural or recreation resources in the National Scenic Area.

APPEAL PROCESS:

The appeal period ends on the 1st day of November 2018.

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.

NOTES:

Any new land uses or structural development such as driveways, parking areas, garages, workshops, fences or other accessory structures; or additions or alterations not included in the approved application or site plan will require a new application and review. New cultivation also requires a new application and review.

This decision does not address local, state, or federal requirements that may be applicable to the proposed development. The landowner is responsible for obtaining all applicable county, state, or federal permits required for the development.

cc:

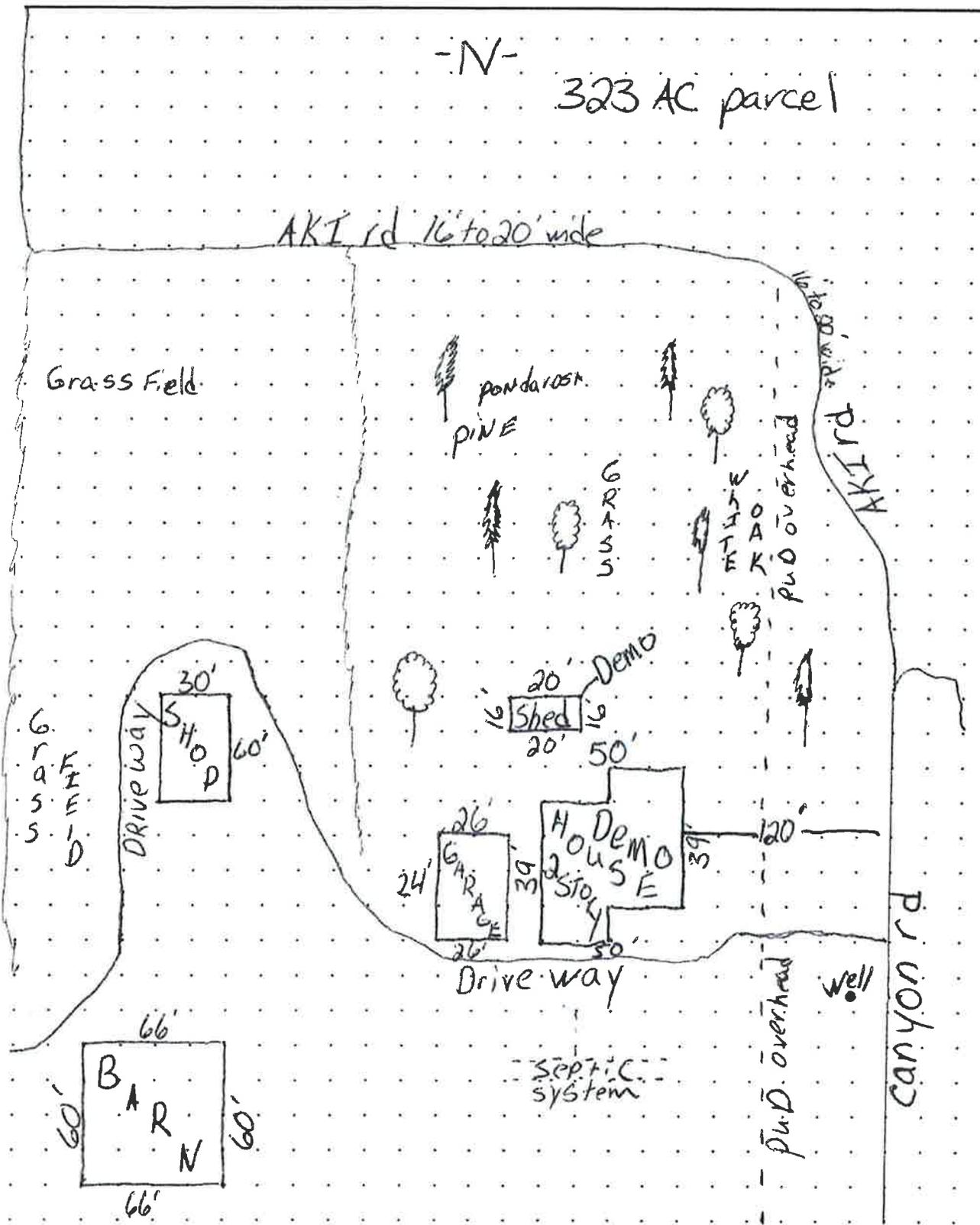
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs Reservation of Oregon
Nez Perce Tribe
U.S. Forest Service National Scenic Area Office
Washington Department of Archaeology and Historic Preservation
Klickitat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

Attachments:

Staff Report for C18-0003
Approved site plan

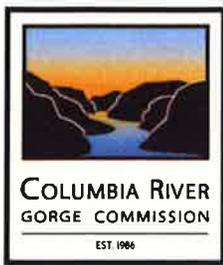
*Please use this template or attach a separate site plan

Site plan (continued):



Each grid equals 50' x 50' at scale of 1" = 200'.

APPROVED
PRICE / SKE 10/1/2018



STAFF REPORT

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LAND USE

DESIGNATION: The subject parcel is in the General Management Area and designated Commercial Forest.

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
- Skamania County
- Washington Natural Heritage Program
- Washington Department of Fish and Wildlife
- Friends of the Columbia Gorge

Written comments were received from the Friends of the Columbia Gorge and Dan and Donna Enz.

FINDINGS OF FACT:

A. Land Use

1. Tim Carse is seeking approval to remove two existing buildings—a dwelling and an accessory building. Both buildings are more than 50 years old. The applicant proposes to clean up the ground beneath the building footprints to allow natural revegetation. No grading is proposed.
2. The Land Use Designation map in the Management Plan for the Columbia River Gorge National Scenic Area designates the subject parcel Commercial Forest in the General Management Area with an 80-acre minimum parcel size. Other existing development on the property include three other accessory buildings.
3. The subject parcel is 323 acres in size and located approximately 3 miles north of Lyle, WA on Canyon Road.
4. Commission Rule 350-81-190(1)(x) allows for the removal or demolition of structures that are 50 or more years old. Klickitat County Assessor records indicate the subject structures may have been constructed in 1940. The removal of the dwelling and accessory structure are allowed pursuant to Commission Rule 350-81-190(1)(x), subject to consistency with guidelines for the protection of scenic, cultural, natural, and recreation resources.

Conclusion:

The proposed removal of the buildings is allowed as a review use in the Commercial Forest land use designation, subject to compliance with guidelines that protect scenic, natural, cultural and recreational resources (350-81-540 through 620).

B. Scenic Resources

1. Commission Rule 350-81-520 lists scenic resource protection guidelines for review uses. The proposal does not include the construction of any new buildings, roads, fences or other structures. The applicant proposes to clean up the ground beneath the building footprints to allow for natural revegetation, but no grading is proposed. Because no new development is proposed, the scenic resource protection guidelines in Commission Rule 350-81-520 do not apply.

Conclusion:

This application does not propose any new development. Scenic resource protection guidelines in Commission Rule 350-81-520 are not applicable to the proposed removal of the barn and garage. A condition of approval will ensure that no ground disturbance is permitted beyond the footprints of the buildings to be removed.

C. Cultural Resources

1. Commission Rule 350-81-540(1)(c)(A)(i) 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 U.S. Forest Service, Columbia River Gorge National Scenic Area, reviewed the application and determined in a Cultural Resources Survey Determination, dated June 12, 2018, that pursuant to Commission Rule 350-81-540(1)(c)(A)(ii) 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 archaeological site.

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.

Mr. Donnermeyer also determined that pursuant to Commission Rule 350-81-540(1)(c)(B) a historical survey is required because the proposed use would alter the exterior architectural appearance of potentially significant buildings and structures that are 50 years old or older and a previous historic survey has not been conducted. In a Heritage Resource Inventory Report dated August 30, 2018, Mr. Donnermeyer recommended that the dwelling is not eligible for the National Register.

4. Commission Rule 350-81-540(2)(b)(A) requires that a cultural resources reconnaissance survey be submitted to the State Historic Preservation Office and tribal governments. The State Historic Preservation Office and tribes have 30 days to comment on the survey.

On August 30, 2018, staff forwarded the "Heritage Resource Inventory Report," which included the historic survey to the State Historic Preservation Office and the tribal governments.

5. Commission Rule 350-81-540(2)(c)(B)(iv)(a) states:

The cultural resource protection process may conclude when one of the following conditions exists...

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

(a) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4)

The State Office of Archaeology and Historic Preservation concurred that buildings to be removed are not eligible for the National Register of Historic Places and thus the project would have no effect on significant historic buildings or structures.

6. 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. Conditions of Approval are included in the Director's Decision to alert the applicant to these requirements.

Conclusion:

With conditions protecting unknown cultural resources and human remains discovered during demolition and restoration of the land under the buildings, the proposed development is consistent with the guidelines in Commission Rule 350-81-540 that protects cultural resources in the National Scenic Area.

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 that are adjacent to the subject parcel, therefore, no buffers are required pursuant to Commission Rule 350-81-086.

2. The application does not propose any new recreational use, so the provisions in Commission Rule 350-81-610 do not apply.

Conclusion:

The proposed development is consistent with Commission Rule 350-81-086 that protects recreation resources in the National Scenic Area.

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. Gorge Commission inventories do not identify any wetlands or sensitive plants within 1,000 feet of the development site. Therefore, Commission Rules 350-81-560 and 350-81-590 are not applicable.
3. Two intermittent streams not used by anadromous or resident fish are located on the subject parcel. Commission Rule 350-81-570(7)(a)(B) requires a 50-foot buffer zone on each side of intermittent streams.

The proposed dwelling to be demolished is located approximately 95 feet from one stream, and 80 feet from the other stream, outside the buffer zone for the stream and consistent with Commission Rule 350-81-570.

The accessory structure to be demolished is located approximately 130 feet from one stream and 130 feet from the other stream, outside the buffer zone for the stream and consistent with Commission Rule 350-81-570.

4. Commission Rule 350-81-570(1)(c) requires consideration of cumulative effects of proposed developments within 1,000 feet of streams, ponds, lakes, riparian areas and their buffer zones.

The proposed development is to remove an old dwelling and accessory building and to restore the land affected by the buildings. The cumulative effect of the development is two fewer buildings within 1,000 feet of the two streams and land restoration. The proposal constitutes an enhancement of the existing condition; therefore, the proposed development does not generate adverse cumulative effect within 1,000 feet of the two streams.

5. Commission Rule 350-81-580 contains guidelines to protect sensitive wildlife areas and sites.

The Gorge Commission's sensitive wildlife inventory identifies the project area is in deer and elk winter range. Commission Rule 350-81-580 (1)(a)(A) defines deer and elk winter range as "sensitive wildlife areas."

6. Commission Rule 350-81-580(1)(c) requires consideration of cumulative effects of proposed developments within 1,000 feet of sensitive wildlife areas and sites.

The proposed development is to remove an old dwelling and accessory building. This creates more habitat for deer and elk. The cumulative effect of the development is two fewer buildings within 1,000 feet of the two streams and land restoration. The proposal constitutes an enhancement of the existing condition; therefore, the proposed development does not generate adverse cumulative effect within 1,000 feet of winter range. Therefore, the proposed development would not generate adverse cumulative winter range impacts.

7. Commission Rule 350-81-580(3) allows review uses to occur within 1,000 feet of a sensitive wildlife area or site when approved pursuant to Commission Rule 350-81-580(4).
8. Commission Rule 350-81-580(4)(a) requires the Gorge Commission to notify the Washington Department of Fish and Wildlife when a new development or land use is proposed within a sensitive wildlife area and determination whether the proposed use may compromise the integrity of the wildlife site or whether the activity would occur during the time of year when wildlife species are sensitive to disturbance.

On May 17, 2018, Commission staff sent Amber Johnson and Stephanie Bergh, with the Washington Department of Fish and Wildlife, a copy of the applicant's land use application and site plan.

9. Commission Rule 350-81-580(4)(c) states:

The wildlife protection process may terminate if the Development Review Officer, in consultation with the appropriate state wildlife agency, determines: the sensitive wildlife area is not active; or the proposed use would not compromise the integrity of the wildlife area, or occur during the time of the year when wildlife species are sensitive to disturbance.

After consulting the Washington Department of Fish and Wildlife, the Executive Director concludes that the proposed use would not compromise the integrity of the wildlife area. Given this information, the proposed development is consistent with Commission Rule 350-81-580(4)(c) and the wildlife protection process may terminate.

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.

F. Treaty Right Protections

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 Indian 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 May 17, 2018. The notice included a comment period of 21 days that ended on June 7, 2018.

3. Commission Rule 350-81-084(1)(b) lists guidelines for tribal government consultation when those governments submit substantive written comments. No comments were received. Given this information, the proposed dwelling is consistent with Commission Rule 350-81-084(1)(b).
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 would not affect or modify treaty or other rights of any Indian tribe, the treaty rights protection process may conclude pursuant to Commission Rule 350-91-084(c)(B).

Conclusion:

The proposed development is consistent with the guidelines in Commission Rule 350-81-084, which provides protection for treaty and any other rights of Native American tribes.

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