

COLUMBIA RIVER GORGE COMMISSION DIRECTOR'S DECISION

CASE FILE: C19-0005

PROPOSAL: The Columbia River Gorge Commission has received an application for the after-the-fact review of a single-family dwelling, driveway, associated utilities and two accessory structures. The applicants also request a hardship dwelling with a new driveway and separate utilities.

APPLICANT: Dennis and Lynn Christensen

LANDOWNER: Dennis and Lynn Christensen

LOCATION: The subject parcel is located at 440 Lyle-Snowden Road, Lyle, Washington, in the South East Quarter of Section 9, Township 3 North, Range 12 East, W.M., Klickitat County, Tax Lot Number 03-12-09-5100-03/00. The parcel is 7.28 acres in size.

LAND USE

DESIGNATION: The subject parcel is in the General Management Area and designated Small Woodland.

DECISION:

Based upon the following findings of fact, the land use application by Dennis and Lynn Christensen, for the after-the-fact review of a single-family dwelling, a hardship dwelling, driveways, associated utilities and two accessory structures, 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**.

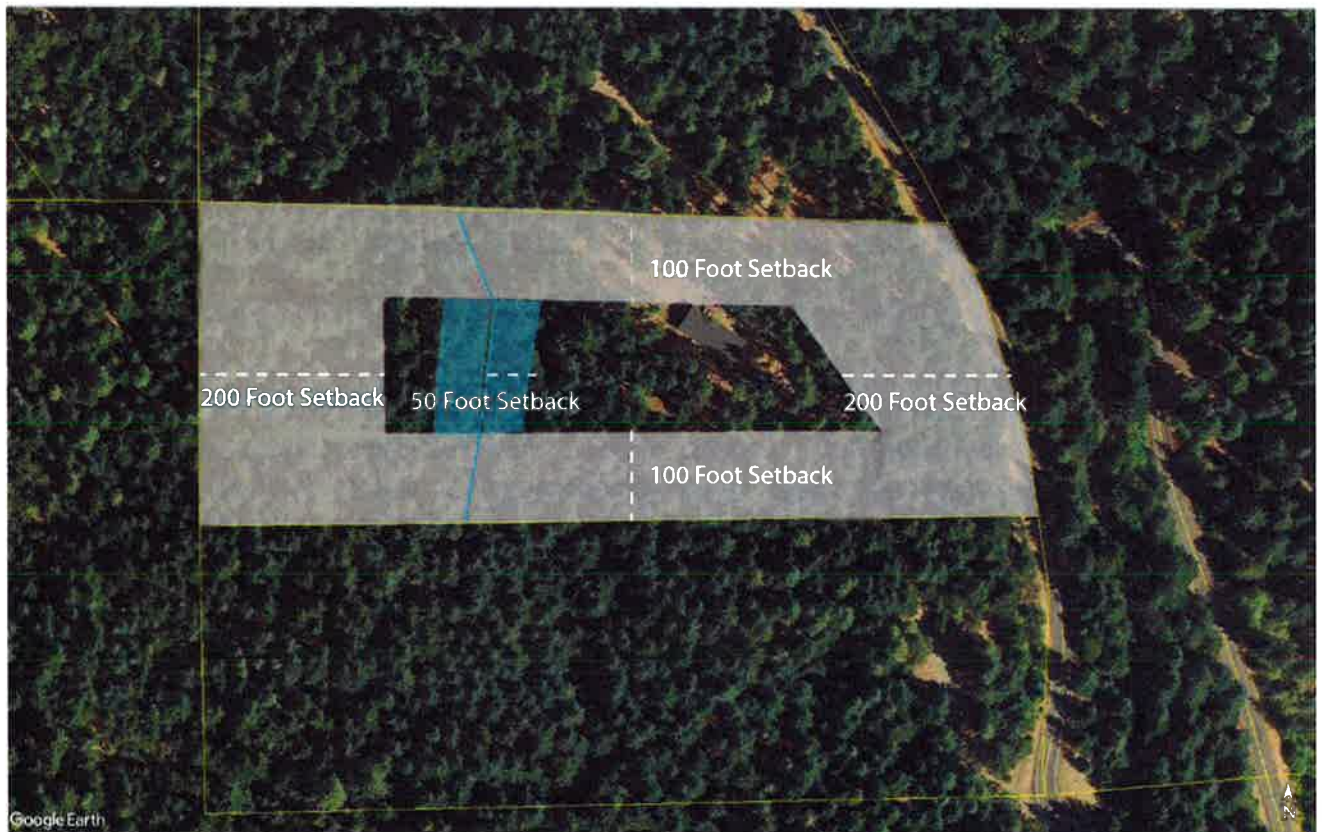
CONDITIONS OF APPROVAL:

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 C19-0005, and approved site plan shall be recorded in county deeds and records at the Klickitat County Auditor's Office. **Once recorded, the applicants shall submit a copy of the recorded documents to the Gorge 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 to obtain necessary approvals, including utility easement approvals.
3. 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 changes are implemented. Any new land uses or structural development such as dwellings,

garages, workshops, or other accessory structures, additions or alterations, or grading not included in the approved application or site plan may require a new application and review.

4. The Columbia River Gorge Commission will conduct at least one siting inspection during construction to verify the staked location of all structures. A site visit for Final Inspection shall also be conducted (see Condition 10). The applicant shall arrange each inspection by calling the Gorge Commission at 509-493-3323 or by emailing info@gorgecommission.org. Each inspection may take up to seven business days from the time of calling for the inspection. The following minimum lot line setbacks shall apply to all the buildings on the property:
 - a. Eastern Property Line: two-hundred (200) feet from the centerline of Lyle-Snowden Road;
 - b. Northern Property Line: one-hundred (100) feet from the northern property line;
 - c. Southern Property Line: one-hundred (100) feet from the southern property line;
 - d. Western Property Line: two-hundred (200) feet from the southern property line;
 - e. Intermittent Stream: fifty (50) feet from the stream bed.



5. The landowner shall submit a written statement to the Commission specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted forest practices on lands designated Commercial Forest Land, Large or Small Woodland. **This statement shall be recorded into county deeds and records for the subject parcel and submitted to the Gorge Commission before construction begins.**

6. The proposed development shall comply with the following fire protection criteria. The applicant shall submit a written statement and amended site plan addressing each criterion to the Gorge Commission for review and approval, before construction begins:
 - a. All buildings shall be surrounded by a maintained fuel break of 50 feet. Hazardous fuels shall be removed within the fuel break area. Irrigated or fire-resistant vegetation may be planted within the fuel break. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees.
 - b. Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structures.
 - c. A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separated from the dwelling.
 - f. Telephone and power supply systems shall be underground.
 - g. Roofs of structures shall be constructed of fire-resistant materials such as metal, fiberglass shingle or tile. Roof materials such as cedar shake and shingle should not be used.
 - h. Any chimney or stovepipe on any structure for use with a woodstove or fireplace shall be screened with no coarser than $\frac{1}{4}$ inch mesh metal screen that is noncombustible and corrosion resistant and should be equipped with a spark arrestor.
 - i. All structural projections such as balconies, decks and roof gables shall be built with fire resistant materials equivalent to that specified in the Uniform Building Code.
 - j. Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than $\frac{1}{4}$ -inch mesh metal screen that is noncombustible and corrosion resistant.
7. The mobile home for Mr. Reeder may only be used as a hardship dwelling unit as defined by Rule 350-81, Land Use Ordinance, Columbia River Gorge Commission and is subject to the following conditions as a hardship dwelling unit:
 - a. The hardship dwelling shall use the same subsurface sewage disposal system used by the existing dwelling only and it shall never be connected to a separate sewage disposal system; and
 - b. this hardship dwelling unit is to be occupied only by Mr. John Reeder; and
 - c. the owner will renew this permit through the Gorge Commission every two years for as long as Mr. Reeder is occupying this hardship dwelling; and
 - d. the hardship dwelling will be removed from the property no later than 30 days after the use ceases as a hardship dwelling, as defined with this application.
8. 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.

9. 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.

10. The applicant shall notify the Gorge Commission within 30 days of project completion to arrange for a **FINAL INSPECTION** to confirm compliance with all of the conditions of approval. Project completion means completion of all work to the exteriors of structures (including painting). The applicants shall arrange the inspection by calling the Gorge Commission at (509) 493-3323 or info@gorgecommission.org. Each inspection may take up to seven business days from the time of calling for the inspection.

DATED AND SIGNED THIS 25 day of September 2019 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 25 day of September 2021 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 25 day of October 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.

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.

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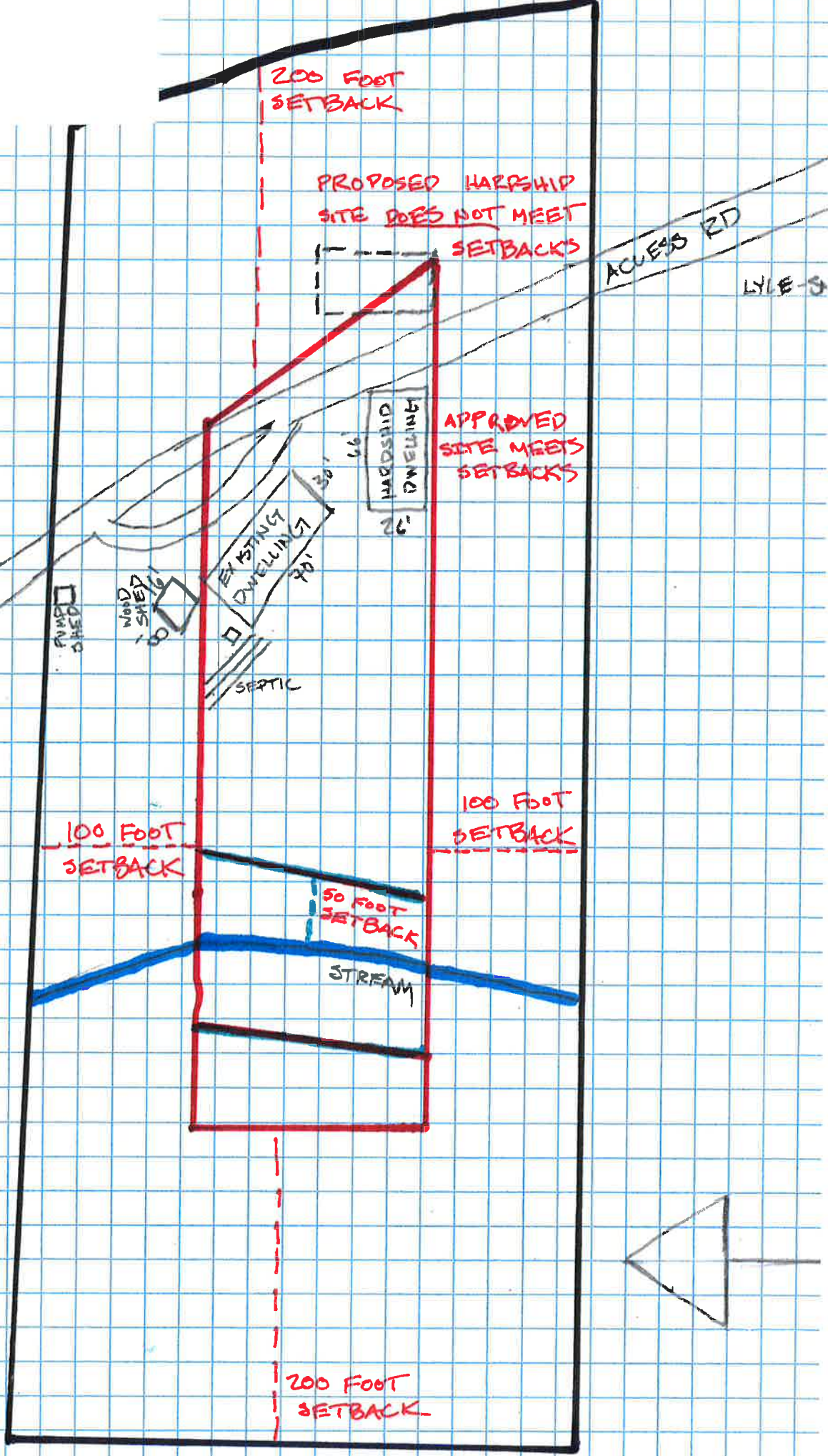
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs Reservation of Oregon
Nez Perce Tribe
U.S. Forest Service National Scenic Area Office
Washington Department of Archaeology and Historic Preservation
Klickitat 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

Attachments:

Staff Report for C19-0005
Approved site plan

Lynn & Dennis Christensen
C19-0005
440 Lyle Snowden Rd
03-12-19-5100-03/00

APPROVED
[Signature]

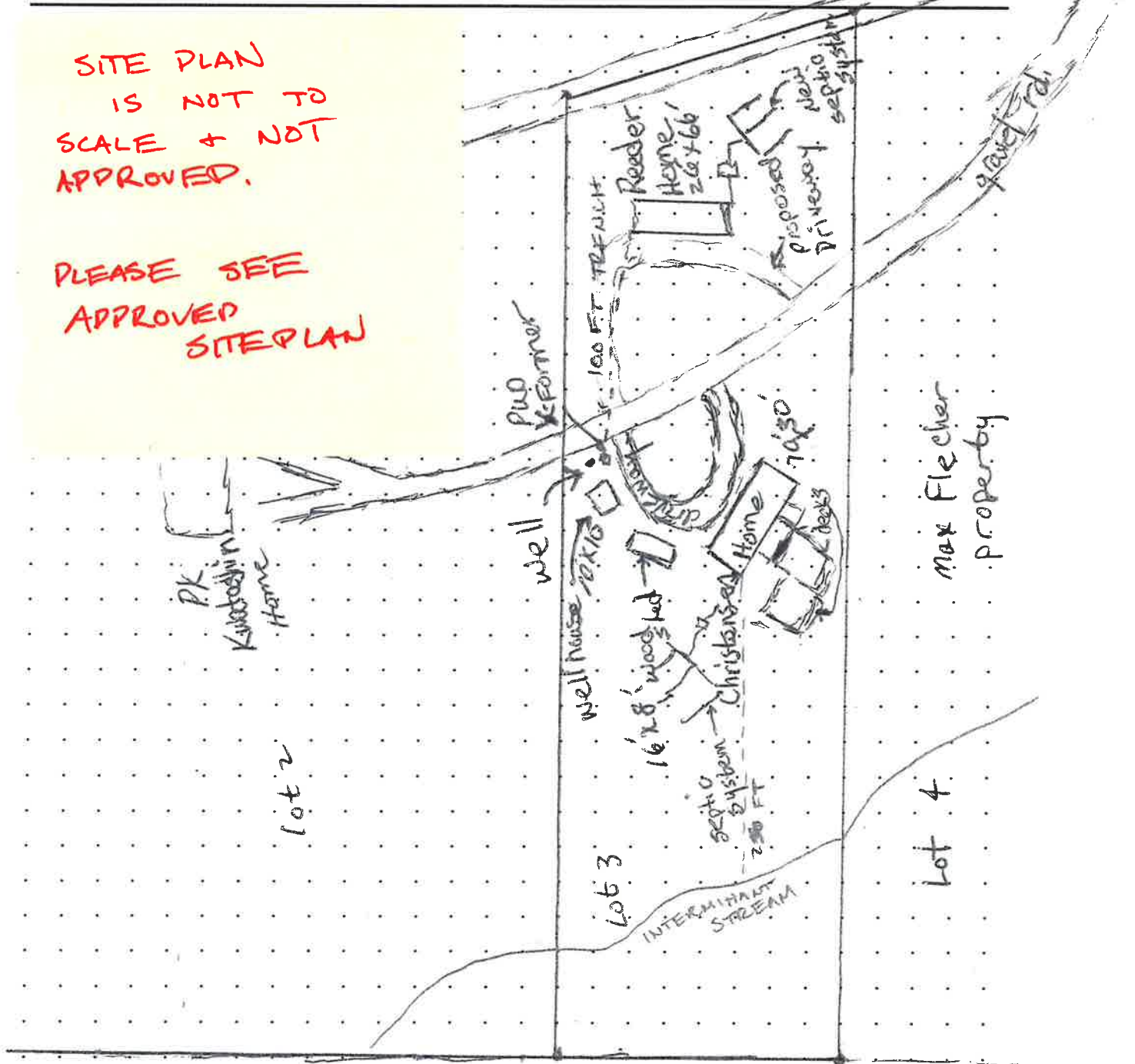


*Please use this template or attach a separate site plan

Site plan (continued):

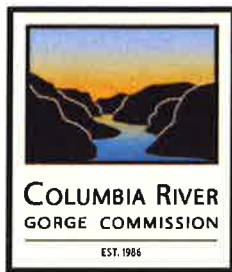
SITE PLAN
IS NOT TO
SCALE + NOT
APPROVED.

PLEASE SEE
APPROVED
SITEPLAN



25' x 25' 1" = 100'

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



COLUMBIA RIVER GORGE COMMISSION STAFF REPORT

CASE FILE: C19-0005

PROPOSAL: The Columbia River Gorge Commission has received an application for the after-the-fact review of a single-family dwelling, driveway, associated utilities and two accessory structures. The applicants also request a hardship dwelling with a new driveway and separate utilities.

APPLICANT: Dennis and Lynn Christensen

LANDOWNER: Dennis and Lynn Christensen

LOCATION: The subject parcel is located at 440 Lyle-Snowden Road, Lyle, Washington, in the South East Quarter of Section 9, Township 3 North, Range 12 East, W.M., Klickitat County, Tax Lot Number 03-12-0951-0003/00. The parcel is 7.28 acres in size.

LAND USE

DESIGNATION: The subject parcel is in the General Management Area and designated Small Woodland.

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 Steve McCoy, Attorney for Friends of the Columbia River Gorge and the Confederated Tribes of the Warm Springs Reservation of Oregon.

FINDINGS OF FACT:

A. Land Use

1. The subject parcel is in the General Management Area and designated Small-Woodland.
2. The subject parcel is 7.28 acres in size and located approximately 4.5 miles north of Lyle, Washington on 440 Lyle-Snowden Road.
3. The applicants, Lynn & Dennis Christensen, request the after-the-fact review of a single-family dwelling, driveway, associated utilities, two accessory structures and fencing around the house. The applicants also request a hardship dwelling with a new driveway and separate utilities, including septic. Existing development on the parcel includes a private road which bisects the subject parcel and provides access to the adjoining parcels to the north.
4. Commission Rule 350-81-270(1)(b) states:

On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel's enrollment in the appropriate state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300). A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

Finding B.5 addresses the legality of the parcel. Finding B.6 addresses the *Approval Criteria for the Siting of Dwellings on Forest Land* (350-81-310). Finding B.7 addresses the *Approval Criteria for Fire Protection* (350-81-300).

The Washington State Forest Assessment Program is authorized under RCW 84.33, and is administered in Klickitat County by the Klickitat County Assessor's Office under the Designated Forest Land Program. The program encourages healthy forest practices on privately owned timber lands by offering tax incentives to landowners. Staff contacted the Klickitat County Assessor's office and, in an email dated June 24, 2019, were informed that subject parcel met the criteria for eligibility in the Washington State Forest Assessment Program. The applicants submitted their application to the Klickitat County Assessor's Office on September 9, 2019.

As a condition of approval, the landowners, Mr. and Mrs. Christensen, shall sign a declaration the and record it into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture, pursuant to this rule.

5. Commission Rule 350-81-020(114) defines *parcel* to include:

Any unit of land legally created by a short division, partition, or subdivision that was legally recognized under all state laws and local ordinances in effect on November 17,

1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

The subject 7.28-acre parcel is Lot 3 of a four-lot subdivision created in 1980 (Plat of Mike Scannel Short Plat, North Tract, recorded June 26, 1980, Klickitat County Auditor's No. 177263). The subject parcel is a legal parcel, consistent with the definition.

6. Commission Rule 350-81-81-310 lists the Approval Criteria for the Siting of Dwellings on Forest Land:

The approval of new dwellings and accessory structures on forest lands shall comply with the following guidelines:

- (a) The dwelling and structures shall be sited on the parcel so that they will have the least impact on nearby or adjoining forest operations. Dwellings shall be set back at least 200 feet from adjacent properties. Clustering or locating proposed development closer to existing development on adjacent lands may minimize impacts on nearby or adjacent forest operations.*

The subject 7.28-acre parcel is Lot 3 of a four-lot subdivision. The subject parcel shares its entire southern boundary with Lot 4 of the subdivision, and its entire northern boundary with Lot 2. The subject parcel is approximately 349 feet long the entire length of the parcel from north to south. There is no location where the dwelling could be set back 200 feet from Parcel 2 and 200 feet from Parcel 4. Washington State Department of Natural Resource land borders the subject parcel to the west. The primary dwelling is sited approximately 550 feet from the western parcel boundary. An intermittent stream crosses the subject property approximately 350 feet from the western parcel boundary. As proposed, both the dwelling and hardship dwelling are sited adjacent to the existing road, which is generally in the middle of the subject parcel. As constructed, the dwelling is sited 100 feet from the northern parcel boundary, and 175 feet from the southern parcel boundary. A condition of approval requires the hardship dwelling to be sited 100 feet from the northern and southern parcel boundaries, 200 feet from the eastern parcel boundary, and requires the applicants to schedule a siting inspection during construction to verify the staked location of the structure. The site plan the applicants submitted does not comply with these setbacks, and is not accurately drawn to scale. Staff drew a revised site plan with the approved location for the hardship dwelling.

Commission Rule 350-81-078(2) states:

In the GMA, a setback or buffer specified in the guidelines for protection of scenic, cultural, natural, recreation, agricultural, or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that all of the following conditions exist:

- (a) The land use designation otherwise authorizes a residence on the tract.*
(b) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer.
(c) The variance from the specified setback or buffer is the minimum necessary to allow the residence.

The Small-Woodland land use designation allows residences and hardship dwellings on the parcel. No site exists on the tract on which a residence could practicably be placed in full compliance with the setback or buffer because of the configuration of the parcel. As proposed, the

development is sited in such a way that minimizes the variance of the 200-foot buffer to the greatest extent practicable.

(b) The amount of forest land used to site dwellings, structures, access roads, and service corridors shall be minimized. This can include locating new dwellings and structures as close to existing public roads as possible, thereby minimizing the length of access roads and utility corridors; or locating the dwelling, access road, and service corridors on portions of the parcel that are least or poorly suited for forestry. Areas may not be suitable for forestry because of existing non-forest uses, adjacent dwellings, or land productivity.

The new dwellings are located as close to existing public roads as possible. The parcel is accessed off a private road that connects to Lyle-Snowden Road. The private road crosses a privately-owned parcel to the south before crossing the subject parcel. Both dwellings have been sited near the private access road, and approximately 650 feet from connection to Lyle-Snowden road.

(c) Dwellings shall be located to minimize the risks associated with wildfire. Dwellings should be located on gentle slopes and in any case not on slopes that exceed 40 percent. Narrow canyons and draws should be avoided. Dwellings should be located to minimize the difficulty of gaining access to the structure in the case of fire. Dwellings should be located to make the access roads as short and flat as possible.

The dwellings are both located at generally flat surfaces, and not on slopes that are greater than 40 percent. A condition of approval requires the hardship dwelling to be 200 feet from the property line to the east, which is formed by Lyle-Snowden Road and steep slopes.

7. Commission Rule 350-81-300 lists the Approval Criteria for Fire Protection on Forest Land:

(a) All buildings shall be surrounded by a maintained fuel break of 50 feet. Hazardous fuels shall be removed within the fuel break area. Irrigated or fire-resistant vegetation may be planted within the fuel break. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees.

A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

(b) Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structure(s).

A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

(c) A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separate from the dwelling.

A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

- (d) Access drives shall be constructed to a minimum of 12 feet in width and not exceed a grade of 12 percent. Turnouts shall be provided at a minimum of every 500 feet. Access drives shall be maintained to a level that is passable to fire equipment. Variances to road guidelines may be made only after consultation with the local rural fire district and the Washington Department of Natural Resources in Washington or the Oregon Department of Forestry in Oregon.*

The pre-existing private road that accesses the property is 12 feet wide and does not have a grade that exceeds 12 percent. Both dwellings are sited adjacent to the private road, accessed by short driveways that require minimal grading.

- (e) Within 1 year of the occupancy of a dwelling, the local government shall conduct a review of the development to assure compliance with these guidelines.*

A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

- (f) Telephone and power supply systems shall be underground whenever possible.*

The proposal is consistent with this requirement; however, a condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

- (g) Roofs of structures should be constructed of fire-resistant materials such as metal, fiberglass shingle or tile. Roof materials such as cedar shake and shingle should not be used.*

The proposal is consistent with this requirement; both dwellings are manufactured homes with fire-resistant composite shingles. A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

- (h) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be screened with no coarser than 1/4-inch mesh metal screen that is noncombustible and corrosion resistant and should be equipped with a spark arrestor.*

A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

- (i) All structural projections such as balconies, decks and roof gables should be built with fire resistant materials equivalent to that specified in the Uniform Building Code.*

The primary dwelling has an attached deck and porch landing. A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

(j) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than 1/4- inch mesh metal screen that is noncombustible and corrosion resistant.

A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with these guidelines.

8. Commission Rule 350-81-262(1) allows all the uses listed in “Expedited Development Review Process” (Commission Rule 350-81-050) on lands designated Forest Land. Commission Rule 350-81-050(1)(a) lists “accessory structures between 60 and 200 square-feet in area and 10 feet or less in height” as development that may be reviewed using the expedited review process, provided they comply with the resource protection and procedural guidelines contained in Commission Rule 350-81-050.

Although the 128 square-foot woodshed and 100 square-foot well-house may qualify for review using the expedited review process, where an applicant concurrently proposes some development that qualifies for expedited review and some development that does not, the Commission reviews all proposed development under the standard “review uses” process. The garden shed accessory building is thus being concurrently reviewed under the full review process with the remainder of the proposed uses.

9. Commission Rule 350-81-092 allows Temporary Use – Hardship Dwellings. Commission Rule 380-81-092 states:

(1) A permit for the temporary placement of a mobile home may be granted under the following circumstances:

(a) A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.

The Christensens request a hardship dwelling for Lynn’s brother, John Reeder. The Christensens and Mr. Reeder provided health documents showing that Mr. Reeder has health conditions requiring care.

(b) The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.

The Christensens also request a separate subsurface disposal system because their current septic system cannot support another residence. There is no existing public sanitary sewer system serving the residence. In an email dated August 31, 2018, David Kavanagh, Klickitat County Health Department, stated that expanding the on-site septic system to accommodate the existing house could meet Klickitat County Health Department Rules. Pursuant to this rule, that hardship dwelling is required to hook up to the existing subsurface sewage system that exists on the property.

(c) The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural, and recreation resources.

Review of scenic, cultural, natural, and recreational resources are provided in the following Sections of this Staff Report.

- (2) A permit may be issued for a 2-year period, subject to annual review for compliance with the provisions of this section and any other conditions of approval.*
- (3) Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.*
- (4) A new permit may be granted upon a finding that a family hardship continues to exist.*

Pursuant to above requirements of Commission 380-81-092(2), (3) and (4), as a condition of approval, the applicants will need to reapply for a hardship dwelling every two years or the permit will expire. A condition of approval also states that a new permit may be granted upon a finding that the family hardship continues to exist. A condition of approval also requires the mobile home to be removed from the property within 30 days upon the expiration of the permit or cessation of the hardship, whichever comes first.

10. Commission Rule 350-81-074(1)(a)(F) Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses less than or equal to 500 feet in length and less than or equal to 10 feet in height that are accessory to an existing dwelling. The existing woven wire-fence surrounding the applicant's backyard encloses a garden and grass yard with a total fence length of 400 feet. The applicant states the fence is 5 feet in height. The existing fence is a use allowed outright.

Conclusion:

With conditions of approval that require multiple documents to be recorded with the property deeds, the removal of the hardship dwelling within 30 days of the cessation of the hardship, and compliance with the fire protection criteria and siting criteria listed in Commission Rules 350-81-300 and 310, the proposed dwelling, hardship dwelling, accessory buildings, and fencing are reviewable uses on lands designated GMA-Small Woodland, provided the development subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620). The applicable resource protection policies are reviewed below.

B. Scenic Resources

1. 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.

The proposed development site is level and minimal grading is necessary to site the dwelling and hardship dwelling. The dwelling is sited directly east of the existing Lyle-Snowden Road, and the hardship dwelling is sited directly west of the road. The dwelling has a 40-foot drive way that forms a semicircle with to points of access to Lyle-Snowden Road. The driveway for the hardship dwelling is sited in a similar fashion. Limited excavation and grading are necessary to site either dwelling, and no grading plan is necessary. As proposed, the dwelling is sited and designed to retain the existing topography and reduce necessary grading to the maximum extent practicable, consistent with Commission Rule 350-81-520(1)(a).

2. 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.

Existing nearby development consists of 13 dwellings and 26 accessory buildings within approximately 0.75 miles of the subject parcel. The dwellings are one and two-stories tall and range from 200 to 3,200 square-feet in size, and 12 to 29 feet-tall. These calculations include all interior living space, including daylight or above-ground basements, attached garages, and covered decks or terraces.

The proposed dwelling has a footprint of 2,400 square-feet and is 16 feet-tall. The proposed hardship dwelling has a footprint of 1,716 square-feet and is 16 feet-tall. The proposed woodshed is 128 square-feet, and the well house is 100 square-feet. The height and size of the proposed dwellings and accessory buildings are within the ranges of heights and size of existing nearby development and thus consistent with Commission Rule 350-81-520(1)(b).

3. 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.

No new vegetation is required by the guidelines of this chapter.

4. 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 Woodlands. According to information submitted in the site plan, the new dwelling is clustered together with other development on the parcel, consistent with the design guidelines for the Oak Woodland landscape setting, and Commission Rule 350-81-520(1)(e).

5. Commission Rule 350-81-520(2) contains guidelines that apply to new development on sites that are topographically visible from Key Viewing Areas (KVAs).

Staff reviewed the site using computer programs ArcGIS and Google Earth. Staff also visited the site on October 24, 2018 and June 19, 2019. The development site is not topographically visible from any KVAs. Commission Rule 350-81-520(2) therefore does not apply.

6. Commission Rule 350-81-520(3)(c)(A) contains the applicable guidelines for proposed uses in this landscape setting. Commission Rule 350-81-520(3)(c) states:

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

The heights of the proposed dwelling and hardship dwelling are 16 feet from peak roof to finished grade. The average tree canopy height on the parcel is 50 feet, with a mix of Douglas firs and other conifers creating the tree canopy.

7. Commission Rule 350-81-520(4) requires that all review uses within Scenic Travel Corridors be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway. The proposed development is not adjacent to or near a Scenic Travel Corridor.

Conclusion:

The proposed development is consistent with the guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area.

C. Cultural Resources

1. Except as specified in Commission Rule 350-81-540(1)(c)(A)(iii), new development requires a reconnaissance survey. Commission Rule 350-81-540(3) requires that, if cultural resources are discovered, an evaluation of the significance shall be conducted. Commission Rule 350-81-540(3)(d)(C) states that if it is determined that the cultural resources are significant, the effects of the proposed use shall be assessed. Commission Rule 350-81-540(5)(a) requires mitigation plans when proposed uses would have an adverse effect on significant cultural resources. Mitigation plans shall reduce an adverse effect to no effect or no adverse effect.
2. Chris Donnermeyer, Heritage Resource Program Manager for the U.S.D.A. Forest Service Columbia River Gorge National Scenic Area, reviewed the new land use application and determined in a Cultural Resources Survey Determination, dated March 29, 2019, that pursuant to Commission Rule 350-81-540(1)(c)(A)(iii) a Cultural Resource Reconnaissance Survey is not required because the development would occur on a site that has been determined to be located within a low probability zone, is not within 100 feet of a high probability zone, and does not occur within 500 feet of a known archeological site.
3. Commission Rule 350-81-540(1)(c)(B) describes when a historic survey is required. In his March 29, 2019 determination, Mr. Donnermeyer also concluded that a historic survey was not required because: the use would not alter the exterior architectural appearance of significant buildings and structures that are 50 years old or older and would not compromise other historic features in the surrounding area that are important in defining the historic or architectural character of significant historic structures. Given this information, a historic survey was not required, consistent with 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 the following conditions exist:

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.

The project notice was mailed on March 23, 2019, and the comment period ended on April 11, 2019. As explained above, the proposed use did not require a reconnaissance or historic survey and no comments were received regarding cultural resource concerns. Pursuant to Commission Rule 350-81-540(2)(c)(B)(i), the cultural resource protection process may conclude.

5. Commission Rule 350-81-540(6) protects cultural resources discovered during construction. It requires that if cultural resources 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 within 24 hours of the discovery. A condition of approval implementing this requirement is included in this decision.

6. Commission Rule 350-81-540(7) contains provisions addressing discovery of human remains during construction. A condition of approval requiring adherence to these measures if human remains are discovered is included in this Director's Decision.

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.

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.

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 identify an intermittent stream crossing the subject property approximately 350 feet from the western parcel boundary.

Commission Rule 350-81-570(7)(a) defines stream, pond and lake buffer zones. It states:

Buffer zones shall generally be measured landward from the ordinary high water-mark of horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet

- (B) Intermittent streams provided they are not used by anadromous or resident fish: 50 feet*
- (C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-81-560(7)(b), substituting the term pond or lake as appropriate.*

The stream is intermittent on the subject parcel, to the west of the proposed development. Intermittent streams require a 50-foot buffer. As proposed, the development is located greater than 200 feet away from the intermittent stream, further than the required 50-foot buffer. 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 shows the applicants development site is within deer and elk winter range. Commission Rule 350-81-580(1)(a)(A) defines sensitive wildlife areas to include these areas.
5. Commission Rule 350-81-580(4)(a) requires the Gorge Commission to notify the Washington Department of Fish and Wildlife (WDFW) when a new development or land use is proposed within a sensitive wildlife area, in this case, deer and elk winter range.

On March 26, 2019, Gorge Commission staff sent Washington Department of Fish and Wildlife (WDFW) a copy of the applicant's land use application and site plan.

6. 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.

WDFW did not indicate any concerns with the proposed development. Pursuant to Commission Rule 350-81-580(4)(c), staff does not believe the proposed development compromises the integrity of the parcel as wildlife site, due to the location and the clustering of the development.

7. Commission Rule 350-81-580(1)(c) states:

Proposed uses within 1,000 feet of a sensitive wildlife area or site shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

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.

As previously explained, the development site is located within 1,000 feet of areas containing black-tail deer winter range. WDFW did not indicate any concerns with the proposed development. Pursuant to Commission Rule 350-81-580(1)(c), staff does not believe the proposed development creates any adverse effects, including cumulative effects, to the integrity

of the parcel as wildlife site, due to the location and the nature of the development, the clustering of the development, and the lack of proposed fences.

8. 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.

F. Treaty Rights Protection

1. Commission Rule 350-81-084(1) provides protection of 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 March 26, 2019. The notice included a comment period of 21 days that ended on April 16, 2019.

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 development 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 does not affect or modify treaty or other rights of any Indian tribe, the treaty rights protection process may conclude pursuant to Commission Rule 350-81-084(c)(B).

Conclusion:

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

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