

COLUMBIA RIVER GORGE COMMISSION DIRECTOR'S DECISION

CASE FILE: C19-0018

PROPOSAL: The Columbia River Gorge Commission received an application for a land division. The applicant seeks approval to divide a 20.24-acre parcel into 4 parcels.

APPLICANT: Steve Morgan

LANDOWNERS: Steve Morgan

LOCATION: The subject parcel is located south of the Dallesport Airport and Dallesport Road in the SW ¼ of Section 34, Township 2N, Range 13E, Willamette Meridian, Klickitat County, Washington

LAND USE

DESIGNATION: The subject parcel is in the General Management Area and is designated Residential with a 2-acre minimum parcel size.

DECISION:

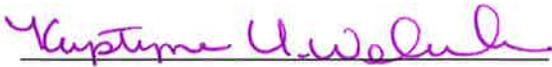
Based upon the following findings of fact, the land use application by Steve Morgan, for a land division is consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Management Plan for the Columbia River Gorge National Scenic Area (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 C19-0018, 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 Executive Director.
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. Any new land uses or structural development such as road construction or grading will require a new application and review.
4. Future development on the property will be subject to the wetland and rare plant protection measures and may require additional field surveys.

DATED AND SIGNED THIS 6 day of February 2020 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 ___ day of February 2022 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 7 day of March 2020.

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:

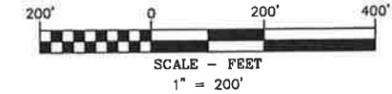
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs Reservation of Oregon
Nez Perce Tribe
U.S. Forest Service National Scenic Area Office
Washington Department of Archaeology and Historic Preservation
Klickitat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

Attachments:

Staff Report for C19-0018
Approved site plan

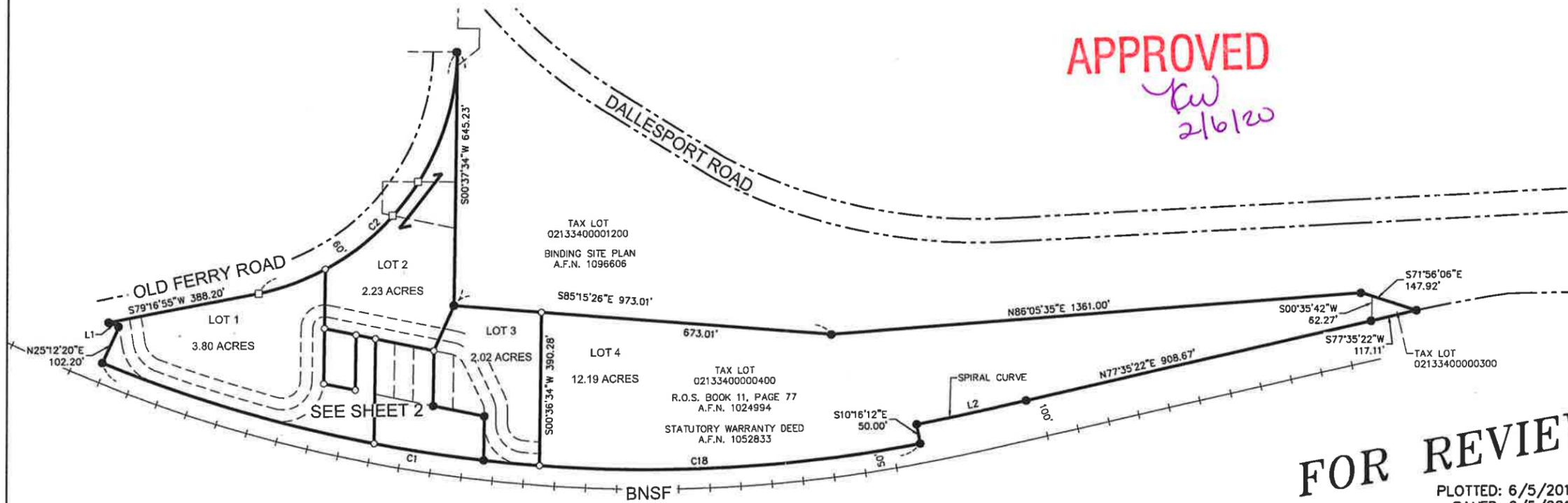
SHORT PLAT SPL-2019-XX

SURVEY LOCATED IN THE
NW 1/4 OF THE SW 1/4, GOV'T LOTS 2,3 & 4
SECTION 34, T.2N., R.13E., W.M.
Klickitat County, State of Washington



BASIS OF BEARINGS
RECORD OF SURVEY BOOK 11, PAGE 77, A.F.N. 1024994.

APPROVED
kw
2/6/20



FOR REVIEW
PLOTTED: 6/5/2019
SAVED: 6/5/2019

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N67°13'27"W	28.04
L2	S78°18'36"W	286.25

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	2132.53'	3769.75'	32°24'43"	S84°01'45"E	2104.21'
C2	858.19'	633.20'	77°39'16"	N39°34'20"E	794.00'
C18	903.82'	3769.75'	13°44'13"	N86°38'00"E	901.66'

LEGEND

- SET 5/8" X 30" REBAR WITH 1 1/4" RED PLASTIC CAP (KA OR58608 WA44349)
- FOUND MONUMENT AS NOTED IN DESCRIPTIONS
- COMPUTED ANGLE POINT, NOT MONUMENTED
- RM REFERENCE MONUMENT
- R.O.S. RECORD OF SURVEY
- S.W.D. STATUTORY WARRANTY DEED
- A.F.N. AUDITOR'S FILE NUMBER
- R1 RECORD DATA PER RECORD OF SURVEY NO.
- FD FOUND DATA

REFERENCED SURVEYS

- R1. AMENDED SURVEY PERFORMED BY TRANTOW SURVEYING, FOR JOHN SAUTER & ALAN DOUBRAVSKY, RECORDED AUGUST 2, 2001 IN BOOK 11 OF SURVEYS, PAGE 77, A.F.N. 1024994.
- R2. SURVEY PERFORMED BY TRANTOW SURVEYING, FOR JOHN SAUTER & ALAN DOUBRAVSKY, RECORDED JULY 24, 2001 IN BOOK 11 OF SURVEYS, PAGE 75, A.F.N. 1024742.
- R3. "BINDING SITE PLAN NO. BSP2013-02" PERFORMED BY TENNESON ENGINEERING CORP. FOR CITY OF THE DALLES AND KLICKITAT COUNTY, RECORDED MAY 28, 2014 IN VOL. 1 OF BINDING SITE PLANS, PAGE 31-31K, A.F.N. 1108277

REFERENCED DEEDS

- STATUTORY WARRANTY DEED, A.F.N. 1132212.
- QUIT CLAIM DEED, A.F.N. 1091266
- STATUTORY WARRANTY DEED, A.F.N. 1052833.

AREA NOTE:

PARCEL	ORIGINAL AREA	NEW AREA
LOT 1	20.24 ACRES	3.80 ACRES
LOT 2		2.23 ACRES
LOT 3		2.02 ACRES
PARCEL 2 <i>Lot 4 kw</i>		12.19 ACRES

NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO SHORT PLAT THAT CERTAIN TRACT OF LAND DESCRIBED IN STATUTORY WARRANTY DEED, A.F.N. 1052833, RECORDED IN KLICKITAT COUNTY RECORDS, INTO 4 LOTS, AS SHOWN ON THE FACE OF THIS PLAT.
THE BASIS OF BEARING FOR THIS SHORT PLAT IS A RECORD OF SURVEY PERFORMED BY TRANTOW SURVEYING, RECORDED IN BOOK 11 OF SURVEYS, PAGE 77.

SURVEYOR'S CERTIFICATE:

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF STEVEN MORGAN, JUNE 2019.

LEONIDES J. SANDOVAL DATE _____
REGISTERED PROFESSIONAL LAND SURVEYOR #44349

AUDITOR'S CERTIFICATE:

FILED FOR RECORD THIS _____ DAY OF _____ 2019
AT _____ M. IN BOOK _____ OF SURVEYS PAGE _____ AT THE
REQUEST OF LEONIDES J. SANDOVAL, REGISTERED LAND SURVEYOR,
NO. 44349.

COUNTY AUDITOR

OWNER
STEVEN MORGAN

KLEIN & ASSOCIATES, MAKES NO WARRANTY AS TO MATTERS OF UNWRITTEN TITLE, ADVERSE POSSESSION, ESTOPPEL, ACQUIESCENCE.

SURVEY PERFORMED FOR:
STEVEN MORGAN
DATE OF MONUMENT: JUNE 2019
PROJECT: 19-05-17 DRAFT: ADS
FILE: 190517-SP.DWG LAYOUT TAB: WA SURVEY

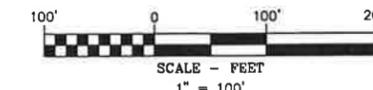


SHEET 1 OF 2
WILLAMETTE MERIDIAN
KLICKITAT COUNTY, WASHINGTON

1/4	SEC	T.	R.
34	2N.	13E.	

SHORT PLAT SPL-2019-XX

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SECTION 34, T.2N., R.13E., W.M.
Klickitat County, State of Washington



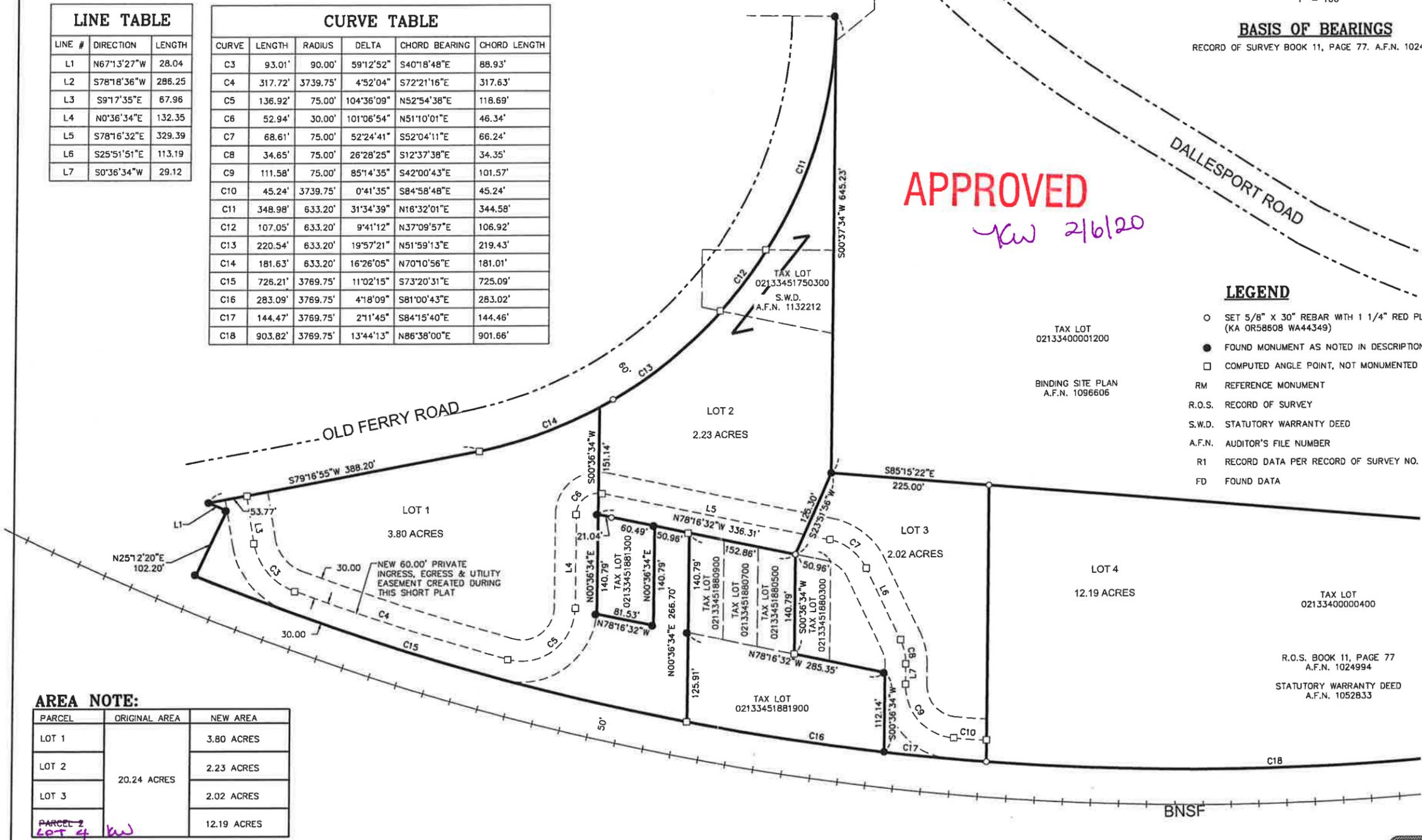
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L4	N0°36'34"E	132.35
L5	S78°16'32"E	329.39
L6	S25°51'51"E	113.19
L7	S0°36'34"W	29.12

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH	
C3	93.01'	90.00'	59°12'52"	S40°18'48"E	88.93'	
C4	317.72'	3739.75'	4°52'04"	S72°21'16"E	317.63'	
C5	136.92'	75.00'	104°36'09"	N52°54'38"E	118.69'	
C6	52.94'	30.00'	101°06'54"	N51°10'01"E	46.34'	
C7	68.61'	75.00'	52°24'41"	S52°04'11"E	66.24'	
C8	34.65'	75.00'	26°28'25"	S12°37'38"E	34.35'	
C9	111.58'	75.00'	85°14'35"	S42°00'43"E	101.57'	
C10	45.24'	3739.75'	0°41'35"	S84°58'48"E	45.24'	
C11	348.98'	633.20'	31°34'39"	N16°32'01"E	344.58'	
C12	107.05'	633.20'	9°41'12"	N37°09'57"E	106.92'	
C13	220.54'	633.20'	19°57'21"	N51°59'13"E	219.43'	
C14	181.63'	633.20'	16°26'05"	N70°10'56"E	181.01'	
C15	726.21'	3769.75'	11°02'15"	S73°20'31"E	725.09'	
C16	283.09'	3769.75'	4°18'09"	S81°00'43"E	283.02'	
C17	144.47'	3769.75'	2°11'45"	S84°15'40"E	144.46'	
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APPROVED
KW 2/6/20



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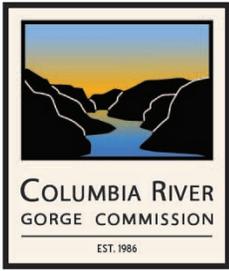
OWNER
STEVEN MORGAN

FOR REVIEW
PLOTTED: 6/5/2019
SAVED: 6/5/2019

KA
Klein & Associates, Inc.
ENGINEERING SURVEYING PLANNING
1411 13th Street Hood River, OR 97031
TEL: 541-386-3322 FAX: 541-386-2515



SHEET 2 OF 2
WILLAMETTE MERIDIAN
KLINKITAT COUNTY, WASHINGTON
1/4 SEC T. R.
34 2N. 13E.



COLUMBIA RIVER GORGE COMMISSION STAFF REPORT

CASE FILE: C19-0018

PROPOSAL: The Columbia River Gorge Commission received an application for a land division. The applicant seeks approval to divide a 20.24-acre parcel into 4 parcels.

APPLICANT: Steve Morgan

LANDOWNERS: Steve Morgan

LOCATION: The subject parcel is located south of the Dallesport Airport and Dallesport Road in the SW $\frac{1}{4}$ of Section 34, Township 2N, Range 13E, Willamette Meridian, Klickitat County, Washington.

LAND USE

DESIGNATION: The subject parcel is in the General Management Area and is designated Residential with a 2-acre minimum parcel size.

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.

FINDINGS OF FACT:

A. LAND USE

1. The applicant is proposing to divide a property into 4 parcels. The subject property is designated Residential in the General Management Area. The minimum parcel size is 2 acres. The applicant's site plan, a proposed plat prepared by Klein and Associates, an Engineering and Surveying firm from Hood River, OR, shows the property is 20.24 acres in size. According to the applicant's survey, the size of the proposed parcels would be: one parcel as 2.02 acres, one parcel as 2.23 acres, one parcel as 3.80 acres, and one parcel as 12.19 acres in size.
2. The subject property, includes three tax lots identified by Klickitat County as:
 1. Tax Lot 8A, in Lots 2, 3, 4 in Section 34, T2N, R13E, (02-13-34-0000-04/00)
 2. Tax Lots 3 and 4, Block 88, North Dalles (02-13-34-5188-03/00)
 3. Tax Lot 9 in Lot 2 Section 34, T2N, R13E (02-13-34-0000-03/00)

Tax Lot 8A includes several inholdings with complicated deed histories. As a result, the size of Tax Lot 8A has been described with different acreages on different surveys and online maps. Klickitat County describes it as 21.14 acres on its Interactive Mapping Program. According to the Commission's mapping tools, the lot is 19.94 acres in size. Lots 3 and 4, Block 88, North Dalles is an inholding of Tax Lot 8A and is approximately .12 acres in size as estimated by staff. Lot 9 is a small property east of and adjacent to the applicant's property. According to the Klickitat County online zoning map, it is approximately .07 acres in size. The applicant has included the three properties as his "subject property."

3. Director's Decision C05-0013 approved a substantially similar project for a land division on the same property. That division was not implemented, and the prior Director's Decision expired on October 2, 2009. That Decision determined the "subject property" met the Commission's definition of parcel according to Commission Rule 350-81-020(112). This decision relies on those prior conclusions without restating the findings from the previous decision. That Director's Decision included the following condition of approval:
 1. *Prior to any signatures on the plat or the recording of the plat by Klickitat County, the following changes shall be made to the proposed short plat:*
 - A. *The proposed short plat shall be revised to show Tax Lot 9 in Lot 2, in T2N, R13E, Section 34 (Parcel #02133400000300) is part of the proposed Lot 4, with the acreage of Lot 4 adjusted accordingly. A signature block for the owner of Tax Lot 9 shall be included on the plat and signatures for Tax Lot 9 shall be obtained prior to recording the plat.*
 - B. *An easement to access Lot 4, shall be obtained, recorded, and noted with the recording information on the proposed plat.*

A copy of the revised plat map provided to Klickitat County for recording shall be provided to the Gorge Commission.

On July 15, 2019, the applicant informed the Gorge Commission that the conditions listed above had been met, hoping to move forward with a similar land division for four parcels. The applicant had acquired Lot 9 (Tax Lot# 02-13-34-0000-03/00) and retained Klein and Associates, who prepared a proposed short plat. The lot configurations for the four parcels and the proposed easement for access to the parcels had changed.

4. After reviewing the application for completion and reviewing the prior Director's Decision for the land division on the subject property, staff determined a new application and review was necessary because the original approval had expired, although the requests are substantially similar.

5. Commission Rule 350-81-124(2) requires that land divisions are subject to the guidelines in Commission Rule 350-81. Sections B, C, D, and E of this report examine consistency of the proposal with Commission Rules 350-81-520 through 620. This section of the report examines the consistency of the proposal with all other applicable guidelines in Commission Rule 350-81.

6. Commission Rule 350-81-124(3) states:

At the time of creation of one or more new parcels, consolidation of access shall be considered in order to reduce adverse effects on scenic, cultural, natural and recreation resources.

In Director’s Decision C05-0013, the preliminary plat had the proposed easement cross land not owned by the applicant in order to access Lot 4. The owner of the land the proposed easement crossed was unclear, identified as “U.S. Government” by Klickitat County on its Interactive Mapping Program. The applicant was unable to identify a federal agency claiming ownership of the land. That Directors’ Decision included a condition of approval requiring the applicant to obtain an easement to access Lot 4 (see Finding A.2 above.)

As required by Commission Rule 350-81-124(3), staff considered whether the consolidation of access would reduce adverse effects on scenic, cultural, natural, and recreation resources. The site plan provided by the applicant consolidated access of all the proposed lots to one access road that avoids land not owned by the applicant. If the road is built within the easement, access to the four lots will have been consolidated into the greatest extent feasible, consistent with this rule.

This application does not propose any road construction or improvements and any such future road construction will be subject to review for consistency with Commission Rule 350-81.

CONCLUSION:

The subject property is designated GMA Residential with a 2-acre minimum parcel size. The proposed land division includes 4 parcels, all of which are at least 2 acres in size and is consistent with the minimum parcel size. As proposed, access has been consolidated into one road for access to the four lots. The proposed land division is allowed under Commission Rule 350-81, subject to consistency with Commission Rules 350-81-520 through 620.

B. SCENIC RESOURCES

1. Commission Rule 350-81-520 contains scenic resource protection guidelines for new land uses in the General Management.
2. The proposed land division does not include the construction of any new structures or other physical development within the landscape. No ground disturbance is proposed. Therefore, the proposed land division is consistent with Commission Rule 350-81-520.

CONCLUSION:

The proposed land division is consistent with the scenic resource guidelines in Commission Rule 350-81-520.

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 October 31, 2019, that pursuant to Commission Rule 350-81-540(1)(c)(A)(iii) a Cultural Resource Reconnaissance Survey is not required because the proposed use will not disturb the ground and would involve a lot-line adjustment or partition, and would occur on a site that has been adequately surveyed in the past.
3. Commission Rule 350-81-540(1)(c)(B) describes when a historic survey is required. In his October 31, 2019 determination, Mr. Donnermeyer also concluded that a historic survey was not required because the use will not alter the exterior architectural appearance of significant buildings and structures that are 50 years old or older and will 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 October 24, 2019, and the comment period ended on November 12, 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. The proposed land division does not include the construction of any new structures or other physical development.
6. Commission Rule 350-81-540(7) contains provisions addressing discovery of human remains during construction. The proposed land division does not include the construction of any new structures or other physical development.

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 established 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 National Wetlands Inventory and information on the Commission's GIS data base indicate the presence of wetlands in the vicinity of the proposed land division. The National Wetlands Inventory identifies one freshwater emergent wetland on the subject property.
3. Commission Rule 350-81-560(1)(a) requires that if the proposed use is within a wetland or a wetland buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary. Commission Rule 350-81-560(1)(a) further requires that (A) the wetland delineation be conducted using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual*, (B) the wetland delineation be conducted by a professional such as a botanist, and (C) that the Executive Director may verify the accuracy of a wetlands boundary delineation.
4. The applicant hired a professional botanist to prepare a wetlands delineation using the procedures of the *Corps of Engineers Wetlands Delineation Manual*. A wetlands delineation report was prepared by Krista Thie, botanist, in April and May 2006. It identifies two wetlands – an upper wetland and a lower wetland - on the subject property. The upper wetland is part of a narrow wet area running more than one mile east and west. A portion of it bisects the northern part of the proposed Lot 3. The lower wetland is approximately 1/3 of an acre and is located entirely within the proposed Lot 4. On October 24, 2006, Commission staff conducted a field visit with Catherine Reed, a Washington Department of Ecology wetlands specialist, to verify the accuracy of the wetland delineation. The Department of Ecology verified the accuracy of the delineations in a letter dated April 24, 2007. Consistent with Commission Rule 350-81-560(1)(a), the applicant determined the exact boundaries of two wetlands on the subject property and included the boundary delineations on the proposed land division map at a scale of 1" = 100 feet.
5. Commission Rule 350-81-560(7) contains guidelines specifying the width of wetland buffer zones and how buffer zones are measured. Commission Rule 350-81-560(7)(a) requires the width of wetland buffer zones to be based on the dominant vegetation community that exists in the buffer zone.
6. Commission Rule 350-80-560(7)(b) states:

The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the

proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

- (A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.*
- (B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.*
- (C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grass like plants, forbs, ferns, and nonwoody vines.*

7. Commission Rule 350-81-560(7)(c) states:

Buffer zones shall be measured outward from a wetland boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

- (A) Forest communities: 75 feet*
- (B) Shrub communities: 100 feet*
- (C) Herbaceous communities: 150 feet*

As described in Finding E.6 above, the buffer zone is an herbaceous community which requires a 150-foot buffer zone.

- 8. Commission Rule 350-81-560(7)(d) states that wetland buffer zones shall be retained in their natural condition. A portion of the buffer zone of the lower wetland is disturbed by an existing dirt road. No development, construction, or ground disturbance is proposed with this land division. Consistent with Commission Rule 350-81-560(7)(d), the buffer zones for the two identified wetlands will remain in their natural condition, with the exception of the existing disturbance to the buffer zone of the lower wetland.
- 9. Future development will be subject to a 150-foot wetland buffer or mitigation consistent with Commission Rule 350-81-560. It appears the proposed lot configuration would allow for future development on the southern portion of Lot 2 and the western portion of Lot 4 outside wetland buffer zones. Lots 1 and 3 and the easement for the access road are located entirely outside wetland buffer zones. Staff informed the landowner that the road may need to be realigned to meet the wetland buffer if he or a future landowner wishes to upgrade the road. The proposed land division is consistent with the protection of wetlands in Commission Rule 350-81-560.
- 10. Commission Rule 350-81-570 includes requirements for uses in a stream, pond, lake or their buffer zones. There are no streams, ponds, or lakes on or near the subject property.
- 11. Commission Rule 350-81-580 includes requirements to protect sensitive wildlife areas or sensitive wildlife sites. According to the Gorge Commission's natural resource inventories, there are no sensitive wildlife areas or sites within 1,000 feet of the subject property.
- 12. Commission Rule 350-81-580(2) requires a field survey to identify sensitive wildlife areas or sites for land divisions that create four or more parcels. Since the proposal would create four lots, a field survey for sensitive wildlife areas or sites was required. Such field surveys must cover all areas affected by a project and be conducted by a professional biologist hired by the project applicant.

Krista Thie, botanist, was hired by the project applicant to conduct a field survey for sensitive wildlife areas or sites on the subject property. Ms. Thie prepared a field survey in May 2006 that

met the requirements of Commission Rule 350-81-580(2). Amber Johnson, Habitat Biologist for the Washington Department of Fish and Wildlife, reviewed the field survey for accuracy and confirmed with Commission staff that the survey was acceptable. The field survey did not find the presence of sensitive wildlife areas or sites on the subject property.

13. The application, site plan, and wildlife survey were submitted to Ms. Johnson, WDFW, for review pursuant to Commission Rule 350-81-580(4)(f) which provides the state wildlife agency the opportunity to review and comment on the survey.
14. Commission Rule 350-81-580(4)(f) requires the Executive Director to determine whether the proposed development is consistent with the wildlife policies and guidelines based on the comments of the state wildlife agency. Based on comments received from Ms. Johnson about the adequacy of the survey and the conclusions of the survey described in Finding 12 above, the Executive Director determined that the proposed land division is consistent with the wildlife guidelines in Commission Rule 350-81-580.
15. Commission Rule 350-81-590(2) requires a field survey to identify rare plants for land divisions that create four or more parcels. Since the proposal would create four lots, a field survey for sensitive plants was required. Such field surveys must cover all areas affected by a project and be conducted by a professional botanist or person with plant ecology expertise hired by the project applicant.

Krista Thie, botanist, was hired by the project applicant to conduct a field survey for rare plants on the subject property. Ms. Thie prepared a field survey in May 2006 that met the requirements of Commission Rule 350-81-590(2). The field survey did not find the presence of rare plants on the subject property.

16. The field survey for sensitive plants was submitted to the Washington Natural Heritage Program for review pursuant to Commission Rule 350-81-590(4)(e). Commission Rule 350-81-590(4)(e) provides the Washington Natural Heritage Program staff the opportunity to review and comment on the field survey and requires the Executive Director to consider those comments to determine whether the proposed development would be consistent with the rare plant policies and guidelines.

Walter Fertig, Rare Plant Botanist for the Washington Natural Heritage Program, submitted written comments dated September 23, 2019, stated Ms. Thie's survey was the last known survey in the area. Based on the comments from the Washington Natural Heritage Program, and pursuant to Commission Rule 350-81-590(4)(e), the Executive Director determined that the proposal is consistent with the protection of rare plants, given the proposal does not include the construction of any new structures or other physical development within the landscape. However, future development on the property will be subject to rare plant protection measures, including additional surveys, in Commission Rule 50-81-590.

CONCLUSION:

The proposed land division would not adversely affect known wetlands, streams, ponds, riparian areas, sensitive wildlife, or sensitive plants. Two wetlands have been identified on the subject property and delineated. Future development on the property will be subject to the wetland protection measures in Commission Rule 350-81-560, and rare plant protection measures in Commission Rule 350-81-590, and may require additional field surveys. Therefore, the proposed land division would be consistent with the guidelines that protect these sensitive natural resources.

F. TREATY RIGHTS

1. Commission Rule 350-81-084(1) provides protection of treaty rights from new development in the National Scenic Area. 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 is located 300 feet from the Columbia River, but has no river access. Pursuant to other noticing requirements, notice of the proposal was mailed or emailed to the four tribal governments on October 24, 2019. The notice included a comment period of 21 days that ended November 12, 2019.

2. 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).
3. 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 of treaty rights from new development in the National Scenic Area.

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