

COLUMBIA RIVER GORGE COMMISSION DIRECTOR'S DECISION

CASE FILE: C20-0007

PROPOSAL: The Columbia River Gorge Commission has received an application to replace a dwelling not damaged or destroyed by fire.

APPLICANT: Tim Carse

LANDOWNER: Scott Myers

LOCATION: The subject parcel is located at 360 Rowland Road, Lyle, Washington, in the South West Quarter of Section 31, Township 3 North, Range 13 East, W.M., Klickitat County Tax Lot Number 03-13-3100-0021/00. The parcel is 1.60 acres in size.

LAND USE

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

DECISION:

Based upon the following findings of fact, the land use application by Tim Carse for Scott Myers for a replacement 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**.

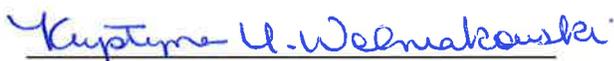
CONDITIONS OF APPROVAL:

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 20-0007, 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-National 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 residences, garages, workshops, or other accessory structures, additions or alterations, or grading not included in the approved application or site plan require a new application and review.

4. The developments shall be constructed as shown on the approved project description, site plan and elevation drawings. Any changes shall be reviewed and approved by the Executive Director before the changes are implemented.
5. The existing dwelling shall be removed within 30 days of project completion.
6. Except for dead trees or other dead vegetation that may pose a hazard, all existing vegetation on the site shall be retained.
7. 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.
8. 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.
9. 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. The applicants shall arrange the inspection by calling the Gorge Commission at (509) 493-3323 or info@gorgecommissin.org. Each inspection may take up to seven business days from the time of calling for the inspection.

DATED AND SIGNED THIS 16 day of July 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 16 day of July 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 15 day of August 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.

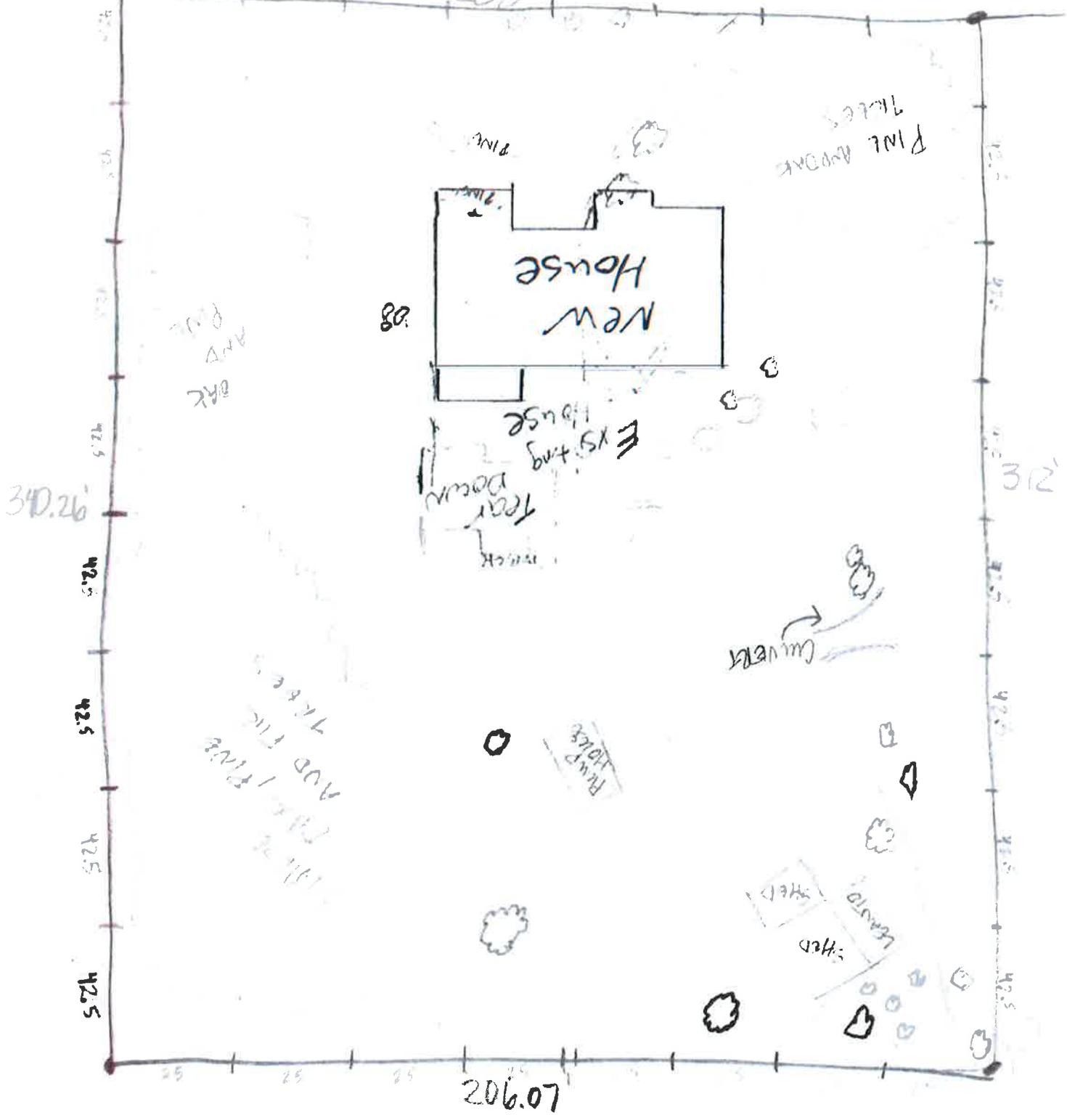
cc: Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs Reservation of Oregon
Nez Perce Tribe
U.S. Forest Service National Scenic Area Office
Washington Department of Archaeology and Historic Preservation
Klickitat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

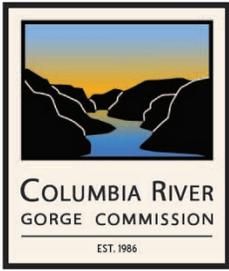
Attachments:

Staff Report for C20-0007
Approved site plan elevations

ROWLAND RD
208'

APPROVED





COLUMBIA RIVER GORGE COMMISSION STAFF REPORT

CASE FILE: C20-0007

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APPLICANT: Tim Carse

LANDOWNER: Scott Myers

LOCATION: The subject parcel is located at 360 Rowland Road, Lyle, Washington, in the South West Quarter of Section 31, Township 3 North, Range 13 East, W.M., Klickitat County Tax Lot Number 03-13-3100-0021/00. The parcel is 1.60 acres in size.

LAND USE

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

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 Gorge, Sydney Hanson, Transportation Archaeologist for the Washington Department of Archaeology and Historic Preservation, and Christian Nauer, Archaeologist for the Confederated Tribes of the Warm Springs Reservation of Oregon. The comments are addressed in the following findings of fact.

FINDINGS OF FACT:

A. Land Use

1. The applicant requests approval to replace an existing 1,008 square foot dwelling with a new 3,348 square feet dwelling that is 23 feet in height, and located in the graded gravel driveway of the existing dwelling. The subject parcel is in the General Management Area (GMA) and is designated Residential, with a minimum parcel size of 10 acres. The subject parcel is 1.60 acres in size and is located at 360 Rowland Road, Lyle, Washington.
2. The landowner had previously received approval from the Gorge Commission to construct a garage addition to the existing dwelling (C19-0008). The landowner has not started construction approved in that decision. The siting of the proposed replacement dwelling necessitates removal of the existing dwelling; therefore, the previous decision will be invalidated upon the removal of the existing dwelling.

Existing development on the parcel also includes two accessory buildings, which are a 64-square foot pump house and a 256-square foot shed with an attached lean-to, for a total of 320 square feet. Both structures are noted on the Klickitat County Assessor's records as constructed in 1975 and 1970, respectively. These accessory structures are considered existing and were not reviewed as part of this application

3. Commission Rule 350-81-082(2)(a) allows for the replacement of existing structures not damaged or destroyed by disaster. Commission Rule 350-81-020 (60) defines existing structure as any structure that was legally established. Commission Rule 350-81-082(2)(a) states:

(2) Replacement of Existing Structures Not Damaged or Destroyed by Disaster

(a) Except as provided in 350-81-082(3), an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

- (A) The replacement structure shall be used in the same manner and for the same purpose as the original structure.*
- (B) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.*
- (C) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.*
- (D) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.*

The original date the dwelling was constructed is unknown. Chris Donnermeyer, Heritage Program Manager for the CRGNSA Forest Service, was not able to find definitive information on development in the area using historical photographs and maps. Klickitat County Tax Assessor records for this parcel state that the dwelling was constructed and established in 1974, prior to the National Scenic Area Act. As discussed later in this finding, the subject parcel was created from a portion of Klickitat County Tax Lot TL 6 (Number 03-13-3100-0023/00) on November 3, 1971. According to Klickitat County records, the subject parcel is described as TL 6B (03-13-3100-0021/00), and the parcel it was created from is described as TL 6.

Klickitat County provided staff with a building permit record from July 7, 1970 recording an addition to an existing dwelling on TL 6. The owner of the parcel is listed on the building permit as Clara Palmer. Prior to 1970, Klickitat County did not require building permits (this 1970 permit appears to be the 124th building permit issued by the county). According to the original deed, TL 6 was owned by Warren and Almata Rowland; on November 3, 1971, TL 6B was created from TL 6 and deeded from Warren and Almata Rowland to Clara Palmer (Book 156, page 624). Newspaper archives from 1972 in the Goldendale Sentinel archives include reference to Clara Palmer and the Rowlands, describing Clara Palmer as Almata Rowland's mother.

In C92-0094, the Gorge Commission issued a decision allowing the placement of a mobile home and the temporary placement of a second mobile home as a hardship dwelling on TL 6. In that decision the Commission found that the parcel was a separate lot. At the time of application C92-0094, TL 6 was vacant, and used primarily as horse pasture. At the time of the land division in 1971, the primary dwelling was located on TL 6B.

Commission Rule 350-81-020(112)(b) defines *parcel* as:

Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

From January 1, 1983 through May 10, 1995, land divisions in Klickitat County were subject to the "Klickitat County Subdivision and Short Platting Ordinance, As Amended." Section 4.00 of this ordinance included the following definition:

"Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts, parcels, building sites, or divisions. A lot shall be considered as all contiguous land under single ownership unless legally platted or short platted. Property bisected by a public road or river shall not be deemed contiguous.

As stated above, TL 6B was legally established by deed on November 3, 1971 (Book 156, page 624).

From January 1, 1983, to May 10, 1995, a public road existed to the north of the lot, currently called Rowland Road. Therefore, according to Klickitat County's definition of "lot" during that time period, the tax lot was not contiguous with lots to the north. In 1992, the Gorge Commission approved C92-0094 on the adjacent lot to the east and south, finding that it was a separate tax lot that had not been in contiguous ownership with adjacent lots. In 2017, the Gorge Commission approved C17-0001 on the adjacent lot to the west, finding that it was a separate tax lot that had not been in contiguous ownership with adjacent lots.

The Gorge Commission received a complete land use application for the replacement dwelling. The replacement dwelling will be used in the same manner and for the same purpose as the original dwelling. The replacement dwelling will be placed north of the existing dwelling. The replacement dwelling will be 2,520 square feet larger than the existing dwelling. The replacement dwelling has been reviewed for compliance with the applicable scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land, which are discussed in sections B through F of this staff report. The existing dwelling has not been discontinued, and it will be removed within thirty days of the completion of the proposed

replacement dwelling. The proposed development complies with the standards for the replacement of existing structures not damaged or destroyed by disaster.

Conclusion:

The construction of a replacement dwelling is a review use on lands designated GMA-Residential, subject to the guidelines to protect scenic, cultural, natural, or recreation resources in the National Scenic Area.

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 dwelling is sited in a previously graded gravel driveway. This site retains the existing topography of the site and minimizes grading activities to the maximum extent practicable.

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. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

The proposed development site is in an area designated GMA Residential and along the northern border of the National Scenic Area. The area designated GMA Residential roughly forms a right triangle, with a height of approximately .5 miles and a width of approximately .5 miles, with the proposed development site at its center. All other lands within 1.25 miles of the development site and within the National Scenic Area are designated GMA Large Scale Agriculture with a 160-acre minimum lot size. There are nine developments within 1.25 miles of the proposed development site and within the border of the National Scenic Area.

According to property data from the Klickitat County Assessor's Office, total interior assessed area for nearby residential developments ranges from 1,404 square feet to 4,870 square feet. One nearby development has the appearance of a two-story building. The remaining nearby developments are either one story or 1.5 stories. Eight of the nine nearby developments are dwellings, most with detached accessory buildings such as detached garages or pole buildings close to the dwelling. One nearby development, and the largest, is primarily composed of agricultural buildings. The total interior assessed area of this development is 1,000 square feet larger than the next development at 3,898 square feet. As such, staff excluded this large development from the compatibility evaluation.

The proposed replacement dwelling has an area 3,348 square feet, which is smaller than three of the nearby developments that were included in the compatibility evaluation. The height of the proposed replacement dwelling is 23 feet, and has the appearance of a 1.5 story building. Overall, the proposed development is compatible with the general scale of existing nearby development.

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 plantings are required by the guidelines in this chapter. Commission Rule 350-81-520(1)(c) does not apply.

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

The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

The proposed development site is topographically screened from key viewing areas by higher elevation lands located to the west, south, and east. A site visit on July 24, 2019 to review application C19-0008 confirmed that intervening topographic features screen the development site from areas to the west, south, and east. Viewshed analysis using Google Earth Pro demonstrated that the proposed replacement dwelling at its peak height would only be topographically visible from scattered areas to the south of the development site within .75 miles, and to the east for 1.5 miles, and would be completely topographically screened from all key viewing areas. No natural or human-caused events have occurred to change this analysis. Commission Rule 350-81-520(2) does not apply.

5. The proposed development is within the Rural Residential in Coniferous Woodland Landscape Setting, which is described in Commission Rule 350-81-520(3)(f):

(A) New development in this setting shall meet the design guidelines described for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In the event of a possible conflict between the two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.

(C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

The applicable design guidelines mentioned in Commission Rule 350-81-520(3)(f)(A) are described in Commission Rules 350-81-520(b) and (e), which are addressed below. Commission Rules 350-81-520(3)(f)(B) and (C) do not apply because the two applicable guidelines do not conflict and there is no recreation use proposed as part of this application.

6. The applicable design guidelines for development in the Coniferous Woodland landscape setting are described in Commission Rule 350-81-520(3)(b):

“Structure height shall remain below the forest canopy level.”

The height of the proposed replacement dwelling is 23 feet. During staff’s July 24, 2019 site visit to review application C19-0008, staff observed mature Oregon white oak and ponderosa pine trees form a canopy over 50 feet high on site. The same canopy exists as of the time of this application. The topography of the parcel further increases the elevation of the surrounding canopy relative to the building site. The height of the proposed replacement dwelling is lower than the forest canopy level.

7. The applicable design guidelines for development in the Rural Residential landscape setting are described in Commission Rule 350-81-520(3)(e):

Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

The proposed replacement dwelling will be sited in an existing gravel driveway. The site plan shows that unidentified vegetation is to be removed as part of constructing the dwelling. Staff contacted the applicant, who stated that the vegetation being removed is three lilac bushes, and that no trees will be removed in constructing the dwelling. As such, existing tree cover is retained as much as possible. A condition of approval requiring the existing tree cover to be retained, except for safety purposes or forest management practices, is included with this Director's Decision.

Conclusion:

Based on these findings, and with the condition that existing tree cover is retained, 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. Commission Rule 350-81-540 provides guidelines to determine when cultural resource reconnaissance surveys and historic surveys are required for proposed developments.
2. Chris Donnermeyer, Heritage Resources Program Manager for the Columbia River Gorge National Scenic Area, provided a cultural resources survey determination for the proposed development on March 26, 2020.
3. Mr. Donnermeyer determined that the proposed development does not require a reconnaissance survey pursuant to Commission Rules 350-81-540(1)(c)(A) because the proposed use: (1) would involve the modification, expansion, replacement, or reconstruction of existing buildings and structures; (2) occurs on a site that has been determined to be located in a low probability zone; and (3) does not occur within 500 feet of a known archaeological site. While
4. Mr. Donnermeyer determined that the proposed development does not require a historic survey pursuant to Commission Rule 350-81-540(1)(c)(B) because the proposed use: (1) would not alter the exterior architectural appearance of significant buildings and structures that are 50 years old or older; and (2) would not compromise features of the surrounding area that are important in defining the historic or architectural character of significant buildings or structures that are 50 years old or older.
5. Commission Rules 350-81-540(6) and (7) provide guidelines for the inadvertent discovery of cultural resources or human remains during construction activities. Several comments addressed the need for these inadvertent discovery plans, though no comments asserted that there was a high likelihood of discovery or that cultural resources surveys were necessary. These guidelines are included in the Director's Decision as conditions of approval.

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.

The proposed development is a new dwelling. The proposed development is located approximately .7 miles north of the boundary of Doug's Beach State Park, far enough away to ensure that the development or use of the parcel would not detract from the use or enjoyment of the site. The proposed development is also topographically screened from Doug's Beach State Park, negating any impact the development might have on use or enjoyment of the site. Further, the majority of Doug's Beach State Park is undeveloped, and all established recreation use is concentrated on the windsurfing and picnicking site at the south end of the park. The proposed development is approximately 1.4 miles from this area of the park. With intervening topography screening the proposed development, and with the proposed use not expected to create any other kind of disturbance, the proposed dwelling would not detract from the use and enjoyment of the established recreation site.

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 350-81-560 provides guidelines for protecting wetlands in the General Management Area. Review of Gorge Commission resource inventories show that there are no wetlands on site. Commission Rule 350-81-560 does not apply.
2. Commission Rule 350-81-570 provides guidelines for protecting streams, ponds, lakes, and riparian areas in the General Management Area.

Review of Gorge Commission resource inventories show that there is an unnamed perennial stream east of the proposed development on the adjacent parcel. Commission Rule 350-81-570(7)(a)(A) states that the buffer for a perennial stream is 100 feet. The closest part of the proposed development is approximately 130 feet from the stream, as it shows in the Gorge Commission inventory. During staff's July 24, 2019 site visit to review application C19-0008, staff were not able to identify any defined stream channel or bed on the adjacent parcel. Additionally, in 1992 the Gorge Commission issued Director's Decision C92-0094 for the adjacent parcel. The 1992 decision determined that there were "no wetlands or streams" in the area. Staff also discussed this discrepancy with Rainer Hummel, Forest Practices District Manager for the Washington State Department of Natural Resources, on July 25, 2019, who stated that there are often discrepancies between the modeled streams in the resource inventory and the reality on the ground. Based on the review of Gorge Commission resource inventories, discussion with Rainer Hummel, and review of the 1992 Director's Decision, staff determined for this current decision that the inventoried stream does not exist, and no buffer is required.

No other water resources are shown in the Commission's inventory.

3. In C19-0008, the applicant included a "seasonal stream" and associated culverts on the site plans in a different location from the inventoried stream discussed above. Staff conducted a site visit on July 24, 2019 to review application C19-0008 to determine if there were unmapped water resources on site. The applicant stated at that time that the area indicated on the site plan as a seasonal stream is an area where water from snowmelt collects in the spring.

Commission Rule 350-81-020(152) defines the word “stream” to mean:

Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs and defined-channel swales. The channel or bed does not have to contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses.

During the July 24, 2019 site visit to review application C19-0008, staff examined the area indicated on the applicant’s site plan to determine if there was a defined channel or bed. This area contains lawn grasses, wild grasses, blackberry bushes, and Oregon white oak and ponderosa pine trees. The area where water collects was visible, but only as a slight depression in the topography on site.

Staff emailed Rainer Hummel, Forest Practices District Manager for the Washington State Department of Natural Resources, on July 25, 2019. Given the information that staff provided, Rainer advised that the slight depression is likely an area of seasonal runoff that would not meet the WDNR definition of a stream, though they could not make a stream determination without a site visit to examine the area.

4. Further north on the property, a culvert under the driveway drains from and into areas that have become slightly downcut. This area is covered in upland grasses and does not form a defined channel beyond the culvert site. As defined above, this area is part of an artificial watercourse to manage periodic water flow. As such, staff determined that there were no on-site water resources. Based on the findings in E.2, E.3, and E.4, Commission Rule 350-81-570 does not apply.
5. Commission Rule 350-81-580 provides guidelines for protecting wildlife habitat in the General Management Area.

Review of Gorge Commission resource inventories show that the proposed development is entirely within an area mapped as Western Gray Squirrel priority habitat and black-tail deer winter range by the Washington Department of Fish and Wildlife. This same area is also Oregon white oak priority habitat. The application and site plan were sent to Amber Johnson with WDFW on March 25, 2020 for review and comment. Amber requested information on the proposed vegetation removal and on the culverts. Staff discussed the application with Amber on June 22, 2020, and Amber stated that WDFW had no concerns about the project.

Washington Department of Fish and Wildlife publishes management recommendations for some priority species and habitats. For Western Gray Squirrel, WDFW recommends that the squirrels’ primary habitat of well-connected canopy cover be left standing. For Oregon white oak, WDFW recommends that the trees be left standing. The applicant is not proposing to remove any Oregon white oak, nor will the proposed development disconnect any existing canopy cover. As proposed, the development will have no adverse impact on Western Gray Squirrel habitat or Oregon white oak.

WDFW does not provide management recommendations for black-tail deer. Commission Rule 350-81-580(6) provides guidelines for new fences in deer and elk winter range. No fencing is proposed as part of this development. As proposed, the development will have no adverse impact on wildlife habitat.

6. Commission Rule 350-81-590 provides guidelines for protecting rare plants in the General Management Area. Commission Rule 350-81-590(1)(c) states:

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

Review of Gorge Commission resource inventories show that there are no known sensitive plants within 1000 feet of the proposed development.

Conclusion:

The proposed development is consistent with the Commission Rules 350-81-560, 350-81-570, 350-81-580, and 350-81-590, protecting natural resources in the National Scenic Area.

F. Treaty Rights Protection

1. Commission Rule 350-81-084(1) provides protection of tribal treaty rights 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, 2020. The notice included a comment period of 21 days that ended on April 16, 2020.

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 during the 21-day comment period. 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 350-91-084(c)(B).

Conclusion:

The proposed development is consistent with the guidelines for protection of tribal treaty rights in the National Scenic Area.

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