

COLUMBIA RIVER GORGE COMMISSION DIRECTOR'S DECISION

CASE FILE: C20-0017

PROPOSAL: The Columbia River Gorge Commission has received an application for the replacement of a single-family dwelling destroyed by a fire.

APPLICANT: Barbara Sexton

LANDOWNER: Barbara Sexton

LOCATION: The subject property is approximately 83 acres and located in the north west quarter of Section 28, Township 3 North, Range 12 East, Willamette Meridian. Klickitat County Tax Lot Number 03-12-2800-0006/00.

LAND USE

DESIGNATION: General Management Area – Small-Scale Agriculture (80)

DECISION:

Based upon the following findings of fact, the land use application by Barbara Sexton, for a replacement single-family dwelling is consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Management Plan for the Columbia River Gorge National Scenic Area (Management Plan), and approvable under Commission Rule 350-81, and is hereby **APPROVED**.

CONDITIONS OF APPROVAL:

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

1. To ensure notice of the conditions to successors in interest, this Director's Decision, Staff Report for C20-0017, 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 garages, workshops, or other accessory structures, additions, alterations, or grading not included in the approved application or site plan will 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 proposed development shall be set back at least 50 feet from the intermittent stream to the east of the development.
6. The replacement dwelling shall only have one kitchen.
7. All exterior building materials, including roof, doors, siding, trim, window casing and sash, decks, and railings shall be dark earth-tone colors. Only approved dark earth-tone colors for exterior materials shall be used. The following colors submitted by the applicants for the exterior of the house are consistent with this condition and are hereby approved:

Exterior:	Miller Paint (chip #0563)
Trim:	Penofin <i>Transparent Sierra</i>
Roof:	Pabco <i>Antique Black</i>

Any proposed changes to these colors shall be submitted to the Gorge Commission for consistency review with this condition of approval. The color of the development shall be maintained by painting and staining as necessary to maintain the approved color.

8. All exterior building materials, including roof, doors, siding, trim, window casing and sash, decks, and railings shall be nonreflective or have low reflectivity. Any exterior metal materials shall be painted with low-gloss black colored finish and maintained as necessary to ensure that the material is non-reflective. Solar panels shall be black, including panels and frames, to minimize reflectivity, with no bare aluminum framing or bare structural surfaces.
9. All windows shall be composed of low-reflectivity glass. A reflectivity rating of 11% is required.
10. All outdoor lighting shall be directed downward and sited, hooded, and shielded such that it is not highly visible as seen from Key Viewing Areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.
11. Except for dead trees or other dead vegetation that may pose a hazard, all existing vegetation on the site shall be retained and maintained for screening purposes, or as indicated on the approved landscaping plan.
12. All disturbed areas on the property disturbed during construction activities shall be reseeded with grasses from the *Recommended Seed Mixes for East Side Environments*. Disturbed areas shall be revegetated immediately upon completion of the project (or as soon as possible thereafter if the project is completed during the winter) with at least 80 percent vegetative coverage within 1 year.
13. All future replacement cattle fencing shall adhere to the following specifications:
 - A. The top wire is not more than 42 inches high, to make it easier for deer to jump over the fence;
 - B. a gap of at least 10 inches is maintained between the top two wires to make it easier for deer to free themselves if they become entangled;
 - C. the bottom wire is a smooth wire, placed at least 16 inches above the ground to allow fawns to crawl under the fence
 - D. stays, or braces placed between strands of wire, are positioned between fence posts where deer are most likely to cross, creating a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

14. 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.
15. 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.
16. 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@gorgecommissin.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 November 2020 at White Salmon, Washington.

Krystyna U. Wolniakowski

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 November 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 25 day of December 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 C20-0017
Approved site plan and elevation drawings
International Dark-Sky Association example sheet of acceptable & unacceptable light fixtures
Recommended Seed Mixes for East Side Environments

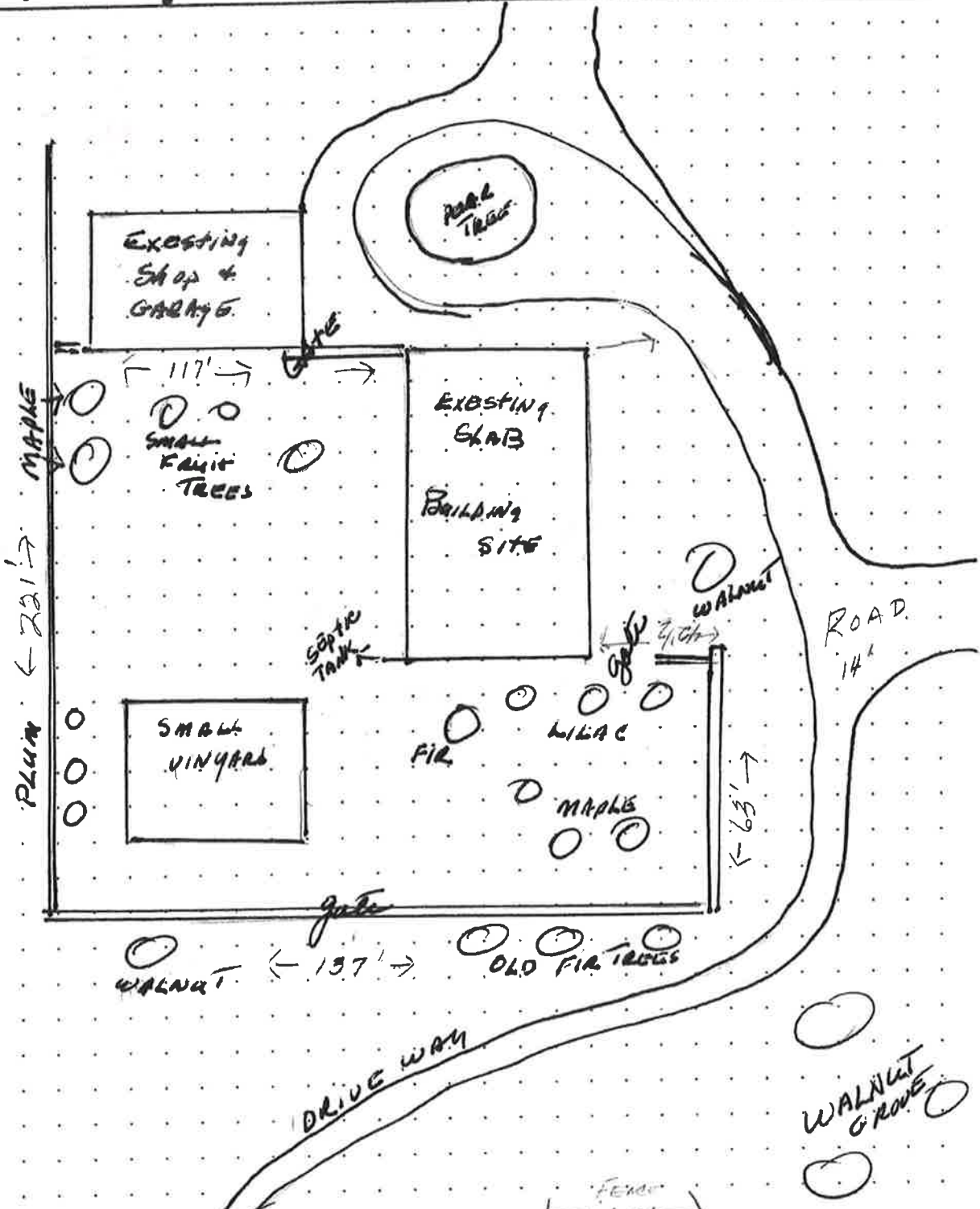
*Please use this template or attach a separate site plan

Site plan (continued):

North

WEST

EAST



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

BOLCH RD

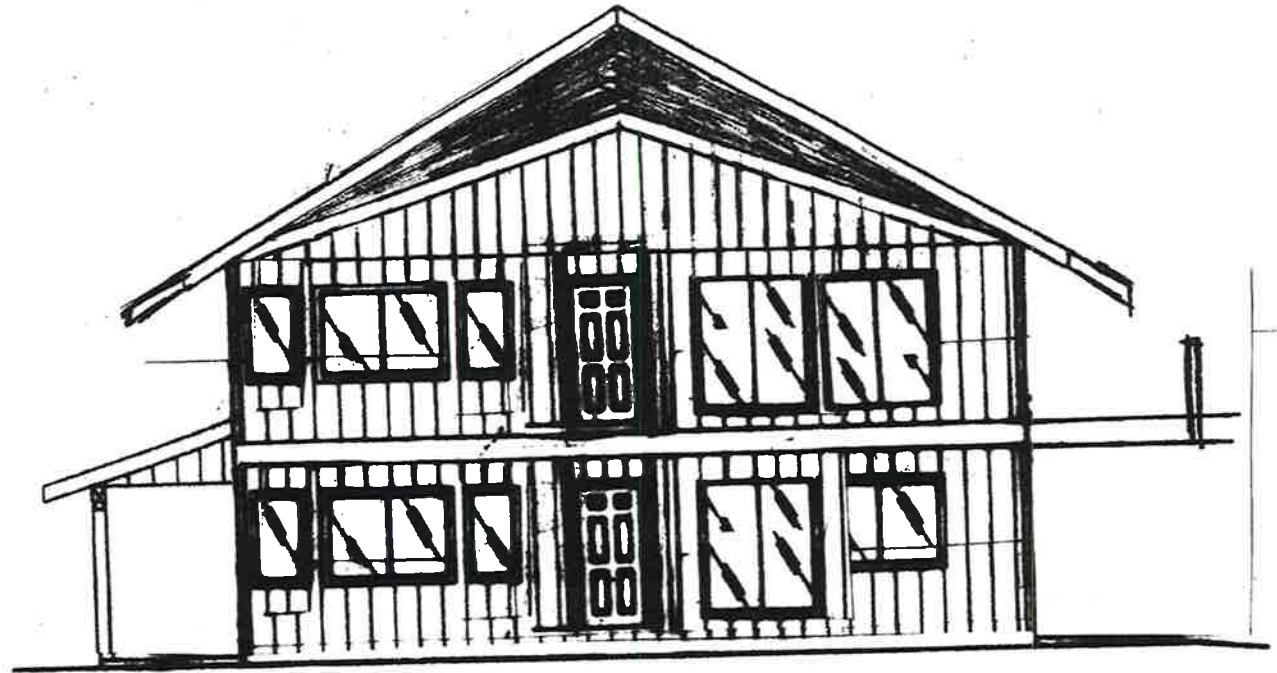
SOUTH

FENCE LINE

O 2 Trees

APPROVED

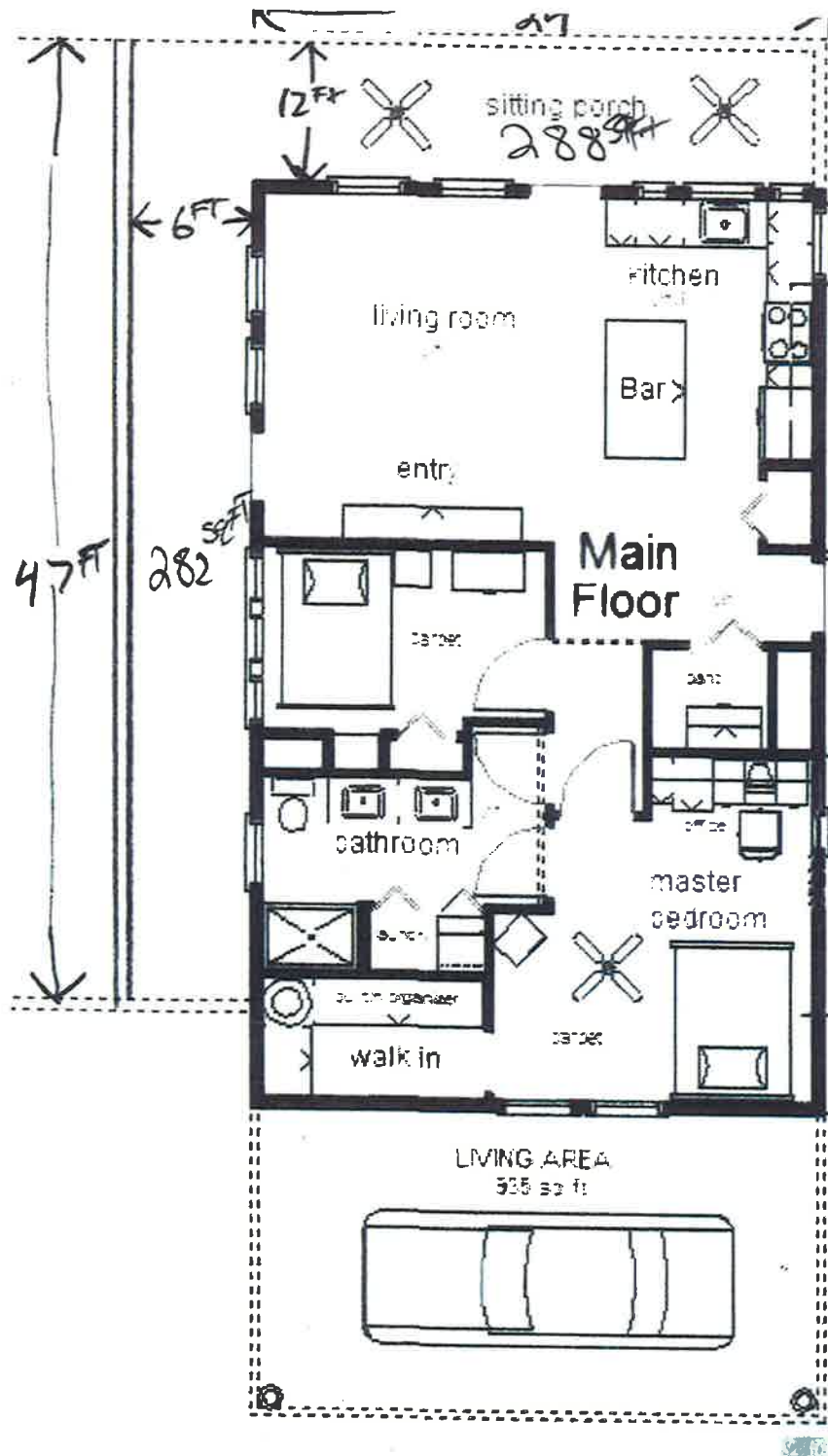
KW



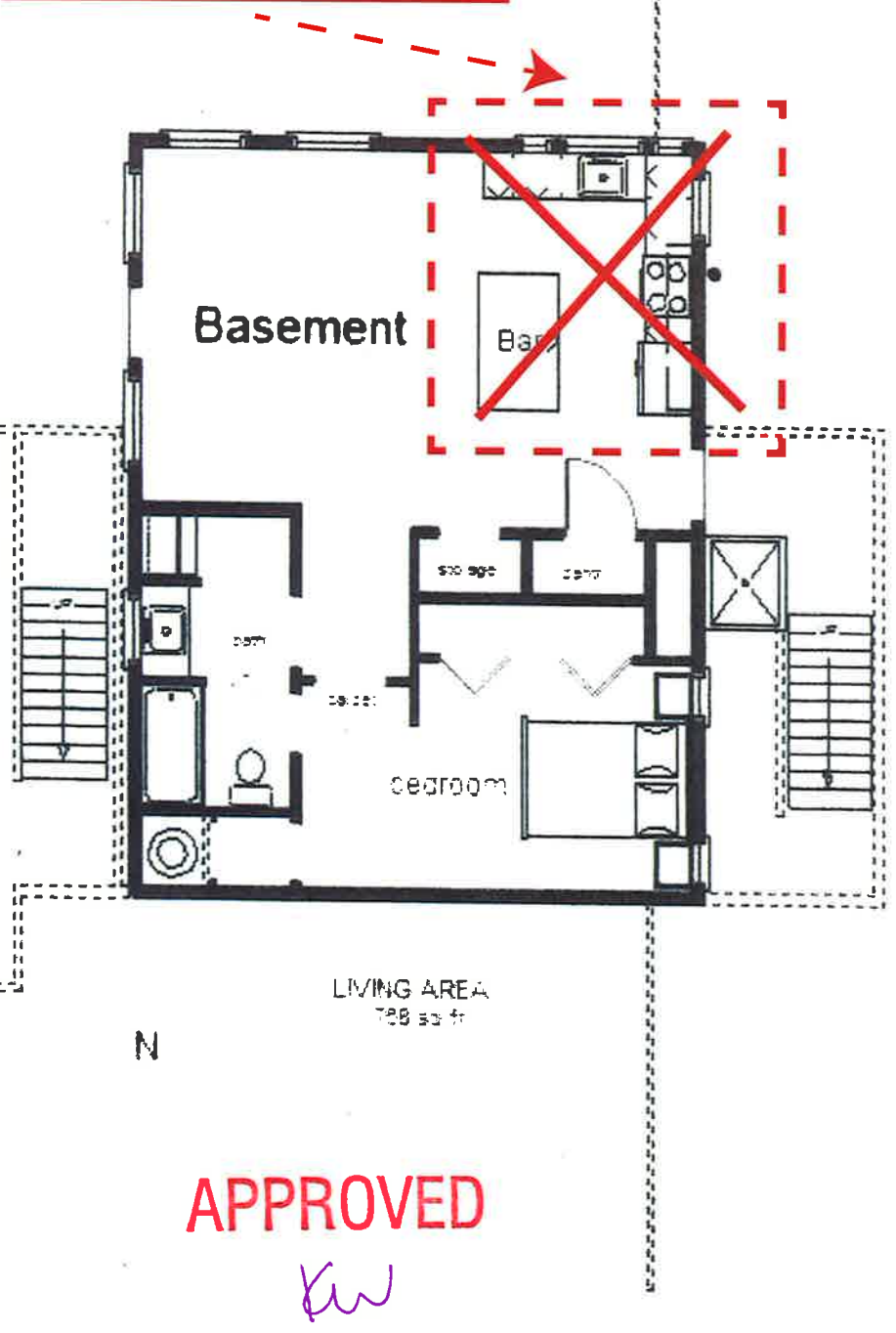
FRONT ELEVATION

APPROVED

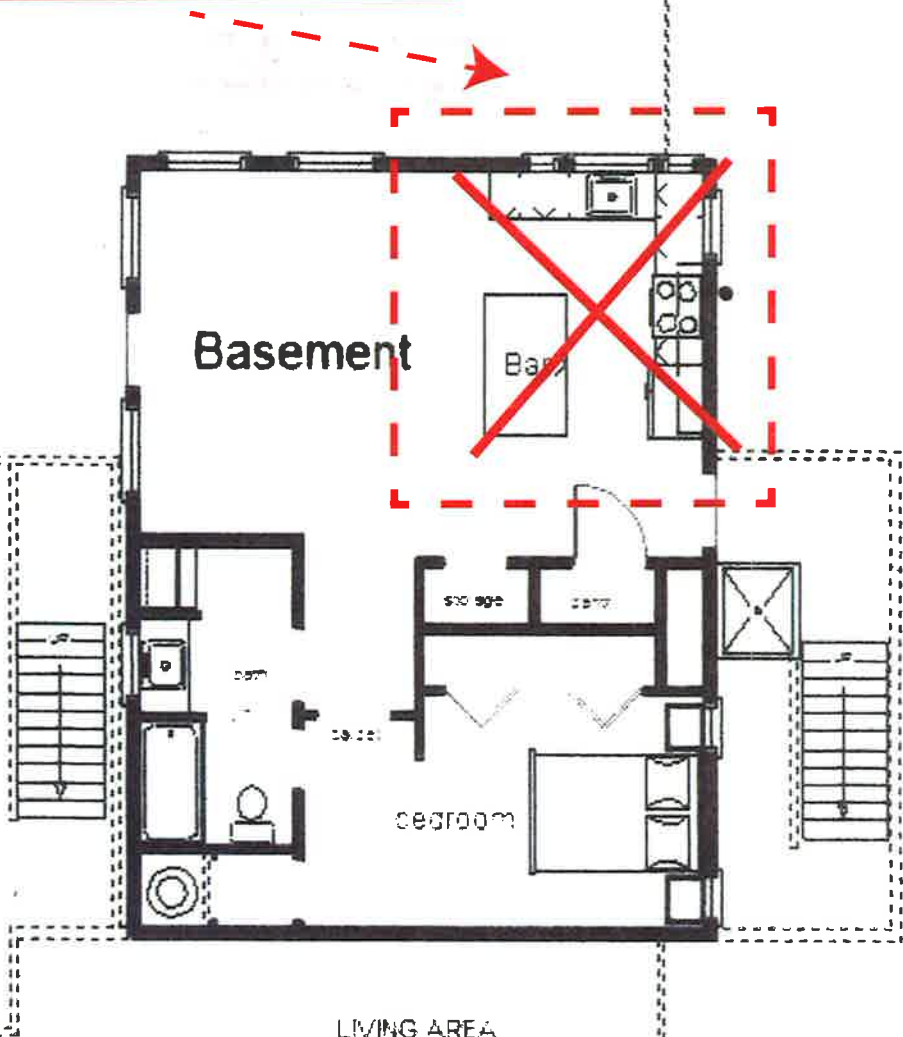
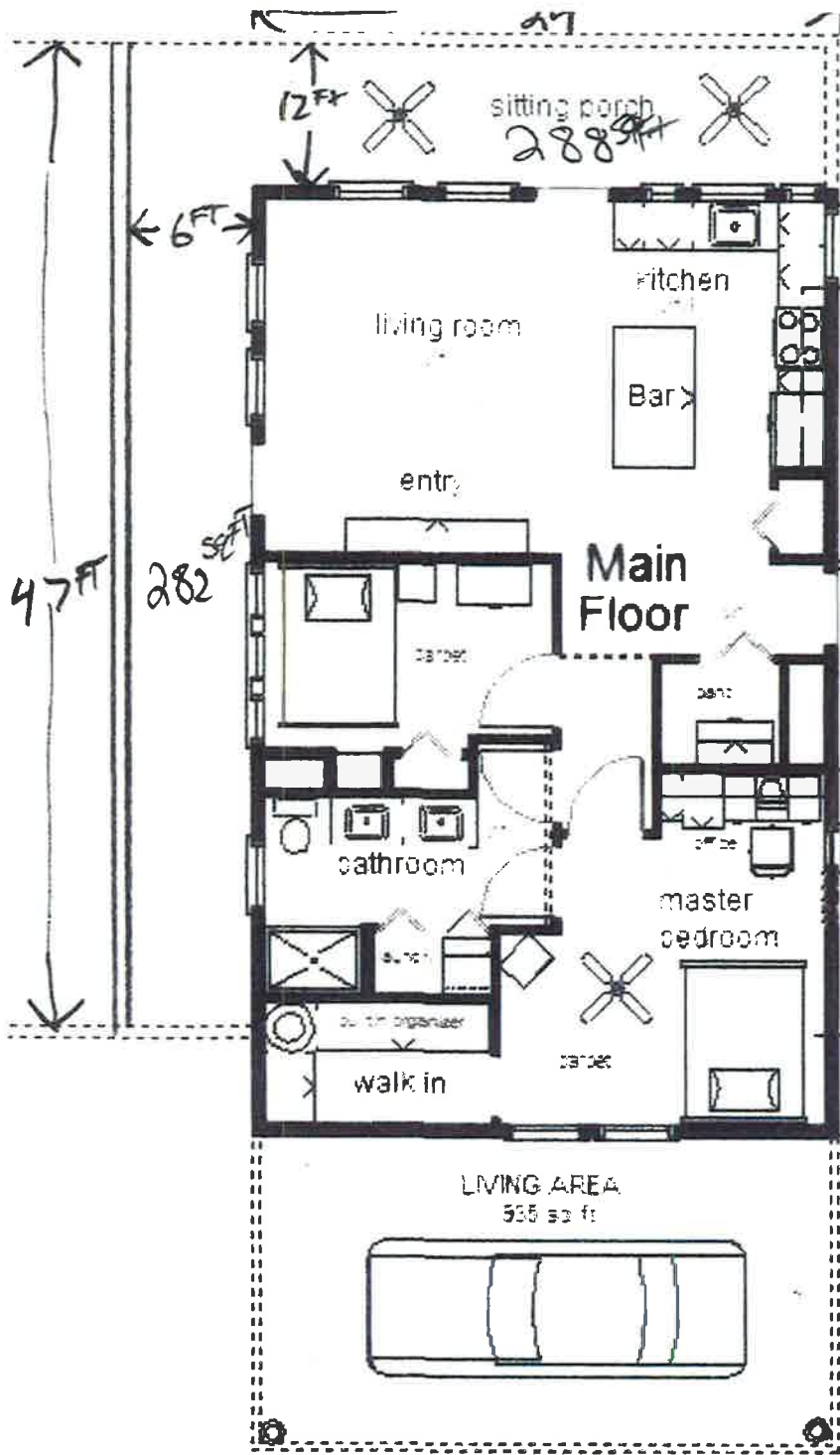
kw



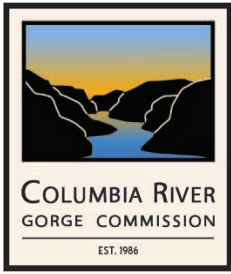
First Floor Kitchen is NOT APPROVED.
 Only one kitchen per dwelling unit.



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Only one kitchen per dwelling unit.



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COLUMBIA RIVER GORGE COMMISSION STAFF REPORT

CASE FILE: C20-0017

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LANDOWNER: Barbara Sexton

LOCATION: The subject property is approximately 83 acres and located in the north west quarter of Section 28, Township 3 North, Range 12 East, Willamette Meridian. Klickitat County Tax Lot Number 03-12-2800-0006/00

LAND USE

DESIGNATION: General Management Area (GMA) – Small-Scale Agriculture (80)

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, Friends of the Columbia River Gorge
Chris Donnermeyer, Heritage Resource Program Manager, USFS NSA

A. LAND USE

1. The subject parcel is approximately 83 acres and is located off Balch Road, a quarter mile north of its intersection with Old Highway 8. The parcel is primarily pastureland, although there are stands of trees throughout the parcel. The parcel is in the Pastoral landscape setting. The applicant's home burned down in a fire in the summer of 2020. At that time, she notified the Gorge Commission. A complete land use application was submitted in October 2020, within two years of the date the original single-family dwelling was destroyed.
2. Previous Director's Decisions include C94-0068, application and approval for the original single-family dwelling on the subject parcel.
3. Commission Rule 350-81-082 contains guidelines for Existing Uses and Discontinued Uses. Commission Rule 350-81-082(3) allows the replacement of an existing structure damaged or destroyed by fire, flood, landslide or other similar disaster if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. As stated above, the applicant's home burned down in a fire in the summer of 2020. At that time, she notified the Gorge Commission. A complete land use application was submitted in October 2020, within two years of the date the original single-family dwelling was destroyed.
4. Commission Rule 350-81-082(3)(a)(E) states that the replacement structure shall be subject to 350-81-082(2)(a)(A), (B), and (C) above if it would not comply with 350-81-082(3)(a)(B) and (C). Commission Rule 350-81-082(3)(a)(C)(1) allows the footprint of the replacement structure to be up to 10 percent larger than the footprint of the original structure.

As proposed, the footprint of the replacement dwelling (39 ft. x 24 ft.) is over 10 percent larger than the footprint of the destroyed building (22 ft. x 32 ft.) Because the proposal is not consistent with 350-81-082(3)(a)(C)(1), the replacement structure is subject to Commission Rule 350-81-082(2)(a)(A), (B), and (C).

5. Commission Rule 350-81-082(2)(a)(A), (B), and (C) 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)(A), (B), and (C) states:

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.

(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.

As stated above, the applicant's home burned down in a fire in the summer of 2020. The proposed replacement dwelling has similar dimensions to the destroyed dwelling and will be located in the same location. Finding A.7 discusses the developments consistency with agricultural buffer zone standards. The development is not subject to either approval criteria for fire protection or approval criteria for siting of dwellings on forest land because the development is not on GMA

Forest designated land. The proceeding sections of this Staff Report discuss the proposed replacement dwellings consistency with the guidelines that protect scenic, cultural, recreation and natural resources, and treaty rights guidelines. The proposal is consistent with this rule.

6. Commission Rule 350-81-190(2)(c) allows one single-family dwelling necessary for and accessory to agricultural use. Commission Rule 350-81-020(53) defines dwelling unit as:

A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

The floor plans for the replacement dwelling identify a kitchen on both the first and second floors of the buildings. Consistent with this rule, a condition of approval states that the replacement dwelling shall have not more than one cooking area or kitchen.

Commission Rule 350-81-190(2)(k) allows as a reviewable use *Bed and Breakfast Inns*, but the applicant has not applied for a bed and breakfast inn or other type of short-term rental facility. A condition of approval is included in the decision to alert the landowner that the accessory building may not be used as a short-term rental or second dwelling.

7. Commission Rule 350-81-076(1) contains setbacks from adjacent properties for buildings on lands adjacent to parcels designated Large-Scale or Small-Scale Agriculture. This rule states:

All new buildings in the GMA shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands that are designated Large-Scale or Small-Scale Agriculture and are currently used for or are suitable for agricultural use...

The parcel adjacent to the subject parcel to the north is designated GMA Small-Scale Agriculture. The parcels adjacent to the subject parcel to the east, south and west are designated SMA Agriculture and not subject to this rule. To determine if the adjacent lands are suitable for agricultural use, staff considered characteristics of the land, existing uses, and looked at soil data and crop production data in the Commission's natural resources database. Commission Rule 350-81-154 defines *suitability* as:

The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

According to the latest data provided by the Natural Resources Conservation Service, the USA Soils Farmland Class rating for the soil of the subject parcel and adjacent parcels is "not prime farmland." Staff observed during site visits to the subject parcel that the adjacent parcels have similar characteristics including pasturelands, oak-pine woodlands and naturally occurring grasses. Staff looked at other parcels in the same land use designation and same landscape setting with similar land characteristics to see what types of agricultural uses the subject parcel and adjacent parcels might be suitable for. In general, the types of agriculture found on nearby land with similar terrain are pasturelands, vineyards and orchards. Currently, the lands between the subject parcel and the adjacent parcels to the south is vegetated with trees creating a vegetative barrier. According to Commission rule 350-81-076, the setback requirement is 100 ft. A currently proposed, the replacement dwelling is sited 250 ft. from the southern property boundary, 380 ft.

from the eastern property boundary, 320 ft. from the western property boundary, and 2,300 ft. from the northern property boundary, consistent with this rule.

CONCLUSION:

With a condition of approval restricting the dwelling to one cooking area, the replacement single-family dwelling is an allowed review use, subject to the applicable guidelines that protect scenic, cultural, natural, and recreation resources.

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 replacement dwelling is sited in the same location as the destroyed dwelling and will use the existing foundation, which ensures the development retains existing topography and minimizes grading activities to the maximum extent practicable, consistent with this rule.

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.

To determine compatibility of the proposed replacement dwelling, Commission staff looked at development surrounding the subject parcel within a half mile. Staff chose the half mile study area because all the parcels have similar visibility from KVAs.

Of the 29 parcels in the study area, staff identified 13 parcels with development. There are currently 32 known buildings in the study area. These buildings include single-family dwellings, mobile homes, garages, agricultural structures, and smaller accessory structures. Buildings range in size from 72 sq. ft. to 4,895 sq. ft. Nearby single-family dwellings range in size 1,536 sq. ft. to 4,895 sq. ft. Buildings range in height up to 2 stories.

When calculating the general scale of buildings, staff calculates the area of covered decks and covered patio spaces. The first story has 768 sq. ft. (32 ft. x 24 ft.) interior space and 288 sq. ft. outdoor covered space. The second story has 936 sq. ft. (39 ft. x 24 ft.) interior space, 288 sq. ft. carport (12 ft. x 24 ft.), and 570 sq. ft. of covered deck space. The total mass of the building is 2,850 sq. ft. The replacement dwelling is 24 ft. tall, smaller in height than the destroyed dwelling. The general scale of the replacement dwelling – including the square footage and the height – is compatible with the general scale of existing nearby development. Staff finds the replacement dwelling is compatible with the general scale of existing nearby development, 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 screening vegetation is required by the guidelines of Commission Rule 350-81-520. As discussed in Finding B.9, in order to mitigate for alterations to the vegetative cover and natural characteristics of the site, a condition of approval is included requiring all areas disturbed during construction activities to be reseeded as soon as possible with at least 80 percent vegetative

coverage within 1 year. Staff is providing the handout, *List of Recommended Seed Mixes for East Side Environments*, as an attachment to the Director's Decision, which has options of seed mixes available locally for drier eastern gorge climates.

4. Commission Rule 350-81-520(1)(d) and (e) state:

(d) A site plan and land use application shall be submitted for all new buildings, except for buildings smaller than 60 square feet in area and less than or equal to 10 feet in height, as measured at the roof peak. The site plan and application shall include all information required in the site plan guidelines in "Review Uses" 350-81-032(5). Supplemental requirements for developments proposed on lands visible from key viewing areas are included in the key viewing areas guidelines in this chapter.

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

A site plan was provided consistent with Commission Rule 350-81-032 (Application for Review and Approval). The landscape setting for the subject parcel is Pastoral. Commission Rule 350-81-520(3)(a) contains design guidelines for proposed uses in the Pastoral landscape setting. Findings B.23 through B.25 address the applicable guidelines in Commission Rule 350-81-520(3)(a) using information submitted in the site plan, consistent with this rule.

5. Commission Rule 350-81-520(2) contains guidelines that apply to developments on sites visible from KVAs. Staff analyzed the visibility of the proposed development on the subject parcel by conducting site visits and using geospatial mapping tools, including ArcGIS and Google Earth, and determined the subject parcel is topographically visible from two KVAs: Historic Columbia River Highway (HCRH) and Rowena Plateau. Because the development site is visible from KVAs, the guidelines of Commission Rule 350-81-520(2) apply to the proposed development.

6. Commission Rule 350-81-520(2)(b) requires new development to be *visually subordinate* to its setting when viewed from KVAs.

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

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

As discussed in the following findings, the proposed development is designed to be *visually subordinate*. Several factors ensure the proposed building will be *visually subordinate* as viewed from KVAs: viewing distance, building proportions, dark earth tone colors, nonreflective building materials, existing topography and existing vegetation. The findings in this Staff Report include conditions of approval in accordance with this rule.

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

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

The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same

piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

To determine cumulative effects of the proposed development, staff analyzed existing development and development potential of the subject parcel and nearby lands within a half mile, an area encompassing approximately 500 acres. As seen from KVAs, the subject parcel is in an area where existing dwellings are visible but sparsely scattered throughout the landscape. The undulating topography of the area and thick stands of mature oak trees serve to partially screen these buildings, helping to make them *visually subordinate* from KVAs. Buildings range in size from 72 sq. ft. to 4,895 sq. ft. Nearby single-family dwellings range in size from 1,536 sq. ft. to 4,895 sq. ft. The total square footage of the proposed replacement dwelling is 2,850 sq. ft. For analysis, staff assumes that all existing dwellings on surrounding lots could be replaced in the future, subject to National Scenic Area review.

The proposed development is designed to be *visually subordinate*. If new buildings in the vicinity of the proposed development are built according to applicable Land Use Designations and designed in a similar manner to existing development and consistent with the guidelines of this chapter, they will be held to the same visual resource protection standards and required to be *visually subordinate*. Similarly, the design guidelines for the Pastoral landscape setting in the GMA recommend existing tree cover screening the development from KVAs be retained. If new buildings are built in a comparable manner to the proposed development and held to the same scenic resource protection standards, there will be no significant increase in the visibility of new development on the landscape, and adverse cumulative effects to scenic resources will be avoided. Development designed and sited to fit with the landscape setting and achieve the scenic standard *visually subordinate* will not generate adverse cumulative scenic impacts.

There will not be any visual effects from KVAs in the foreground because no development in the study area will be visible in the foreground of any KVA. The development will be visible from KVAs further away, such as the Historic Columbia River Highway and Rowena Plateau. From these KVAs, there is already limited existing development in the viewshed. Generally, buildings in these viewsheds are clustered together, mixed in with existing vegetation, and appear part of the scattered rural residential development that exists.

According to data from Klickitat Assessor Records, within the study area there are 29 parcels. Ten parcels, totaling approximately 111 acres including Balch Lake, are public lands owned by the State of Washington. Government owned land in the National Scenic Area is not typically developed, so staff assumes that government owned lands near the subject parcel will not be developed. The remaining 21 parcels are privately-owned.

Of the 19 privately-owned parcels, 13 are developed with dwellings and accessory structures; the other 6 privately-owned parcels are undeveloped. Four of the undeveloped privately-owned parcels can be developed in the future and are designated GMA Small-Scale Agriculture with a minimum parcel size of 80 acres. Staff assumes for this analysis that these four parcels will someday be developed with a dwelling and accessory structures. The other two undeveloped privately-owned parcels are designated GMA Large-Scale Agriculture with a with a minimum parcel size of 160 acres. One of those two parcels is approximately 580 acres and could be divided in the future. Staff assumes for this analysis that these two parcels will someday be developed with a dwelling and accessory structures.

It is unlikely that there would be multiple similar developments on the *same piece of ground*, given the limitations on the number of dwellings and the property size. While additional dwellings for agricultural labor housing or a dwelling for an agricultural operator's relative are allowed uses on the subject property, the need for any such additional dwellings would be based on demonstrated need in support of agricultural use.

For the reasons above, the proposed development will not cause adverse scenic impacts, and will not cause adverse cumulative scenic impacts, consistent with Commission Rule 350-81-520(2)(c).

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

The extent and type of conditions applied to a proposed development to achieve visual subordination should be proportionate to its potential visual impacts as seen from Key Viewing Areas.

(A) Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:

- (i) The amount of area of the building site exposed to Key Viewing Areas.*
- (ii) The degree of existing vegetation providing screening.*
- (iii) The distance from the building site to the Key Viewing Areas from which it is visible.*
- (iv) The number of Key Viewing Areas from which it is visible.*
- (v) The linear distance along the Key Viewing Areas from which the building site is visible (for linear Key Viewing Areas, such as roads).*

The project is visible from two KVAs at the following distance zones:

Key Viewing Area (KVA)	Distance Zone		
	Foreground	Middleground	Background
	0 - 1/4 Mile	1/4 - 3 Miles	Over 3 Miles
Historic Columbia River Highway		X	
Rowena Plateau		X	X

The site is visible from the two KVAs listed above. The site is not visible in the foreground of any KVA. The closest KVA is HCRH at a distance of approximately two and one tenth miles. The farthest KVA is Tom McCall Viewpoint, part of the Rowena Plateau trail system, at a distance of approximately three and four tenths miles. Using GIS inventories, staff found that while the building is screened by existing vegetation in and around the subject property, the proposed building site is topographically visible intermittently along HCRH for three and two tenths miles in the middle ground.

The elevation of the development site is approximately 700 ft. The site is only visible from one higher elevation KVA, Tom McCall Viewpoint, approximately 1,700 ft. elevation. From this KVA, existing vegetation both on and off the subject parcel provides effective screening because the site is located in the background, three and four tenths miles away. At that viewing distance the development will be insignificant in the landscape and not visible to the unaided eye.

The development is intermittently visible for three and two tenths miles along the HCRH in the middle ground as the road travels between Mosier, OR and Rowena Plateau at an elevation varying from 450 ft. to 700 ft. rising from west to east. As seen from the HCRH, staff found that the building site is completely screened by existing vegetation in and around the subject property.

As explained below, conditions are applied to the development's color and reflectivity to ensure the development is *visually subordinate* to its setting as seen from KVAs. The applicant has proposed a design for the replacement dwelling that is compatible with existing development. The applicant also proposes deep eaves on the south side of the house that will help shade the windows. With the retention of the existing trees around the house, the dwelling will not noticeably contrast with the landscape.

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

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

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

Factors contributing to the visibility of the development include distance from KVAs, dark earth tone colors, low reflective building materials, and existing vegetation. The Director's Decision contains requirements and conditions of approval to ensure the development is *visually subordinate*, consistent with this rule.

The proposed replacement dwelling is sited in the same location as the destroyed dwelling, on portions of the subject parcel that minimize visibility from KVAs. As seen from KVAs, the building site is fully screened by vegetation consisting primarily of mature Oregon white oak trees. Although oak trees are deciduous, they provide year-round screening at the site because of the density of the branches. No other location on the subject property would have afforded additional topographic or vegetative screening.

The applicant has proposed a design for the house that is compatible with existing development. The building is 2,850 sq. ft. and has a maximum final height of 24 ft. from the lowest adjacent grade to the highest point of the roof. Finding B.16 addresses the colors of the development which are dark earth tone colors found at the site. Finding B.17 address building material reflectivity including windows. Conditions have been applied to ensure compliance with these aspects of the design.

The subject property is densely vegetated and no new landscaping is required to screen the development from KVAs. In order to mitigate for alterations to the vegetative cover and natural characterizes of the site, a condition of approval is included requiring all areas disturbed during construction activities to be reseeded. The subject property is predominately covered in thick vegetation including mature oak, pine and fir trees which provide ample screening from KVAs. The property is in the Pastoral landscape setting and consistent with those guidelines, a condition of approval is included requiring the applicant to retain the existing tree cover on the property to help screen the development from KVAs.

In order to mitigate for alterations to the vegetative cover and natural characteristics of the site, a condition of approval is included requiring all areas disturbed during construction activities to be reseeded and that disturbed areas are revegetated immediately upon completion the project (or as soon as possible thereafter if the project is completed during the winter months) with at least 80 percent vegetative coverage within 1 year. Staff is providing the handout, *List of Recommended Seed Mixes for East Side Environments*, as an attachment to the Director's Decision, which has options of seed mixes available locally for drier eastern gorge climates.

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

New development shall be sited to achieve visual subordination from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or

would conflict with guidelines to protect cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.

As discussed in Section E below, the development is entirely located within the buffer of sensitive wildlife sites habitat but does not conflict with natural resource guidelines. Similarly, as discussed in Section C, the development does not conflict with cultural resource guidelines. The proposed development is consistent with Commission Rule 350-81-520(2)(e).

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

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

As proposed, the replacement dwelling will be screened from view of KVAs by thick existing vegetation consisting primarily of mature Oregon white oak trees. The trees provide the development complete screening from view of KVAs.

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

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

The subject parcel is in the Pastoral landscape setting, subject to Commission Rule 350-81-520(3)(a). Findings for the Landscape Settings Design Guidelines are addressed below in Finding B.23. Consistent with Commission Rule 350-81-520(3)(a)(B)(i) a condition of approval is included requiring the applicant to retain existing tree cover on the property except for safety purposes including, but not limited to, fire protection and hazard tree removal.

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

The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from Key Viewing Areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.

The site of the dwelling is at an elevation of 690 ft. As seen from KVAs, the applicant's land continues to rise steeply behind the development to 780 ft. elevation creating a large background and keeping the proposed development below the skyline, consistent with this rule.

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

The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-81-520 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new

landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction.

(C) Unless as specified otherwise by provisions in 350-81-520, landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-81-520(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species)

No new screening vegetation is required by the guidelines of Commission Rule 350-81-520.

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

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

For the dwelling, garage, and barn the applicant has proposed Miller Paint #0563 for the exterior walls and Penofin *Transparent Sierra* for the trim and for the doors. The roof will be Pabco *Antique Black* shingles.

These dark earth-tone browns, grays and blacks are found within the shadows of the surrounding landscape. A condition of approval requires all exterior surfaces of the proposed development, including roof, doors, siding, trim, window casing and sash, decks, and railings to be these specific colors to ensure consistency with Commission Rule 350-81-520(2)(l).

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

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

The proposed exterior materials for the dwelling are HardieBacker cement board siding, glass windows, and black asphalt shingles for the roof. The deck and railings will be wood.

The dwelling has several expanses of glass windows exposed to KVAs. The *Scenic Resources Implementation Handbook* recommends limiting continuous unscreened glass to 50 sq. ft. to prevent adverse impacts to scenic resources. As proposed, none of the glass is unscreened or over 50 sq. ft.

The *Scenic Resources Implementation Handbook* suggests that the use of glass with 11% reflectivity may be allowable when development is located beyond the foreground of KVAs and when partially screened by topography and vegetation. A condition of approval is included requiring the glass for the windows to have 11% reflectivity, consistent with this rule.

With a condition of approval requiring glass with 11% reflectivity, the proposed development is consistent with Commission Rule 350-81-520(2)(m).

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

In addition to the site plan requirements in 350-81-032(5), applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

A site plan was provided consistent with Commission Rule 350-81-032 (Application for Review and Approval) and Commission Rule 350-81-520(2)(n).

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

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

The applicant proposes seven exterior lighting fixtures for the replacement dwelling: three entry way lights and four porch lights. A condition of approval is included in the decision ensuring lights are directed downward, hooded and shielded such that they are not highly visible from KVAs, consistent with this rule. Staff also provided the applicants with examples of acceptable light fixtures from International Dark-Sky Association as an attachment with this decision.

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

Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to this guideline may be authorized.

The subject parcel is setback from the Columbia River approximately nine tenths of a mile, consistent with this rule.

20. Commission Rule 350-81-520(2)(y) states:

New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building site shall be used.

The building site is relatively flat with a gradual slope. The replacement dwelling is sited at the same location as the original dwelling.

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

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

No new grading is proposed. The replacement dwelling is sited at the same location as the destroyed dwelling.

22. Commission Rule 350-81-520(2) (aa) requires all proposed structural development involving more than 200 cu. yds. of grading include a grading plan.

The property is generally flat, and no excavation is proposed because the replacement dwelling is sited at the same location as the destroyed dwelling and retains the existing foundation. The proposal is consistent with Commission Rule 350-81-520(2) (aa), a grading plan is not required.

23. The Landscape Settings Map for Columbia River Gorge National Scenic Area classifies the subject parcel Pastoral. Commission Rules 350-81-520(3)(a) contains applicable guidelines for the proposed development in this landscape setting. It states:

- (A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.*
- (B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:*
 - (i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.*
 - (ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.*
 - (iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas-fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).*
 - (iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.*
- (C) Compatible recreation uses include resource-based recreation of a very low-intensity or low-intensity nature (as defined by 350-81-610) occurring infrequently in the landscape.*

Commission Rule 350-81-520(3)(a)(A) does not apply because no accessory structures, outbuildings, and access ways are proposed. However, the replacement dwelling is sited in the same location as the destroyed dwelling, which is clustered together with other accessory buildings and agricultural structures on the property. Because the property is visible from KVAs, consistent with Commission Rule 350-81-520(3)(a)(B)(i) a condition of approval is included requiring the applicant to retain existing tree cover on the property except for safety purposes including, but not limited to, fire protection and hazard tree removal. Commission Rule 350-81-520(3)(a)(C) does not apply because no recreation uses are proposed. With a condition of approval requiring the retention of existing tree cover, the proposal is consistent with the Pastoral landscape setting guidelines.

CONCLUSION:

With conditions of approval regarding building materials and color, retention of existing vegetation, and the immediate revegetation of disturbed soils, the proposal is consistent with Commission Rule 350-81-520 that protects 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 is conducted. Commission Rule 350-81-540(3)(d)(C) states that if 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 are required to reduce adverse effects to no adverse effect or no effect.
2. Chris Donnermeyer, Heritage Resource Program Manager for the U.S. Forest Service Columbia River Gorge National Scenic Area, reviewed the land use application and determined in a Cultural Resources Survey Determination, dated October 23, 2020, that pursuant to Commission Rule 350-81-540(1)(c)(A)(iii) a Cultural Resource Reconnaissance Survey is not required because would involve the modification, expansion, replacement, or reconstruction of existing buildings and structures, and does not occur within 500 feet of a known archaeological site.
3. Commission Rule 350-81-540(1)(c)(B) describes when a historic survey is required. In his October 23, 2020 survey determination letter, Mr. Donnermeyer also concluded that a historic survey is not required because the development would not alter the exterior architectural appearance of significant buildings or 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 October 15, 2020, and the comment period ended November 5, 2020. As explained above, the proposed use did not require a reconnaissance survey 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 is included in this decision requiring adherence to these measures if human remains are discovered.

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.

C. 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 on the subject parcel. The proposal is consistent with Commission Rule 350-81-560 that protects wetlands.
3. The Gorge Commission's natural resource inventories identify an intermittent stream crossing the subject property to the east of the proposed development. 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.*

Commission inventories identify Balch Lake, a freshwater lake, 700 feet away from the proposed development. As proposed, the development is located further than the required 150-foot buffer as determined by 350-81-560(7)(b), consistent with this rule

The Development Review for the original dwelling, C94-0068, also included a condition of approval requiring a 50-foot undisturbed buffer between the development and the stream. As proposed, the development is located further than the required 50-foot buffer, consistent with this rule. However, a condition of approval is also included in the director's decision.

4. Commission Rule 350-81-580 contains criteria for the review of potential impacts to sensitive wildlife. The Gorge Commission's sensitive wildlife inventory shows the development site is located within Deer and Elk Winter Range and within 1000 feet of Balch Lake, a sensitive wildlife habitat area for Western pond turtle and Lewis' woodpecker. Commission Rule 350-81-580(1)(a)(A) defines sensitive wildlife areas to include these areas.
5. Commission Rule 350-81-580(3) allows review uses to occur within 1,000 feet of a sensitive wildlife area or site when approved pursuant to Commission Rule 350-81-580(4).
6. Commission Rule 350-81-580(4)(a) requires the Gorge Commission to notify Washington Department of Fish and Wildlife and submit a site plan when a new development or land use is proposed within a sensitive wildlife area.

Commission staff notified Amber Johnson, with Washington Department of Fish and Wildlife of the proposed development and sent a copy of the site plan on October 15, 2020. No comments were received.

7. Commission Rule 350-81-580(6) states:

New fences in deer and elk winter range

- (a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.*
- (b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:*
 - (A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.*
 - (B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.*
 - (C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.*
 - (D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.*
- (c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.*

The project narrative does not identify new fencing for installation. However, the property is used for cattle grazing, and the applicants intend to continue to graze cattle and use the property as grazing ground. A condition of approval in the Director's Decision requires any replacement fencing to comply with this rule.

8. According to Commission Rule 350-81-580(4)(c) and (d) the wildlife protection process may conclude if the proposed use would not compromise the integrity of the wildlife area or if the proposed use would have only minor effects that can be eliminated by simply modifying the applicant's site plan.

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 a wildlife site due to the size and location of the development and the previously established residential use.

9. 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 noted above, the development site is located within winter range for deer and elk. Staff also considered the existing conditions of the study area and the likelihood of other similar development in the area. For the purposes of evaluating the cumulative effects of repeated similar activities, staff focused on similarly zoned Scenic Area lands within the Klickitat River Winter Range.

The Klickitat River Winter Range is nearly 123,000 acres spanning three to four miles on either side of the Klickitat River and encompasses the subject property. Existing conditions in the study area can be described as rural with dispersed structural development. Corridors of trees exist in the study area, primarily along stream corridors which have protected buffers. The subject property has a fence along the perimeter. No new fences are proposed to reduce winter range habitat.

WDFW did not indicate any concerns with the proposed development. Staff believes the proposed development will have little effect on existing deer habitat and western pond turtle and Lewis’ woodpecker habitat. 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 size and location of the development and the previously established residential use.

10. 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.

E. 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.

F. TREATY RIGHTS PROTECTION

1. Commission Rule 350-81-084(1) provides protection of tribal treaty rights from new development in the National Scenic Area.
2. Commission Rule 350-81-084(1)(a) lists additional notice requirements 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 Treaty Tribe governments on October 15, 2020. The notice included a comment period of 21 days that ended on November 5, 2020.

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

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

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

CONCLUSION:

The proposed development is consistent with the guidelines in Commission Rule 350-81-084, which provides protection for treaty rights or other rights of any Indian tribe.

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