



COLUMBIA RIVER GORGE COMMISSION MINOR CHANGE TO A DIRECTOR'S DECISION

CASE FILE: C21-0002

MINOR CHANGE

APPLICANT: Washington Department of Transportation (WSDOT)

ORIGINAL

APPLICANT: Washington Department of Transportation (WSDOT)

LANDOWNER: Washington Department of Transportation (WSDOT)

ORIGINAL

PROPOSAL: The Columbia River Gorge Commission has received an application for slope stabilization on three tall rock and talus slopes and associated safety improvements along Washington State Route 14 (SR-14) near Chamberlain Lake Rest Area. The project includes rock scaling, bolting and tree removal on three near-vertical basalt slopes exceeding 90 ft in height along 3,750 linear feet, and the construction of 1,600 ft of rockfall ditch and 4 ft-tall concrete barriers on two slopes. A minor change to this Decision was issued on September 14, 2021, permitting the replacement of 100 feet of existing guardrail on the west end of the project and the installation of 175 feet of new guardrail on the east end of the project.

MINOR CHANGE

REQUEST : The same development as in the original approved Director's Decision, as modified by the minor change issued on September 14, 2021, with changes as follows:

1. The new guardrail on the east end of the project will be extended 15 feet, for a total of 190 feet.

LOCATION: The subject property is 34 acres and located along SR-14 between MP 73.16 and 73.92, 1.5 miles west of Lyle, Washington, in Section 32, Township 3 North, Range 12 East, W.M., Klickitat County, Washington. Tax Lot Number 03-12-3200-0006/00.

LAND USE

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

AUTHORITY TO APPROVE MINOR CHANGE:

This application was received and reviewed under Commission Rule 350-81. The proposed minor changes are therefore being reviewed pursuant to Commission Rule 350-81-046.

Commission Rule 350-81-046 states:

Any change to a development action approved by the Executive Director shall be processed as a new action, except that the Executive Director may approve minor changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-81 and the findings and conclusions for the original action. If the Executive Director approves a minor change, the Director shall notify all of the parties that would have standing to appeal the change, including the applicant, the Forest Service, the four Indian tribal governments, the county planning department, and anyone who submitted comments during the comment period on the original land use application. The change itself (not the original decision) would be subject to appeal under the same time frames applicable to the original decision.

DECISION:

Based upon the findings of fact in the Staff Report for Director’s Decision C21-0002, the request for a minor change by WSDOT is consistent with the purposes of the Columbia River Gorge National Scenic Area Act (Act) and the standards in Section 6 of the Act, 16 U.S.C. §§ 544(a), 544d(d), the Management Plan for the Columbia River Gorge National Scenic Area (Management Plan), and Commission Rule 350-81, and is hereby approved.

AMENDED 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).** (Note: Conditions with changes are shown with ~~strikeout text~~ indicating deletions to the original condition and underlined text indicating additions to the original condition.)

1. To ensure notice of the conditions to successors in interest, this Director’s Decision, Staff Report for C21-0002, 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, 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. All newly exposed rock faces shall be treated with Permeon rock stain until the rock face blends with the adjacent naturally occurring rock face. All bolt plugs shall be treated with Permeon rock stain until the plugs blend with the adjacent naturally occurring rock face.

6. The concrete barriers shall be treated with Permeon rock stain to blend them with the naturally occurring rock face. The impact attenuators at the ends of the concrete barriers and the metal guardrail at the east end of the development shall be treated with Natina steel stain to blend them with the naturally occurring rock face.
7. Any tree stumps remaining on site following development shall be cut as close to the ground as is practicable, not to exceed 18 inches tall.
8. Other than trees identified for removal and other vegetation that must be removed for site development purposes, all existing vegetation on site shall be retained to ensure visual subordination and compliance with Commission Rule 350-81-520(3)(c)(B)(iii).
9. All disturbed soils shall be reseeded with grasses and forbs from the Recommended Seed Mixes for East Side Environments, which is included as an attachment to this Director's Decision. Disturbed areas shall be revegetated immediately upon completing 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.
10. Direct impacts to individual plants of *Penstemon barrettiae* that are firmly rooted in place shall be avoided. If any individual plants of *Penstemon barrettiae* are identified on site, seeds shall be collected and donated to either the Berry Botanical Garden in Portland, Oregon, or the University of Washington's Miller Seed Vault in Seattle, Washington.
11. 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.
12. 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.

DATED AND SIGNED THIS 6 day of October 2021 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 5 day of October 2023 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 5 day of November 2021.

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.

c: 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
Sally Sauter

Attachments:

Amended Staff Report for C21-0002

COMMENTS FROM INDIVIDUALS/AGENCIES/GOVERNMENTS:

Notice of the original 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 (USFS NSA)
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:

Jasa Holt, Data Specialist for the Washington Natural Heritage Program
Amber Johnson, Wildlife Biologist for the Washington Department of Natural Resources
Steve McCoy, Attorney for Friends of the Columbia River Gorge
Sally Sauter, neighboring landowner

AMENDED FINDINGS OF FACT AND CONCLUSIONS AND ANALYSIS OF CONSISTENCY OF PROPOSED CHANGES: *(Note: Findings and Conclusions with changes are shown with strikethrough text indicating deletions to the original findings and underlined text indicating additions to the original findings. Original, unchanged Findings and Conclusions are not included.)*

A. LAND USE

1. The Washington State Department of Transportation (WSDOT) requests approval to conduct slope stabilization on three tall rock and talus slopes and associated safety improvements along Washington State Route 14 (SR-14) near the Chamberlain Lake Rest Area. The project includes rock scaling, bolting and tree removal on three near-vertical basalt slopes, the construction of a rockfall ditch and 48-inch-tall concrete barriers under two of those slopes, and the construction of ~~175~~190 linear feet of metal guardrail at the east end of the development. Additionally, the applicants propose to replace 100 linear feet of existing metal guardrail at the west end of the development.

The project will involve intensive, strategic rock-scaling, bolting, and targeted tree removal on near-vertical basalt slopes exceeding 90 feet in height along 3,750 linear feet of SR-14, focused on three distinct slopes on the parcel. These slopes are identified in the project application materials as slope 2125, 3337, and 3338, which are located at the western, central, and eastern project limits, respectively. The project also involves constructing 1,600 feet of Stage 3 rockfall ditch with a 48-inch-tall concrete barrier and two galvanized steel impact attenuators to provide adequate rockfall catchment at the base of the cliffs. The rockfall ditch and concrete barrier will be installed along identified slopes 2125 and 3338, each approximately 800 feet long; the central project limits do not include rockfall catchment or installation of a concrete barrier. The impact attenuators will be installed at the east end of the rockfall ditch under slope 2125, and on the west end of the rockfall ditch under slope 3338. ~~175~~190 linear feet of new metal guardrail will be installed at the east end of the project, connected to and extending out from the end of the concrete barrier. Additionally, the project involves the replacement of 100 feet of existing metal guardrail at the western end of the development, which will attach to the new concrete barrier. The proposed project does not include any new metal rockfall fencing, blasting, shotcrete, illumination, expanded areas of pavement, or stormwater facilities.

CONCLUSION:

The proposed development is a review use on lands designated GMA Small-Scale Agriculture, subject to Commission Rules 350-81-520 through 350-81-620 that protect scenic, cultural, natural, and recreation resources in the National Scenic Area. The replacement of 100 feet of existing galvanized metal guardrail at the west end of the project area is a use allowed outright in all land use designations except Open Space and Agriculture-Special, under Commission Rule 350-81-074(1)(a)(H)(i).

ANALYSIS OF CONSISTENCY OF PROPOSED CHANGE:

This finding is hereby amended to accurately describe the proposed changes. The amended findings continue to support the conclusion that the project will be consistent with Commission Rule 350-81-520.

B. SCENIC RESOURCES

5. Commission Rule 350-81-520(2)(b) requires all development to be visually subordinate to its setting as seen from key viewing areas. Commission Rule 350-81-020(170) defines *visually subordinate* as:

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.

The applicants provided a *Visual Quality Assessment Technical Memorandum* with their application materials, dated January 28, 2021, that detailed the work and proposed mitigation to achieve visual subordination. According to the application materials, the project can be broken down into three distinct pieces: scaling and bolting; vegetation removal; and construction of the rockfall ditch and installation of the concrete barrier.

Scaling and bolting will along all three identified slopes, all generally facing south-south-east. Scaling will be focused on slopes 2125 and 3337. The intent of the scaling is to remove known areas of loose, unstable rock. The intent of bolting is to stabilize larger blocks of fractured rock that cannot be removed by scaling, including blocks that occur above the primary scaling areas. Scaling and bolting will not alter the overall slope structural appearance, affect slope pitch, height, or aspect, or realign any structural elements of SR-14. The primary visual impacts to the rock face, as visible from KVAs, will be the temporary appearance of unweathered rock following scaling activities and the appearance of grout plugs where bolting occurs. The bolts themselves will be recessed completely into the rock and covered by the grout plugs. The applicants propose to apply the rock weathering agent Permeon to newly exposed rock faces and grout plugs to reduce visibility and reflectivity, and to blend with adjacent, natural rock faces. The Permeon treatment will help the newly exposed rock and the grout plugs blend with the existing weathered rock. Permeon can be made in multiple colors from a light tan to nearly black and can be mixed to blend with the site where it is applied.

Vegetation removal is intended to reduce the potential for future rockfall by preventing vegetation from establishing in existing fissures in the rock and expanding them. The larger clumps of established trees and understory vegetation in the project area between slopes 3337 and 3338 will be retained. Vegetation removal will be minimized to those trees and shrubs identified in the application by WSDOT's geotechnical engineers, and vegetation that is necessary to remove for site development or safety purposes. On April 14, 2021, in a phone call with staff, the applicant stated that WSDOT regulations require the removed trees to be flush cut to a height no greater than 18 inches. The applicant submitted a revised Visual Quality Assessment on May 11, 2021, stating that "[t]rees will be 'flush cut' with the ground with stumps not extending above 18-inches from the surface." A condition of approval will require that any tree stumps are cut as low to the ground as is practicable, not to exceed 18 inches tall, to prevent an undulating battlement effect on the top of the rock face. As conditioned, there is no expected visual impact from tree removal, as the visually dominant feature of this corridor is the rockface itself, not the limited vegetation growing on the rockface.

Other, smaller vegetation may be removed or impacted due to secondary development activities such as foot traffic or equipment staging, which would affect the visual condition of the site. A condition of approval has been applied requiring the applicant to reseed these areas with native vegetation immediately upon completion the project, with at least 80 percent vegetative coverage

within 1 year. With this condition applied, the staging and trafficked areas will be visually subordinate.

The rockfall ditch and concrete barrier will be constructed in two 800-foot segments below slope 2125 and 3338, leaving a gap at slope 3337 and for the area between slope 3337 and 3338. These areas are already maintained as rockfall areas, but are not developed and cannot safely contain rockfall from higher elevations. The rockfall ditch will be constructed below grade, and will only be visible from SR-14. The ditch will be approximately 20 feet wide below slope 2125 and approximately 15 feet wide below slope 3338, and will be 4 feet deep. The bottom of the ditch will be filled with gravel to absorb energy from falling rock, preventing falling rocks from bouncing out. As the ditch is below grade and largely behind the concrete barrier, the ditch itself will not be a visually dominant feature as seen from key viewing areas, including SR-14.

The 48-inch-tall concrete barrier and galvanized impact attenuators will be a permanent fixture to the landscape, visible from all key viewing areas listed in Finding B.5. The proposed height is more than the 36-inch standard for concrete barriers, but is necessary in some of the project area where the rockfall ditch cannot be made wide enough to ensure public safety. While the 36-inch barriers are visually preferable to the 48-inch barriers, and while the 36-inch barriers could be used safely in several sections of the catchment area, the undulating pattern between the two barrier heights would be more visually apparent than a single continuous line across the top of the barrier, which better emulates the horizontal line of the natural rock features. As the 48-inch barriers are necessary for public safety in some sections, all of the barriers will be 48-inches tall to achieve visual subordination. Additionally, two impact attenuators will be attached to the concrete barrier, one at the east end of the barrier below slope 2125, and one on the west end of the barrier below slope 3338. The physical design of the impact attenuators cannot be altered, in order to remain compliant with current highway design safety standards. The initial application materials stated that both the barriers and the impact attenuators will be treated with a dark brown Natina weathering agent to blend the structures with the background rock colors. Following a conversation with WSDOT staff on April 14, 2021 regarding the use of Natina on the concrete barriers, the applicant submitted a revised Visual Quality Assessment on May 11, 2021 stating that Permeon would be applied to the barriers, and Natina applied only to the impact attenuators. A condition of approval shall require the use of Permeon on the concrete barriers and Natina on the impact attenuators, ensuring that the barriers and impact attenuators will be visually subordinate to its setting as seen from key viewing areas.

The ~~175~~190 feet of new guardrail will be installed on the eastern end of the project area. The guardrail will be constructed with galvanized metal and wood, and will be located at the north edge of the pavement of SR 14. The location of the guardrail and the physical design of the guardrail cannot be altered in order to remain compliant with current highway design safety standards. A condition of approval shall require the use of Natina on the guardrail to blend the structures with the background rock colors, ensuring it will be visually subordinate to its setting as seen from key viewing areas.

The revised Visual Quality Assessment stated that the Permeon for the concrete barriers may be substituted with “an approved dark grey-brown concrete stain.” Use of a concrete stain for the barriers is not permitted until a color is specified and reviewed by the Gorge Commission. A condition of approval is included requiring that any changes to the approved development to be reviewed and approved by the Executive Director before any changes are implemented.

CONCLUSION:

With conditions of approval requiring reseeding areas that are disturbed by secondary development activities, requiring the use of Permeon and Natina weathering agents to reduce the visibility of the exposed rock, installed bolts, concrete barrier, impact attenuators, and new guardrail, and requiring the retention of existing screening vegetation on the parcel, the proposed development is consistent with the applicable policies of the Management Plan and guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area.

ANALYSIS OF CONSISTENCY OF PROPOSED CHANGE:

This finding is hereby amended to accurately describe the proposed changes. The amended findings continue to support the conclusion that the project will be consistent with Commission Rule 350-81-520.

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 new buildings are proposed. The application is for the modification of an existing road, including new concrete barriers, impact attenuators, and new guardrail along the north side of SR 14. The subject parcel contains the Chamberlain Lake Rest Area, at the east end of the parcel, south of SR 14. While development may temporarily impact public access to the Chamberlain Lake Rest Area during construction, the concrete barriers, impact attenuators, and new guardrail will be on the other side of SR 14 and will not affect existing viewpoints or recreational trails at the Chamberlain Lake Rest Area. As such, the proposed development will not detract from the use and enjoyment of that site, and 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.

ANALYSIS OF CONSISTENCY OF PROPOSED CHANGE:

This finding is hereby amended to accurately describe the proposed changes. The amended finding continues to support the conclusion that the project will be consistent with Commission Rule 350-81-086.

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