COLUMBIA RIVER GORGE COMMISSION
DIRECTOR'S DECISION

CASE FILE: C21-0010

PROPOSAL: The Columbia River Gorge Commission has received an application for a boundary line adjustment between three parcels to resolve a boundary dispute.

APPLICANTS: Jim Minick and John & Deanna Nickols

LANDOWNERS: Jim Minick (two lots) tax lot: 03-12-2855-0001/00, (2.41 acres)
tax lot: 03-12-2855-0002/00 (0.50 acres)
John & Deanna Nickols tax lot: 03-12-2800-0017/00 (8.03 acres)

LOCATION: The subject parcels are located adjacent to Old Highway 8, in the southern half of Section 28, Township 3 North, Range 12 East, Willamette Meridian, Klickitat County, Washington.

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

DECISION: Based upon the following findings of fact, the land use application for a boundary line adjustment by Jim Minick, and John & Deanna Nickols, 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 C21-0010, 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 lot line adjustment shall be conducted as shown on the approved surveyor's map. Any changes shall be reviewed and approved by the Executive Director before the changes are implemented.

5. If cultural resources are discovered, 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.

6. If human remains are discovered, 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 27th day of January 2022 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 27th day of January 2024 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 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 applicant shall specify the date construction commenced. The Executive Director may grant an extension upon determining that conditions, for which the applicant is not responsible, would prevent the applicant 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 February 2022.*

The decision of the Executive Director is final unless the applicants 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

Attachments:
Staff Report for C21-0010
Approved site plan
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**LANDOWNERS:**
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  - tax lot: 03-12-2855-0001/00, (2.41 acres)
  - tax lot: 03-12-2855-0002/00, (0.50 acres)
- John & Deanna Nickols
  - tax lot: 03-12-2800-0017/00, (8.03 acres)

**LOCATION:**
The subject parcels are located adjacent to Old Highway 8, in the southern half of Section 28, Township 3 North, Range 12 East, Willamette Meridian, Klickitat County, Washington.

**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 (USFS NSA)
- Washington Department of Archaeology and Historic Preservation (DAHP)
- 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 (WDFW)
- Friends of the Columbia Gorge
Written comments were received from:

Steve McCoy, Staff Attorney, Friends of the Columbia Gorge
Chris Donnermeyer, Heritage Resource Program manager, USFS NSA

FINDINGS OF FACT:

A. LAND USE

1. Jim Minick and John & Deanna Nickols have applied for a lot line adjustment to their parcels, located on Old Highway 8, west of Lyle. All three properties are designated GMA Residential with a 10-acre minimum parcel size.

The Nichols parcel is 8.03 acres. There are four previous Director's Decisions that apply to the property. Director's Decision C05-0001 approved a manufactured home. Director's Decision C07-0006-K-G-19 approved a lot line adjustment on the property that reduced the parcel size to 8.03 acres. Director's Decision C09-0006 approved an accessory building after-the-fact. Decision C18-0005 approved two accessory buildings, a driveway extension, and the removal of two accessory buildings.

The first Minick parcel 'lot 1' (03-12-2855-0001/00) is 2.41 acres. Development includes a single-family dwelling, garage and shed. Staff obtained a copy of the original building permit from Klickitat County. The three existing buildings were approved by the Klickitat County Planning Department on March 9, 1976, under permit B0759. The application for the permit was submitted before the date of the National Scenic Area Act, November 17, 1986.

The second Minick parcel 'lot 2' (03-12-2855-0002/00) is a half-acre. Development includes a mobile home and utility shed. The mobile home was approved by the Klickitat County Planning Department (M3259) on Nov 18, 1987, and by the US Forest Service (87-0370-K-G-C11) on January 8, 1988, subject to consistency with the Final Interim Guidelines.

2. Commission Rule 350-81-020(114)(b) defines "parcel" to include:

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
demed contiguous.

The Nickels' purchased their 9.09-acre parcel in 1993 through a real estate contract with
Samuel and Frances Virginia Cavender (vol. 297, pg. 833 -index#: 235315). Mr. and Mrs.
Cavender had previously purchased the property in 1972 through a quit claim deed from
Tony and Cherilyn Krossman (vol. 158, pg. 550 - index#: 142325). Director's Decision C07-
0006-K-G-19 approved a lot line adjustment on the property that reduced the parcel size
to 8.13 acres.

The two Minick parcels are Lots 1 and 2 of a three-lot subdivision created in 1975 (Short
Plat # G-14, Charles Carse, recorded October 8, 1975, Klickitat County Auditor's No.
154281). The three subject parcels are legal parcels, consistent with this definition.

3. Commission Rule 350-81-050 contains a list of developments that may be reviewed using
the expedited review process, as long as they comply with the resource protection
guidelines contained in 350-81-052. Commission Rule 350-81-050(1)(k) includes the
following use as eligible for expedited review:

Lot line adjustments in the General Management Area that would not result in
the potential to create additional parcels through subsequent land divisions,
subject to 350-81-126(1), except all lot line adjustments for parcels designated
Open Space, Public Recreation, or Commercial recreation shall be reviewed
through the full development review process.

The subject parcels are designated GMA Residential with a 10-acre minimum lot size. A
minimum of 20 acres is needed for a parcel to qualify for a land division. The proposed lot
line adjustment will change the Nichols parcel (03-12-2800-0017/00) from 8.03 acres to
7.79 acres. For the Minick parcels, the proposed lot line adjustment will change lot one
(03-12-2855-0001/00) from 2.41 acres to 2.58 acres and lot 2 (03-12-2855-0002/00)
from 0.50 acres to 0.57 acres. Each parcel is currently less than the minimum parcel size
before the lot line adjustment, and each parcel will be less than the minimum parcel size
after the lot line adjustment. Therefore, the proposed lot line adjustment is consistent
with this rule. Because the proposed lot line adjustment will not create a parcel that is 20
acres or greater in size, the proposal will not result in the potential to create additional
parcels through any future land division. Therefore, the proposal is eligible for expedited
review and this staff report reviews the proposal pursuant to Commission Rule 350-81-

4. Commission Rule 350-81-126(1) states the review standards for lot line adjustments in
the General Management Area, outside of Agriculture Special, Open Space, Commercial,
Public Recreation, or Commercial Recreation land use designations. The proposed lot line
adjustment takes place within the GMA outside of the listed land use designations and is
therefore subject to this rule. Commission Rule 350-81-126(1)(a)(A) states:

The lot line adjustment shall not result in the creation of any new parcel(s).
As explained in Finding A.3, the proposed lot line adjustment will not result in the creation of any new parcels.

5. Commission Rule 350-81-126(1)(a)(B) states:

   The lot line adjustment shall not result in the potential to create a new parcel(s) or residential development in excess of the maximum density allowed by the land use designation(s) for the affected parcels.

As explained in Finding A.3, the proposed lot line adjustment will not result in the creation of any new parcels. The three subject parcels are designated GMA Residential with a 10-acre minimum parcel size. The Residential land use designation allows one dwelling per parcel and the maximum density allowed by the land use designation is one dwelling per 10 acres. All three parcels are developed with dwellings and are smaller than the minimum parcel size. The current development of the parcels already exceeds the maximum density allowed by the land use designation of the parcels. As proposed, each parcel will contain one dwelling and will not be capable of residential development in excess of the maximum density allowed by the Residential land use designation. The proposed lot line adjustment is consistent with this rule.

6. Commission Rule 350-81-126(1)(a)(C) states:

   The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum parcel size before the lot line adjustment to become less than the minimum parcel size after the lot line adjustment, except to allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

As described above, the parcels have a 10-acre minimum parcel size. The proposed lot line adjustment will change the Nichols parcel (03-12-2800-0017/00) from 8.03 acres to 7.79 acres. For the Minick parcels, the proposed lot line adjustment will change lot 1 (03-12-2855-0001/00) from 2.41 acres to 2.58 acres and lot 2 (03-12-2855-0002/00) from 0.50 acres to 0.57 acres. Each parcel is currently less than the minimum parcel size before the lot line adjustment, and each parcel will be less than the minimum parcel size after the lot line adjustment. Therefore, the proposed lot line adjustment is consistent with this rule.

7. Commission Rule 350-81-126(1)(a)(D) states:

   The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to be reduced in size, except to accomplish one of the following purposes:

   (i) Resolve boundary disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided (1) the parcel to be enlarged would not become eligible for a subsequent
land division and (2) the amount of land transferred would be the minimum necessary to resolve the issue.

(ii) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

The Residential land use designation has a minimum parcel size of 10 acres. The proposed lot line adjustment will change the Nichols parcel (03-12-2800-0017/00) from 8.03 acres to 7.79 acres. The purpose of the lot line adjustment is to resolve a boundary dispute between the three parcels, as allowed in subsection (i). Evidence of the boundary line dispute exists in the form of a mediated boundary line agreement, signed by the landowners in 2018. The dispute is an adverse possession claim, in which Mr. Minick is claiming title to a portion of Mr. and Ms. Nichols' parcel. Mr. Minick claims he and his predecessor have occupied and utilized all the real property located directly east of the fence which forms the apparent boundary between the parcels. The amount of land transferred in this lot line adjustment application is approximately .24 acres. This is the land in dispute in the mediated boundary line agreement and thus is the minimum necessary to resolve the dispute.

8. Commission Rule 350-81-126(1)(a)(E) states:

The lot line adjustment shall not allow the boundary of a parcel designated Large-Scale Agriculture, Agriculture-Special, Commercial Forest Land, Large Woodland or Open Space to be extended into another land use designation for the purpose of establishing a dwelling under less stringent guidelines (e.g., extending a parcel designated GMA Large-Scale Agriculture into a parcel designated Rural Center or Residential).

The Minick parcels and the Nichols' parcel are all designated Residential. The lot line adjustment will not extend into another land use designation.

9. Commission Rule 350-81-126(1)(a)(F) states:

The lot line adjustment shall not allow previously approved parcels or developments to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

There are four previous Director Decisions for the Nichols' parcel. Decision Director’s Decision C05-0001 approved a manufactured home on the parcel, and no conditions are impacted by the proposed lot line adjustment. Director’s Decision C07-0006-K-G-19 approved a lot line adjustment, and conditions of approval are unaffected by the proposed lot line adjustment. Director’s Decision C09-0006 approved an accessory building after-the-fact, and includes conditions required by the decision for landscaping vegetation to
the south to the south of the accessory buildings but is outside of the area included in the proposed lot line adjustment. Decision C18-0005 approved two accessory buildings, a driveway extension, and the removal of two accessory buildings. Conditions of approval included in that decision are unaffected by the proposed lot line adjustment.

There are no previous Director's Decisions for the first Minick parcel, lot 1 (03-12-2855-0001/00). The parcels will not become out of compliance or further out of compliance with existing land use and resource protection guidelines as a result of the proposed lot line adjustment.

The mobile home on the second Minick parcel, lot 2 (03-12-2855-0002/00) was approved by the Forest Service (87-0370-K-G-C11) under the Final Interim Guidelines. There are no conditions of approval included in the decision affected by the proposed lot line adjustment.

10. Commission Rule 350-81-126(1)(a)(G) states:

*The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.*

This provision ensures that the resulting parcels from the proposed lot line adjustment could be buildable in compliance with land use and resource protection standards. All three parcels are already developed with a single-family dwelling and other associated improvements. The proposed lot line adjustment will reduce the size of the Nichols parcel to 7.79 acres from 8.03 acres. There is an existing dwelling and two accessory structures on the Nichols parcel. Other allowable development on the Nichols parcel could include an agricultural building. An agricultural building could potentially be located in several locations including to the east and south of the existing dwelling that would be outside of buffer zones and could comply with resource protection standards. The lot line adjustment would not affect the ability of the subject parcels to comply with land use or resource protection guidelines and is consistent with Commission Rule 350-81-126(1)(a)(G).

**CONCLUSION:**

The proposed lot line adjustment is an allowed expedited review use, subject to Commission Rule 350-81-052 which protects scenic, cultural, natural, and recreation resources and treaty rights for uses reviewed through the expedited review process.

**B. SCENIC RESOURCES**

1. Commission Rule 350-81-052(1)(a)(B) states:

*Except signs, the colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. This guideline shall not apply to additions, which may*
match the color of existing buildings.

No new structures or physical development are included in the applicants’ proposal.

2. Commission Rule 350-81-052(1)(a)(C) states:

   Except signs, structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents and chimneys.

   No new structures are included in the applicants’ proposal.

3. Commission Rule 350-81-052(1)(a)(D) states:

   Outdoor lights shall be directed downward and sited, hooded, and shielded such that they are not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

   No outdoor lights are proposed as part of the application.


   Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and/or designed to achieve the applicable scenic standard (e.g., visual subordinance, not visually evident).

   No new structures are included in the applicants’ proposal. Commission Rule 350-81-052(1)(a)(F) is not applicable.

CONCLUSION:

The proposed development is consistent with the expedited review guidelines for scenic resources in Commission Rule 350-81-052.

C. CULTURAL RESOURCES

1. Commission Rule 350-81-052(1)(b) includes cultural resource protection provisions for uses eligible for the expedited review process. Commission Rule 350-81-052(1)(b)(A) states:

   The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey, pursuant to 350-81-54(1)(c)(A) or historic survey, pursuant to 350-81-540(1)(c)(B).

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 October 21, 2021. Mr. Donnermeyer determined that the proposed development does not require a reconnaissance survey or historic survey.
pursuant to Commission Rules 350-81-540(1)(c)(A) and (B) because it would not disturb the ground and would involve a lot line adjustment or partition, would not alter the exterior architectural appearance of significant buildings and structures that are 50 years old or older, and 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.

2. Commission Rule 350-81-052(1)(b)(B) states:

   The GMA guidelines that protect cultural resources and human remains discovered during construction [350-81-540(6) and (7)] shall be applied as conditions of approval for all development approved under the expedited development review process.

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 cease; further disturbance is prohibited, and the Gorge Commission shall be notified within 24 hours of the discovery. A condition of approval is included in the director's decision consistent with this rule.

Commission Rule 350-81-540(7) contains provisions addressing discovery of human remains during construction. A condition of approval is included in the director's decision consistent with this rule.

CONCLUSION:

With conditions to protect unknown cultural resources or human remains discovered during construction, the proposed development is consistent with the cultural resource guidelines for expedited review in Commission Rule 350-81-052(1)(b).

D. NATURAL RESOURCES

1. Commission Rule 350-81-052(1)(d) contains the natural resource protection guidelines for expedited review uses. Proposed developments reviewed using the expedited review process must comply with the resource protection guidelines to be eligible for expedited review.


   The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

   This application is for a lot line adjustment. This guideline does not apply.

   The development meets one of the following:
   (I) The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range, and turkey habitat) and known sensitive plants; or
   (II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained; or
   (III) For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines (1) the sensitive wildlife area or site is not active or (2) the proposed development would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.
   For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.

This application is for a lot line adjustment and will not disturb the ground. The proposal will have no effect on natural resources and is eligible for expedited review, consistent with Commission Rule 350-81-052(1)(d)(B)(ii).


   Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or sensitive plants [350-81-580(1)(b) and (2); 350-81-590(1)(b) and (2)].

Because the development is eligible for the expedited review, a field survey is not required.

CONCLUSION:

The proposed lot line adjustment is consistent with the expedited review use guidelines in Commission Rule 350-81-052(1)(d) that protects natural resources in the National Scenic Area.

E. RECREATION RESOURCES

1. Commission Rule 350-81-052(1)(c)(A) requires new development approved under the expedited review process to not detract from the use and enjoyment of recreation sites on adjacent parcels.
The parcel is designated Recreation Class 2 according to the Gorge Commission's Recreation Intensity Class Map. There is no recreation on parcels that are nearby or adjacent to the subject property. The proposal is consistent with this rule.

CONCLUSION:

The proposed development is consistent with the recreation resource guidelines for expedited review in Commission Rule 350-81-086.

F. TREATY RIGHTS PROTECTION

1. Commission Rule 350-81-052(2) describes the treaty rights protection guidelines for expedited review uses.

2. Commission Rule 350-81-052(2)(a) states:

   Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.

   The proposed lot line adjustment will not affect or modify treaty or other rights of any Indian tribe, consistent with this rule.

3. Commission Rule 350-81-052(2)(b) states:

   The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

   No comments were received from any Indian tribe during the comment period.

4. Commission Rule 350-81-052(2)(c) states:

   Except as provided in 2.b above, the GMA and SMA treaty rights and consultation goals, policies and guidelines in Chapter 3, Section IV of the Management Plan shall not apply to proposed developments reviewed under the expedited review process.

   The GMA and SMA treaty rights and consultation goals, policies, and guidelines have not been applied to this application, in compliance with this guideline.

CONCLUSION:

The proposed development is consistent with the treaty rights protection guidelines for expedited review uses in Commission Rule 350-81-052(2).