

Director's Decision

Summary of Application

FILE NUMBER:	C22-0018
PROPOSAL:	The Columbia River Gorge Commission has received an application for new cattle fencing.
APPLICANTS:	Donald Cox
LANDOWNERS:	Donald Cox
SIZE and LOCATION:	The subject parcel is 132 acres in size and is described as Tax Lot Number 03-10-1400-0001/00 in the Northeast 1/4 of Section 14, Township 3 North, Range 10 East, Willamette Meridian, Klickitat County, Washington.
LAND USE DESIGNATION:	General Management Area (GMA) – Large-Scale Agriculture (160)

Decision

Based upon the findings of fact and conclusions of law in the staff report accompanying this decision and the conditions of approval in this decision document, the land use application by Donald Cox, for new cattle fencing is consistent with Commission Rules chapter 350, division 082, and thus consistent with the *Management Plan for the Columbia River Gorge National Scenic Area* and the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act, Pub. L. 99-663, 100 Stat. 4274 (1986), and is hereby **APPROVED**.

Conditions of Approval

The following conditions of approval are given to ensure that the subject request is consistent with Commission Rules chapter 350, division 082. Compliance with these conditions of approval is required. The Gorge Commission may take one or more enforcement actions at any time to ensure compliance with these conditions of approval.

1. In accordance with Commission Rule 350-082-0150(3), the applicant shall record the Executive Director's decision and conditions of approval and approved site plan and elevation drawings in county deeds and records (at the Klickitat County Auditor's Office) to ensure notice of the conditions to successors in interest. The record shall be associated with all tax lots and parcels that constitute the subject property. The applicant need not record the separate staff report document containing the relevant

findings and conclusions. Once recorded, the applicants shall submit a copy of the recorded documents to the Executive Director.

2. This decision does not exempt the proposal from other non-National Scenic Area rules and regulations. It is the applicant's responsibility to ensure the use complies with all other applicable federal, state, and county laws and to obtain necessary approvals, including utility easement approvals.
3. Inspections Required, contact the Gorge Commission office to schedule:
 - A. Post-completion inspection required.
 - B. Applicants may request interim inspections, and the Gorge Commission staff may, at its discretion, conduct interim inspections.
4. 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.
5. Fencing shall adhere to the following specifications:
 - 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 ten 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.
6. Fencing shall be non-reflective and black or dark earth tone in color. If metal posts are used, these shall be painted matte black or pre-weathered to achieve a non-reflective and dark appearance. Materials shall be approved by Commission staff prior to installation.

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

7. 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.

8. 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 THIS 10 day of January 2023 at White Salmon, Washington.

Krystyna U. Wolniakowski

Krystyna U. Wolniakowski
Executive Director

Expiration of Approval

Commission Rule 350-082-0160 governs the expiration of this Director's Decision.

Expiration of this Director's Decision is automatic. The Executive Director does not notify applicants or landowners of decisions that are expired or may be close to expiring.

This decision of the Executive Director becomes void on the 10 day of January 2025 unless construction has commenced in accordance with Commission Rule 350-082-0160(4).

Commission Rule 350-082-0160(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. Commission Rule 350-082-0160(5) specifies that completion of the structure means completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the National Scenic Area approval. 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 Gorge Commission or applicant demonstrates otherwise.

Once the applicant has commenced construction of one element in this decision, the applicant must complete all elements in this decision in accordance with Commission Rule 350-082-0160. The Gorge 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 350-082-0160(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 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 9 of February 2023.

The decision of the Executive Director is final unless the applicant or any other person who submitted comment files a Notice of Appeal with the Commission within thirty (30) days of the date of this decision. Commission Rule chapter 350, division 70 governs appeal of this decision. This rule is available on the Gorge Commission's website and at the Gorge Commission office. You may contact the Gorge Commission office if you have questions about appealing this decision.

Notes

1. 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.
2. 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.

In accordance with Commission Rule 350-082-0150(6), the Gorge Commission staff mailed notice of this decision to the following governments, agencies, and organizations and persons who provided comment on the application:

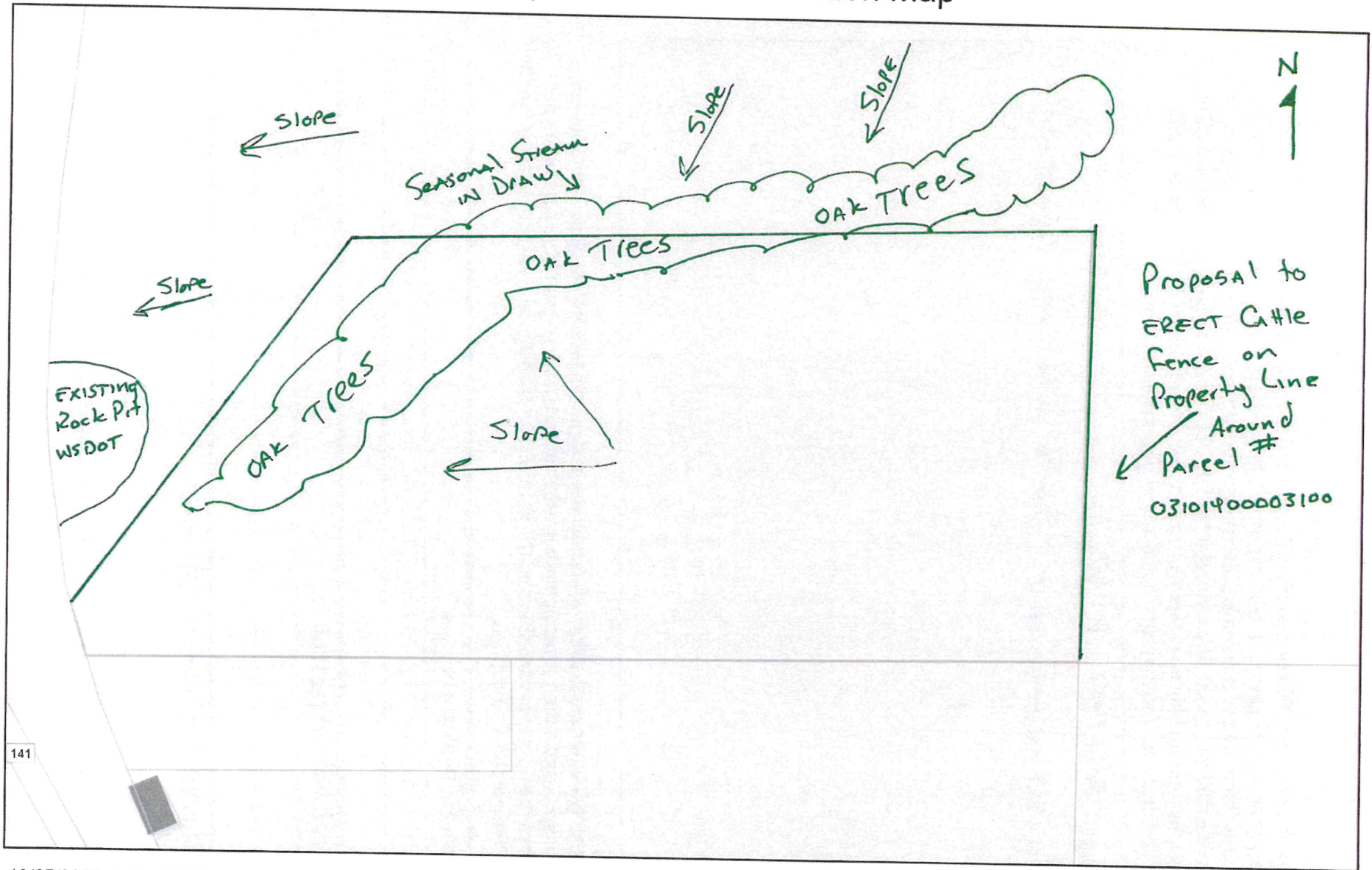
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs Reservation of Oregon
Nez Perce Tribe
U.S. Forest Service National Scenic Area Office
Washington Department of Archaeology and Historic Preservation
Klickitat 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 C22-0018
Approved site plans and elevation drawings

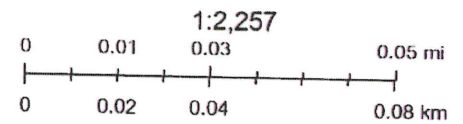
Development Review Location Map



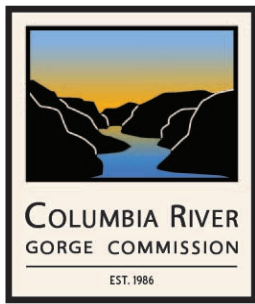
10/25/2022, 4:16:21 PM

-  Taxlots
-  NSA Exterior Boundary

APPROVED
KW



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Development Review Staff Report

Summary of Application

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LANDOWNERS:	Donald Cox
SIZE and LOCATION:	The subject parcel is 132 acres in size and is described as Tax Lot Number 03-10-1400-0001/00 in the Northeast 1/4 of Section 14, Township 3 North, Range 10 East, Willamette Meridian, Klickitat County, Washington.
LAND USE DESIGNATION:	General Management Area (GMA) – Large-Scale Agriculture (160)

Notice of Application Mailed to:

In accordance with Commission Rule 350-082-0110, the Gorge Commission staff mailed notice of this application to property owners within 200 feet of the subject parcel and sent email notice of this application to the following governments, agencies, and organizations:

Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs
Nez Perce Tribe
U.S. Forest Service National Scenic Area Office (USFS CRGNSA)
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 Received From:

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

Findings of Fact

A. Land Use

1. Donald Cox is seeking approval for new cattle fencing. The subject property is approximately 132 acres and is primarily designated GMA Large-Scale Agriculture. The applicant actively raises and manages livestock on the subject property and other adjoining properties totaling 493 total acres. A small portion of the property is within the White Salmon Urban Area Boundary. The purpose of the new cattle fencing is to exclude cattle from a private property within the White Salmon Urban Area Boundary that was previously used as rangeland and has been converted to residential land. In total there will be 1,600 linear feet of new cattle fencing on the subject parcel; 1,200 ft of the new fencing will be on lands designated GMA Large Scale Agriculture, and 400 ft will be within the Urban Area Boundary and exempt from National Scenic Area Rules.
2. Commission Rule 350-082-0240(2) allows uses listed in Commission Rule 350-082-0220 'Development and Uses Eligible for Expedited Review' on lands designated Large-Scale Agriculture in the GMA. Commission Rule 350-082-0220(1)(d) allows wire-strand fencing. It states:

Wire-strand fences other than those allowed outright, provided the fence complies with 350-082-0650(5) if it is inside deer and elk winter range as delineated in the Gorge Commission and Forest Service natural resource data or determined by an appropriate federal or state agency.

The applicant proposes wire-stranding for the new cattle fence. The subject property is located within deer and elk winter range. Consistency with Commission Rule 350-082-0650(5) is addressed in Finding D.4. The proposed fencing is eligible for expedited review, consistent with Commission Rule 0240(2)(A).

Land Use Conclusion:

The proposed development is an allowed expedited review use, subject to compliance with the guidelines in Commission Rule 350-082-0220 that protect scenic, cultural, natural and recreation resource treaty rights.

B. SCENIC RESOURCES

1. Commission Rule 350-082-0220(2)(a) includes scenic resource protection guidelines for uses eligible for the expedited review process. Commission Rule 350-082-0220(2)(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 approved by the reviewing agency shall be included as a condition of approval. This guideline shall not apply to additions to existing buildings smaller in total area in square feet than the existing building, which may be the same color as the existing building.

The development site is located on a south-facing hillside at an elevation varying between 620 and 860 ft. The fencing is topographically visible in the foreground (.25 to 1 mile) of one Key Viewing Area (KVA) to the west, SR 141, and is topographically visible in the middle ground (1 to 4 miles) from three KVAs to the south, the Columbia River, I-84, and Panorama Point Park. The fencing is not visible from any KVAs in the background. A condition of approval is included in the Director's Decision consistent with Commission Rule 350-082-0220(2)(a)(B) requiring all fencing to be non-reflective and black or dark earth tone in color, and that if metal posts are used, they are painted matte black or pre-weathered to achieve a non-reflective and dark appearance prior to installation.

2. Commission Rule 350-082-0220(2)(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.

A condition of approval is included in the Director's Decision requiring a flat, low-reflective finish consistent with Commission Rule 350-082-0220(2)(a)(C).

3. Commission Rule 350-082-0220(2)(a)(D) states:

Any exterior lighting shall be sited, limited in intensity, hooded, and shielded in a manner that prevents lights from being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

No exterior lighting fixtures are proposed.

4. Commission Rule 350-082-0220(2)(a)(E) states signs shall comply with 350-082-0520.

No new signs are proposed.

5. Commission Rule 350-082-0220(2)(a)(F) states:

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

The entire proposal is located within one-half mile of SR-141 and there are no opportunities to site the development further away from the KVA because of the configuration of the property boundaries. However, the fence has been designed to be visually subordinate. The fence will be dark-earth tones colors and will have a small visual profile because the fence is also complaint with the deer and elk winter range

guidelines, addressed in Finding D.4. As designed, the fencing will blend with the surrounding landscape of grassland and Oregon white oak. The fence is consistent with this rule.

Scenic Resources Conclusion:

The proposed development is consistent with the expedited review guidelines for scenic resources in Commission Rule 350-81-0220.

C. CULTURAL RESOURCES

1. Commission Rule 350-082-0220(2)(b) includes cultural resource protection provisions for uses eligible for the expedited review process. Commission Rule 350-082-0220(2)(b)(A) states:

The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey or historic survey as determined by 350-082-0620(2)(a)(A).

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 December 1, 2022. 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 the proposed use would involve a minor ground disturbance, does not occur within 500 feet of a known archaeological site, 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 350-082-0220(2)(b)(B) states:

The GMA guidelines that protect cultural resources and human remains discovered during construction (350-082-0620(6) and (7)) shall be applied as conditions of approval for all development approved under the expedited development review process, including development in the SMAs.

Commission Rule 350-082-0620(6) protects cultural resources discovered during construction, and Commission Rule 350-082-0620(7) contains provisions addressing discovery of human remains during construction. Conditions of approval are included in the director's decision consistent with these rules.

Cultural Resources Conclusion

With conditions protecting unknown cultural resources and human remains discovered during construction, the proposed development is consistent with the expedited review guidelines for cultural resources in Commission Rule 350-82-0220.

D. NATURAL RESOURCES

1. Commission Rule 350-082-0220(2)(d) includes natural resource protection provisions for uses eligible for the expedited review process. Proposed developments reviewed using the expedited review process must comply with the resource protection guidelines to be eligible for expedited review.
2. Commission Rule 350-082-0220(2)(d)(A) contains guidelines for the protection of water resources. It states:

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.

The Gorge Commission's natural resource inventories identify one stream in the vicinity of the project. The stream was identified as modeled by GIS because of the topography. Staff did not observe a stream during site visits and identified a draw where the stream might be. An area where water collects was visible, but only as a slight dip in the topography on site without a defined stream channel. Staff concludes no stream is in the vicinity of the development. The proposal is consistent with Commission Rule 350-81-570 that protects water resources. Given this information, the proposed development is consistent with 350-082-0220(2)(d)(A).

3. Commission Rule 350-082-0220(2)(d)(B) contains guidelines for consistency with the expedited review process for the protection of sensitive wildlife and sensitive plants. It states:

Sensitive Wildlife and Rare Plants

The development meets one of the following:

(I) The development is at least 1,000 feet from known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range) and known rare plants.

(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.

(III) For sensitive wildlife, the development is within 1,000 feet of known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range), but an appropriate federal or state wildlife agency determines the Priority Habitat or sensitive wildlife site is not active, the proposed development would not compromise the integrity of the Priority Habitat or wildlife area, or the proposed development would not occur during the time of the year when wildlife species are sensitive to disturbance.

(IV) For rare plants, the development is within 1,000 feet of known rare plants, but the Oregon Biodiversity Information Center 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 rare plants.

Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or rare plants in 350-082-0650(1)(d) and (2) and 350-082-0660(1)(d) and (2).

The proposed development is located in deer and elk winter range, but there are no other known sensitive plants or wildlife areas or sites on the subject property or within 1,000 feet. The proposal addition is consistent with the natural resource protection measures in Commission Rule 350-082-0220(2)(d)(B).

4. Commission Rule 350-0820-0650(5) contains guidelines for new fencing in deer and elk winter range. It states:

New fences in deer and elk winter range

(a) New fences in deer and elk winter range may 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 the Forest Service document, Specifications for Structural Range Improvements (Sanderson, et al. 1990), as summarized below and as may be revised from time to time, unless the applicant demonstrates the need for an alternative design. To allow deer and other wildlife safe passage:

(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 ten 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.

As discussed above, the proposed development is located in deer and elk winter range. The fence is necessary to contain Mr. Cox's cattle operation. A condition of approval is included requiring all fencing to meet these standards.

Natural Resources Conclusion:

The proposed development is consistent with the expedited review use guidelines in Commission Rule 350-082-0220(1)(d) that protects natural resources in the National Scenic Area.

E. RECREATION RESOURCES

1. Commission Rule 350-082-0220(2)(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.

No established recreation sites exist on adjacent properties.

Recreation Resources Conclusion:

The proposed development is consistent with Commission Rule 350-082-0220(1)(c)(A) that protects recreation resources in the National Scenic Area.

F. TREATY RIGHTS PROTECTION

1. Commission Rule 350-082-0220(2)(e) describes the treaty rights protection guidelines for expedited review uses.
2. Commission Rule 350-082-0220(2)(e)(A) states:

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

The proposal will not affect or modify treaty or other rights of any Indian tribe, consistent with this rule.

3. Commission Rule 350-082-0220 (2)(e)(B) states:

The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if a tribal government 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 substantive comments were received.

Treaty Rights Conclusion:

The proposed development is consistent with the treaty rights protection guidelines for expedited review uses in Commission Rule 350-082-0220(2)(e).

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