

NOTICE OF NSA DECISION

Case File: T2-2021-14827 **Permit:** Post-Emergency/Disaster Response Site Review

Applicant: Union Pacific Railroad Company (UPRR) **Owner:** Union Pacific Railroad (UPRR)
Oregon Department of Transportation (ODOT)

Location: Within the right of way of Union Pacific Railroad Company and the East Historic Columbia River Highway

- and -

Property #1: No Situs Address Map, Tax Lot: 1N5E -00500
Alternate Account #: R945130030 Property ID #: R322873

- and -

Property #2: No Situs Address Map, Tax Lot: 1N5E12C -00200
Alternate Account #: R945120060 Property ID #: R503995

Zoning: Gorge Special Open Space (GSO) **Overlays:** Geologic Hazards (GH)

Key Viewing Areas: Beacon Rock, Cape Horn, Columbia River, Crown Point, Historic Columbia River Highway, Highway I-84 (including rest stops), Pacific Crest Trail, Portland Women's Forum State Park, Washington State Route 14

Landscape Setting: River Bottomlands and Coniferous Woodlands

Recreation Intensity: Recreation Class 2

Proposal Summary: Applicant requests a Post-Emergency/Disaster Response Site Review for response activities to construct a temporary debris wall and removal of landslide debris that occurred on January 2021.

Decision: **Approved with Conditions**

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is **Wednesday, August 24, 2022, at 4:00 pm.**

Issued By:

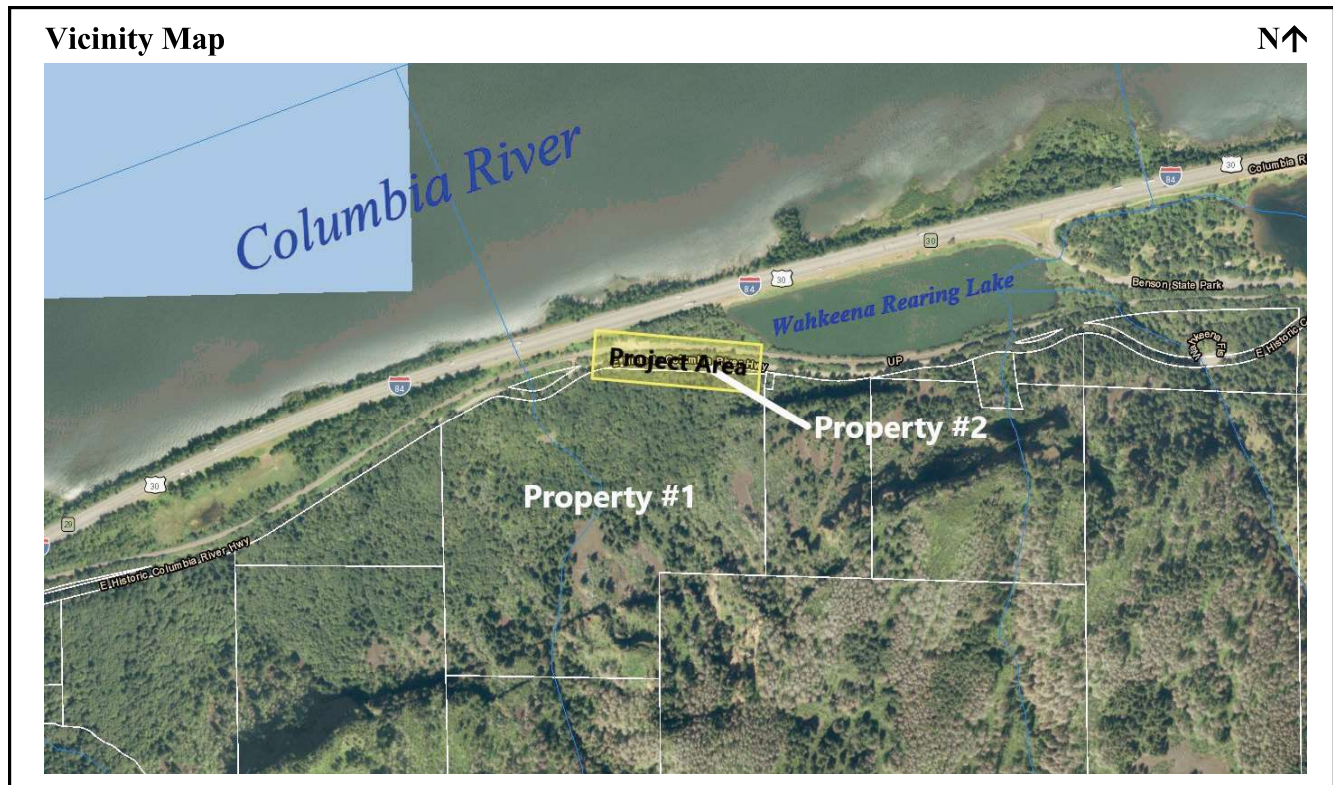
Rithy Khut, Planner

For: Carol Johnson, AICP
Planning Director

Date: Wednesday, August 10, 2022

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application are available for review by contacting Rithy Khut, Staff Planner at 503-988-0176 or rithy.khut@multco.us. Copies of all documents are available at the rate of \$0.40/per page.

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Columbia River Gorge Commission until all local appeals are exhausted.



Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet the applicable approval criteria below:

Multnomah County Code (MCC): General Provisions: MCC 38.0015 Definitions, MCC 38.0030 Existing Uses and Discontinued Uses, MCC 38.0560 Code Compliance and Applications

Gorge Special Open Space (GSO): MCC 38.2625(D)(5) Review Uses - Placement of Structures necessary for continued public safety...

National Scenic Area (NSA) Site Review Approval Criteria: MCC 38.7090 Responses to an Emergency/Disaster Event

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link

Chapter 38: Columbia River Gorge National Scenic Area

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in brackets.

1. No ground disturbing activities or additional work shall be completed without first obtaining a NSA Site Review approval. All emergency work listed in the Post Emergency/Disaster Response application has been completed. [MCC 38.2615]
2. Within ninety (90) days of the date of the final decision, the property owner(s), or their representative(s) shall:
 - a. Acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be sent to Rithy Khut at rithy.khut@multco.us. [MCC 38.0660(A) & (B)]

Note: Once this decision is final, the applicant shall complete the following steps:

1. Read your land use decision and the conditions of approval. Be ready to demonstrate compliance with the conditions.
2. Contact Rithy Khut, Planner, at 503-988-0176 or rithy.khut@multco.us, **for an appointment** for review of the conditions of approval. Please ensure that any items required under, “Within ninety (90) days of the date of the final decision...” are ready for land use planning review.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.
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Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 Project Description:

Staff: The applicant requests a National Scenic Area (NSA) Post-Emergency/Disaster Response Site Review for response activities to construct a temporary debris wall and removal of landslide debris that occurred on January 2021. The Site Review will authorize development activities that were not previously reviewed by the County that relate to previous ground disturbing activities involving the placement of structures, conex containers, to protect Union Pacific Railroad. The structures and landslide debris have subsequently been removed after the emergency/disaster event.

2.0 Property Description & History:

Staff: This application is located within the right of way of East Historic Columbia River Highway and Union Pacific Railroad in addition to the following properties:

1. Property #1: 1N5E -00500 (Alternate Account #: R945130030 / Property ID #: R322873)
2. Property #2: 1N5E12C -00200 (Alternate Account #: R945120060 / Property ID #: R503995)

The right of way of Union Pacific Railroad is owned by the Union Pacific Railroad Company and the right of way of the East Historic Columbia River Highway, Property #1, and #2 are owned by the Oregon Department of Transportation (ODOT). The project area is located within the Gorge Special Open Space (GSO) zoning districts in the Columbia River Gorge National Scenic Area (CRGNSA). Property #1 has a Geologic Hazards (GH) overlay, which covers most of the property.

There have been no previous land use cases or building permits associated with the subject properties.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 38.0530 and MCC 38.7090 as exhibited in Exhibit C.4 and Exhibit C.8. Staff did receive public comment during the comment periods.

3.1 Cultural Resources Survey Determination Letter from Chris Donnermeyer, Heritage Resources Program Manager, Columbia River Gorge National Scenic Area

Staff: Chris Donnermeyer submitted a Cultural Resource Survey Determination on January 10, 2022 stating that “A Cultural Resource Reconnaissance Survey is: Required” and “A Historic Survey is: Not required” (Exhibit D.1).

3.2 Letter of Concurrence of Archaeological Resources Survey and Section 106 Level of Effect from Chris Donnermeyer, Heritage Resources Program Manager, Columbia River Gorge National Scenic Area

Staff: Chris Donnermeyer submitted a letter stating that they “have reviewed the cultural resources survey letter...and Section 106 Level of Effect Form.” They conclude that for cultural resources, “Sites 1 and 2 are recommended ‘not eligible’ for the National Register of Historic Places (NRHP). I concur with this recommendation.” For Section 106, they concur with the, “recommendation for the undertaking of ‘No adverse effect.’” Lastly, they recommend procedures for unanticipated discoveries during the project implementation, which will be incorporated into this Decision. (Exhibit D.2)

3.3 Steven D. McCoy, Staff Attorney, Friends of the Columbia Gorge provided a letter digitally by e-mail (Exhibit D.3)

Staff: Steven D. McCoy submitted an e-mail and letter on April 29, 2022 on behalf of the Friends of the Columbia Gorge. The letter contained comments intended to identify application requirements, procedural requirements, resource protection standards, and provide recommendations to the County and the public regarding legal requirement.

4.0 Administrative Procedures Criteria:

4.1 § 38.0560 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff:

A finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial

evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 38.0560.

For purposes of the current application, staff is not aware of any open compliance cases on the subject properties, and there is no evidence in the record of any specific instances of noncompliance on the subject properties. Further, the current application is necessary to protect public safety as the applicant, the Union Pacific Railroad Company, is seeking a Post-Emergency/Disaster Response Site Review. The application is to review response activities that have already been completed, which include the placement of structures that have been removed that were erected to block and hinder debris flows from reaching the East Historic Columbia River Highway, Interstate I-84, and Union Pacific Railroad. *This criterion is met.*

5.0 Open Space (GSO) Criteria:

5.1 § 38.2625 REVIEW USES

(A) The following uses may be allowed on lands designated GGO, pursuant to MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(4) Placement of Structures necessary for continued public safety, or the protection of essential public services or protection of private or public existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals for such structures shall be submitted within 12 months following an emergency/disaster event. Applicants are responsible for all other applicable local, state and federal permitting requirements.

Staff: The applicant requests a National Scenic Area (NSA) Post-Emergency/Disaster Response Site Review for response activities to construct a temporary debris wall and removal of landslide debris that occurred on January 2021. The temporary debris wall was a structure that was placed for the protection of essential public services and protection of public existing structures including the East Historic Columbia River Highway, Interstate I-84, and Union Pacific Railroad. The structures have subsequently been removed after the emergency/disaster event.

6.0 National Scenic Area (NSA) Site Review Criteria:

6.1 § 38.7090 RESPONSES TO AN EMERGENCY/DISASTER EVENT

Responses to an emergency/disaster event are allowed in all zoning districts within the Columbia River Gorge National Scenic Area when in compliance with the following standards:

Staff: The applicant requests a National Scenic Area (NSA) Post-Emergency/Disaster Response Site Review for response activities to construct a temporary debris wall and removal

of landslide debris that occurred on January 2021. As discussed in Section 5.0, the temporary debris wall was a structure that was placed for the protection of essential public services and protection of public existing structures including the East Historic Columbia River Highway, Interstate I-84, and Union Pacific Railroad. The structures have subsequently been removed after the emergency/disaster event. The following standards are discussed below.

6.1.1 (A) General standards for all response activities.

(1) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

Staff: The applicant utilized Management Practices (BMPs) in their initial response activities. As the emergency/disaster event was a debris flow, the initial response included the placement of the temporary structure as a debris wall to contain the sediment and provide erosion control (Exhibit A.3 and A.4). *This criterion is met.*

(2) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life, property, public services or the environment, an extension of no more than two years may be granted by the Planning Director, or the U.S. Forest Service for federal agency actions.

Staff: The applicant installed and erected a structure for temporary use during the emergency event. The structure, a debris wall was constructed of roll off containers (Exhibit A.3 and A.4). The debris wall was erected shortly after the emergency/disaster event on February 5, 2021 and removed on April 23, 2021, which is less than the one-year timeline described above. *This criterion is met.*

(3) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

Staff: The emergency/disaster response activity did not contain any new exploration, development (extraction or excavation), or production of mineral resources. The response activity was designed to protect UPRR assets. *This criterion is met.*

(4) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake, or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

Staff: The applicant indicated that no spoils resulting from grading or exaction activities were deposited into a wetland, stream, pond, lake, or riparian area. The initial response included the placement of hydroseed and gravel in all areas disturbed by the emergency/disaster response. Subsequent actions to construct a retaining wall resulted in some spoil materials that were

contoured into the slope with the remainder removed and disposed of by the contractor hired by the applicant (Exhibit A.2) The retaining wall was then removed from the project area. *This criterion is met.*

6.1.2 (B) Notification Requirements

(1) Actions taken in response to an emergency/disaster event, as defined in MCC 38.0015, are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

(a) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.

(b) Notification shall be submitted by mail, fax, telephone, email or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.

(c) Notification shall be furnished to the Planning Director, or the U.S. Forest Service for federal agency actions.

(d) At a minimum, the following information shall be required at the time of notification:

1. Nature of emergency/disaster event.

2. Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).

3. Location of emergency/disaster response activities.

4. Estimated start and duration of emergency/disaster response activities.

5. Contact person and phone number for the parties conducting emergency/disaster response actions.

(e) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

Staff: On February 5, 2021, the applicant notified the Land Use Planning Division that a debris flow had occurred along the East Historic Columbia River Highway and UPRR. The owner, UPRR notified the County by e-mail that emergency/disaster response activities would occur at a landside site (Exhibit A.7). The notification email and attached pdf contained all of the information required above. *These criteria are met.*

(2) Upon notification of an emergency/disaster response action, the Planning Director or the Forest Service shall, as soon as possible:

(a) Review their natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites, and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;

(b) Notify the Oregon Department of Fish and Wildlife of all noticed emergency/disaster response actions, to provide that agency an opportunity to consult with responding agencies during the event, and;

(c) Notify the U.S. Forest Service (except when the U.S. Forest Service is the notifying agency), State Historic Preservation Office (SHPO), and the Tribal governments of all emergency/disaster response activities. The U.S. Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

Staff: Upon receipt of the notification in 2021, Planning Staff reviewed the natural resource inventory data and notified all applicable agencies. The notification was sent by e-mail on February 1, 2021 (Exhibit A.7 and C.1). *These criteria are met.*

(3) Upon notification of a response action, the U.S. Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide onsite advice to minimize impacts to resources from emergency/disaster response actions.

Staff: Land Use Planning Staff is unsure if the U.S. Forest Service provided the services of a resource advisor.

6.1.3 (C) Post-Emergency/Disaster Response Site Review Application Requirements

(1) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Planning Director, or U.S. Forest Service for federal agency actions. In the case of an event with multiple responding parties, the agency providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and no more than two (2) extensions shall be granted.

Staff: The response activities were conducted on February 5, 2021. On April 5, 2021, the application was submitted after a 30-day extension was requested. However due to a delay in internal processing, the application was paid and deemed submitted on July 20, 2021 (Exhibit C.2). *This criterion is met.*

(2) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. The terms “development activities” and “development” include the disposal of any soil materials associated with an emergency/disaster response action. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an application for those actions.

Staff: The applicant has submitted a narrative and plans detailing the development activities conducted during the emergency/disaster response (Exhibit A.2, A.3, and A.4). The development activities that were completed included removal of debris flow materials and the placement of a temporary debris wall. Both response actions were temporary in nature, as the

debris flow spoils were removed from the project area and the debris wall was deconstructed after the emergency/disaster event concluded. *This criterion is met.*

(3) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).

Staff: The emergency/disaster response required both structural development and ground disturbance with mechanized equipment. Therefore, the response is not exempt from the requirements of MCC 38.7090.

(4) Applications shall include the following information:

(a) Applicant's name and address.

(b) Location of emergency/disaster response.

(c) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.

(d) A map of the project area drawn to scale, at a scale of 1"=200' or a scale providing greater detail. The map shall include:

1. North arrow and scale.

2. Boundaries, dimensions and size of subject parcel(s).

3. Topography at a contour interval sufficient to describe the terrain of the project site.

4. Bodies of water, watercourses, and significant landforms.

5. Existing roads and structures.

6. New structures placed and any vegetation removal, excavation or grading resulting from the response actions.

(e) An exception to the scale requirements of subsection (4)(d) may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1"=200' or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

Staff: The applicant has submitted a narrative and plans detailing the development activities conducted during the emergency/disaster response as required above (Exhibit A.3 through A.5). *This criterion is met.*

6.1.4 (D) Post-Emergency/Disaster Response Site Review

All applications for post-emergency/disaster response Site Review shall be processed pursuant to the procedural provisions of MCC 38.0530 (B) and evaluated for compliance with the standards of MCC 38.7090 (E).

Staff: The application for post-emergency/disaster response is being processed as a Type II decision and is evaluated for compliance with the standards of MCC 38.7090(E), which is discussed below.

6.1.5 (E) Post-Emergency/Disaster Response Site Review Approval Criteria

Actions taken in all land use designations that are in response to an emergency/disaster event shall be reviewed for compliance with the following standards:

(1) Scenic Resources

(a) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. In the GMA, such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in the Corbett Rural Center zoning district. In the SMA, such actions shall meet the scenic standard to the greatest extent practicable.

Staff: The development activities conducted during the emergency/disaster response were completed and removed at the conclusion of the emergency/disaster response. The response actions, debris flow spoils removal and the construction and then deconstructed of a debris wall, all impacts were temporary in nature (Exhibit A.2, A.3, and A.4). As the impacts were temporary, the scenic resources have not been adversely impacted. *This criterion is met.*

(b) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

Staff: The development activities conducted during the emergency/disaster response were located within the right of way of Union Pacific Railroad and along the East Historic Columbia River Highway. The response activities, debris flow spoils removal and the construction and then deconstructed of a debris wall were located in areas that were paved asphalt surfaces, therefore no road cuts, structural development, landform alteration or areas of denuded of vegetation were created as a result of the response actions (Exhibit A.2, A.3, and A.4). *This criterion is met.*

(c) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one year requirement may be granted upon demonstration of just cause, with an extension of up to one year.

Staff: As previously discussed above, no areas were denuded of vegetation as a result of the response actions; therefore, revegetation does not need to occur. *This criterion is not applicable.*

(d) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are nonreflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.

Staff: The structural development activities conducted during the emergency/disaster response included the construction and then deconstructed of a debris wall (Exhibit A.2, A.3, and A.4). As the debris wall has been removed, the requirement above is not required to be met. *This criterion is not applicable.*

(e) Additions to existing structures, resulting from a emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable.

Staff: No additions to existing structures occurred as part of the response action; therefore, this criterion is not applicable. *This criterion is not applicable.*

(f) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action, shall comply with the following standards:

* * *

Staff: The response action did not occur in the General Management Area; therefore, these criteria are not applicable. *These criteria are not applicable.*

(g) In the Special Management Area, spoil materials associated with grading, excavation, and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

- 1. The spoil materials shall either be:**
 - a. Removed from the NSA, or**
 - b. Deposited at a site within the NSA where such deposition is, or can be, allowed within two years of the emergency.**
- 2. After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.**
- 3. All grading (i.e. contouring) shall be completed within 30 days after the spoils materials are removed.**
- 4. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.**
- 5. All revegetation shall take place within one (1) year of the date an applicant completes the grading.**
- 6. MCC 38.7090 (E) (1) (g) shall take effect on August 3, 2006, or approval of a disposal site, whichever comes first.**

Staff: The development activities conducted during the emergency/disaster response were located in the Special Management Area. A part of the response action was the removal of debris flow spoils (Exhibit A.2, A.3, and A.4). The debris flow spoils that were removed were taken to Coopey Quarry, which is a permitted site within the NSA for the depositing of spoils. As the removal of spoils was located in the railroad and highway right of way area, the areas were returned back to their previous condition and no grading was required. *These criteria are met.*

(2) Cultural Resources and Treaty Rights

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect Tribal treaty rights.

(b) The U.S. Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Planning Director.

1. Reconnaissance surveys shall be conducted by the U.S. Forest Service and comply with the standards of MCC 38.7045 (D) (1) and (D)(2)(c).

2. Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.

(c) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the Planning Director shall notify the Tribal governments when:

1. A reconnaissance survey is required, or

2. Cultural resources exist in the project area.

All such notices shall include a copy of the site plan required by MCC 38.7090 (C) (4) (d).

Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them. The Planning Director shall send a copy of all comments to the Gorge Commission.

(d) When written comments are submitted in compliance with (C) (2) above, the project applicant shall offer to meet within five calendar days with the interested persons. The five day consultation period may be extended upon agreement between the project applicant and the interested persons. A report shall be prepared by the Planning Director following the consultation meeting. Consultation meetings and reports shall comply with the standards of MCC 38.7045 (C) (1) and (2) and 38.0110 (A)(1) and (2).

(e) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources. The survey and evaluation shall be documented in a report that follows the standards of MCC 38.7045 (D) (2)(c) and, (F).

(f) A mitigation plan shall be prepared by the project applicant if the affected cultural resources are significant. The mitigation plan shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J).

(g) The Planning Director shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the Tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and Tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written

comments to the Planning Director. The Director shall record and address all written comments in the Site Review decision.

(h) The Planning Director shall make a final decision on whether the emergency/disaster response actions are consistent with the applicable cultural resource goals, policies, and guidelines. If the final decision contradicts the comments submitted by the SHPO, or those submitted by a Tribal government regarding treaty rights, the Director shall justify how an opposing conclusion was reached.

(i) The cultural resource protection process may conclude when it has been determined that Tribal treaty rights have not been affected and one of the following conditions exists:

1. The emergency/disaster response does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.
2. The emergency/disaster response action avoided cultural resources that exist in the project area.
3. Adequate mitigation measures to affected cultural resources have been developed and will be implemented.
4. A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:
 - a. The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the National Register Criteria for Evaluation (36 CFR 60.4), or
 - b. The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation [U.S. Department of the Interior 1990] and The Secretary of the Interior's Standards for Historic Preservation Projects [U.S. Department of the Interior 1983].

Staff: The US Forest Service conducted a Cultural Resources Survey to determine if a Cultural Resource Reconnaissance Survey or a Historic Survey is required. The determination found that a Cultural Resource Reconnaissance Survey was required and a Historic Survey was not required (Exhibit D.1).

Additional notice was sent to the Tribal Governments including a copy of the required documents. No substantive comment was received during 15-day comment period.

Subsequently, after the initial Cultural Resources Survey Determination, the US Forest Service reviewed the report entitled, "HCRH: Milepost 166 Debris Flow Mitigation Archaeological Resources Survey, Multnomah County," prepared by Jamie L. Kennedy and Christopher L. Ruiz, the Section 106 Level of Effect Form prepared by Robert Hadlow and Finding of Effect

(FOE) prepared by ODOT (Exhibit D.1 and D.2). After the review, the US Forest Service concurred with the recommendations and with the “no adverse effect” finding (Exhibit D.2). Upon completion of this review, additional notification was sent on April ,15, 2022 (Exhibit C.8). After the completion of the additional review timeline, no substantiated comment was received during the 14-day comment period. *This criterion is met.*

(3) Natural Resources

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.

(b) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in MCC .7060(F).

1. Wetlands, Streams, Ponds, Lakes, Riparian Areas

* * *

Staff: The development activities conducted during the emergency/disaster response were not located within a buffer zone of a wetland, stream, pond, lake, or riparian areas. The response action occurred entirely within the right of way of the railroad and right of way of the highway. Both right of ways were developed with either gravel or paved asphalt; therefore, these criteria are not applicable. *These criteria not applicable met.*

2. Wildlife Habitat

* * *

Staff: The development activities conducted during the emergency/disaster response were not located within 1,000 feet of sensitive wildlife habitat or area. The response action occurred entirely within the right of way of the railroad and right of way of the highway. Both right of ways were developed with either gravel or paved asphalt; therefore, these criteria are not applicable. *These criteria not applicable met.*

3. Deer and Elk Winter Range

* * *

Staff: The development activities conducted during the emergency/disaster response were not located within a deer and elk winter range. The response action occurred entirely within the right of way of the railroad and right of way of the highway. Both right of ways were developed with either gravel or paved asphalt; therefore, these criteria are not applicable. *These criteria not applicable met.*

4. Rare Plants

* * *

Staff: The development activities conducted during the emergency/disaster response were not located within 1,000 feet of sensitive plants. The response action occurred entirely within the right of way of the railroad and right of way of the highway. Both right of ways were developed with either gravel or paved asphalt; therefore, these criteria are not applicable. *These criteria not applicable met.*

(4) Recreational Resources

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.

(b) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

Staff: The development activities conducted during the emergency/disaster response were to return the Union Pacific railroad line back to its original condition prior to the debris flow. Although there are no Recreational Resources at the site of the emergency/disaster response, the removal of debris flow spoils and construction/deconstruction of a debris wall ensures that recreation resources within the area are once again accessible to the public (Exhibit A.2, A.3, and A.4). The removal of debris flow spoils and removal of the debris wall mitigate any adverse effects as the spoils and debris walls have been removed from the site. *These criteria are met.*

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Post-Emergency/Disaster Response Site Review in the Gorge Special Open Space (GSO) zone to authorize the development that has occurred. This approval is subject to the conditions of approval established in this report.

8.0 Exhibits

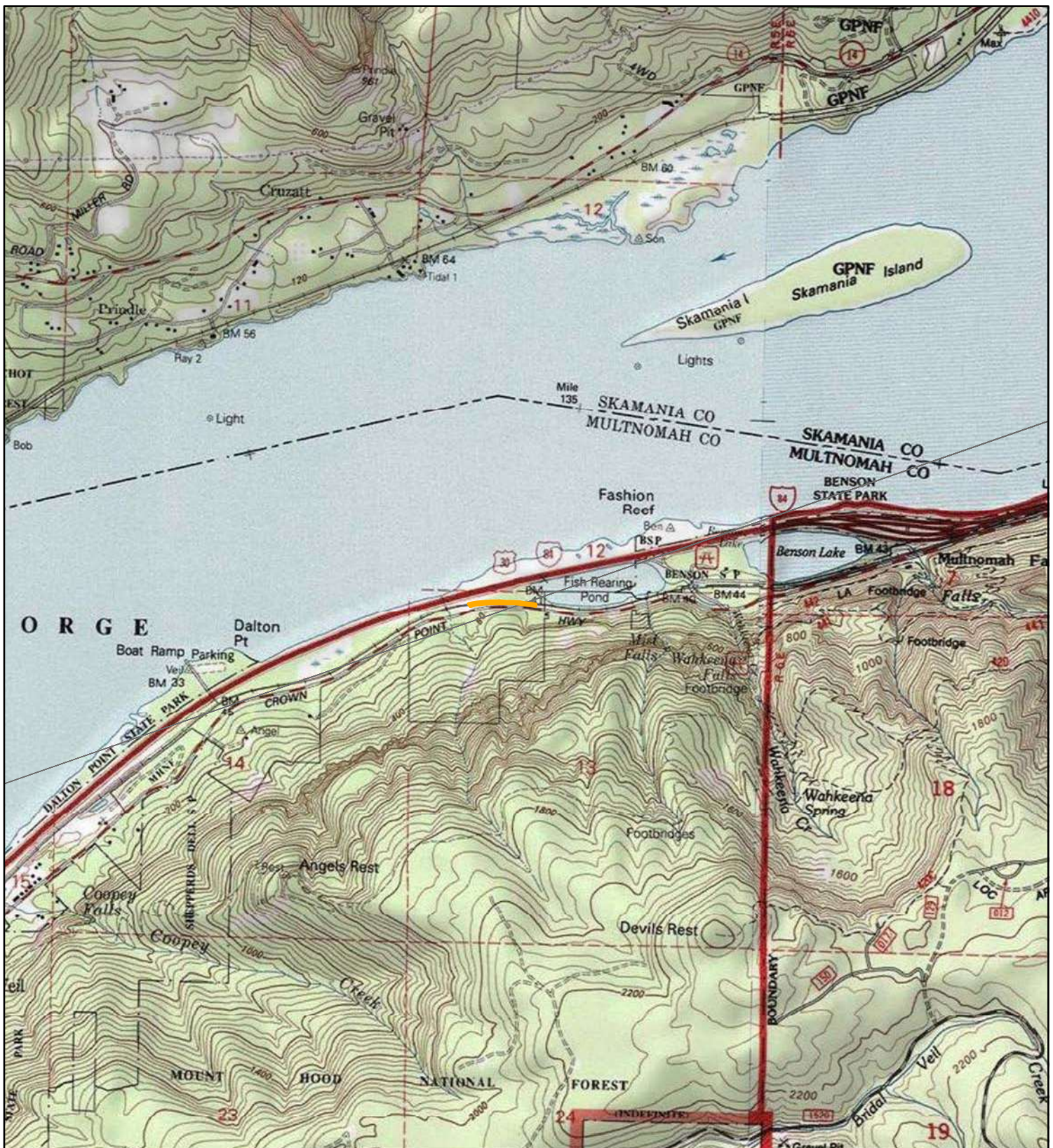
- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits
- ‘D’ Comments Received

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2021-14827 by contacting Rithy Khut, Staff Planner at 503-988-0176 or rithy.khut@multco.us.

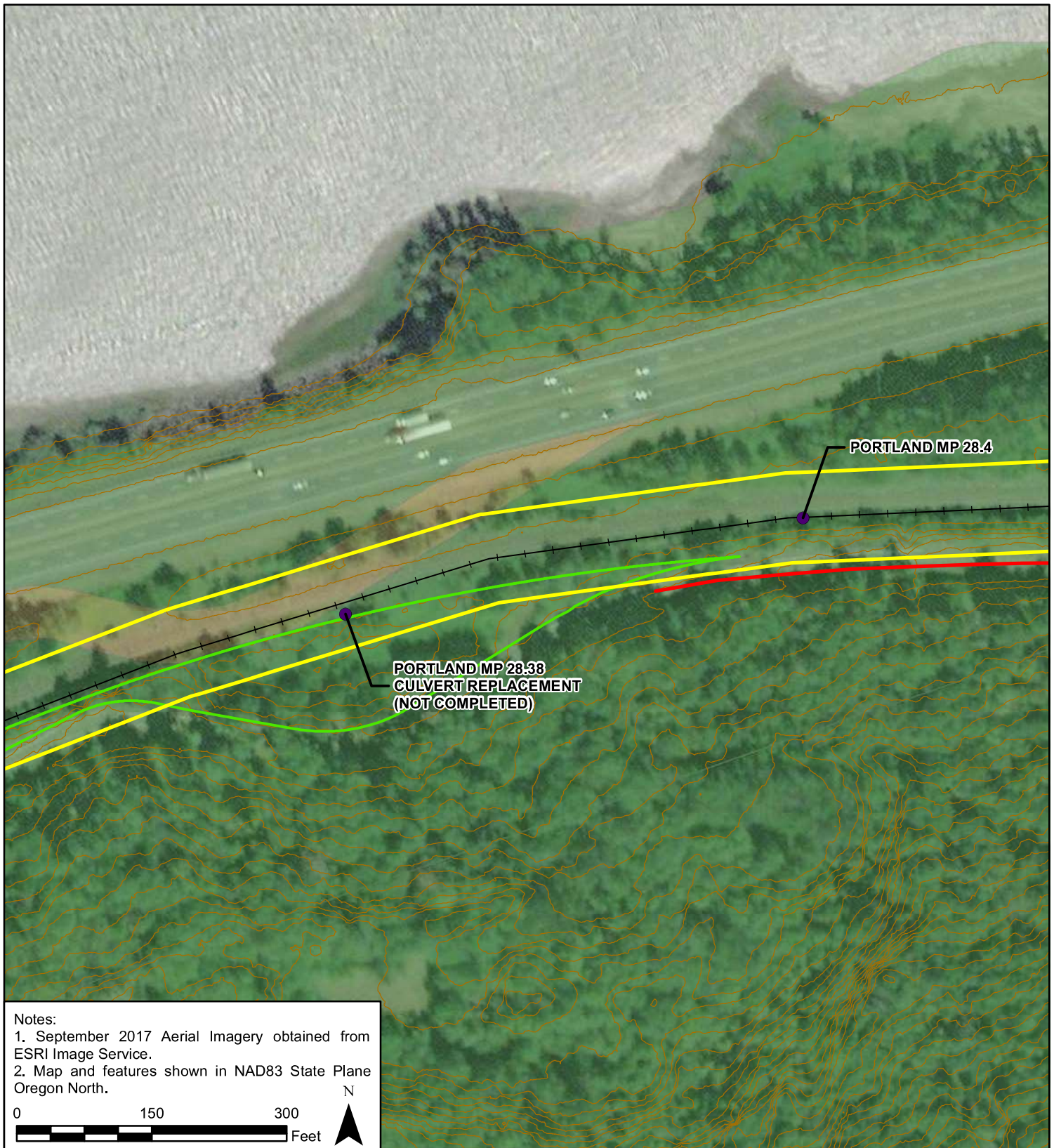
Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	NSA Application Form	06/30/2021
A.2	1	Cover Letter	06/30/2021
A.3	16	Applicant Narrative	06/30/2021
A.4*	4	Figures	06/30/2021
A.5	4	Appendix A – Photograph Log	06/30/2021
A.6	7	Appendix B – Pre-file Meeting Summary Notes	06/30/2021
A.7	18	Appendix C – Emergency Notification	06/30/2021
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N5E -00500 (Alt Acct #: R945130030)	06/30/2021
B.2	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N5E12C -00200 (Alt Acct #: R945120060)	06/30/2021

B.3	1	Division of Assessment, Recording, and Taxation (DART): Map with 1N5E -00500 (Alt Acct #: R945130030) highlighted	06/30/2021
B.4	1	Division of Assessment, Recording, and Taxation (DART): 1N5E12C -00200 (Alt Acct #: R945120060)	06/30/2021
‘C’	#	Administration & Procedures	Date
C.1	13	Emergency Notification	02/01/2021
C.2	4	E-mail submittal of the application	04/14/2021
C.3	58	Agency Review	07/29/2021
C.4	43	Cultural Review Notice	08/13/2021
C.5	7	Incomplete Letter	08/17/2021
C.6	1	Applicant’s Acceptance of 180 Day Clock	09/15/2021
C.7	3	Complete Letter (Day 1)	01/18/2022
C.8	9	Opportunity to Comment and mailing list	04/15/2022
C.9	23	Administrative Decision and mailing list	08/10/2022
‘D’	#	Comments Received	Date
D.1	4	E-mail from Chris Donnermeyer, Heritage Program Manager, United States Forest Service regarding Cultural Resources Survey Determination	08/03/2021
D.2	3	Letter of Concurrence from Chris Donnermeyer, Heritage Resources Program Manager, Columbia River Gorge National Scenic Area	01/26/2022
D.3	3	E-mail and Letter from Steven McCoy on behalf of the Friends of the Gorge	04/29/2022

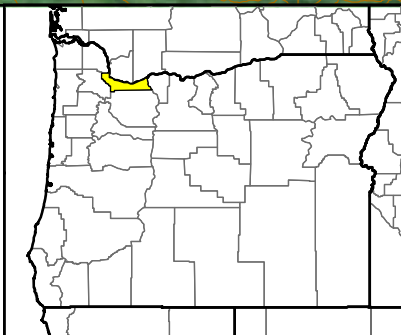
Figures



<p>Legend</p> <p> Project Limits</p> <p>USGS Topographic Quadrangle for Bridal Veil, OR obtained through ArcGIS Online Streaming Service</p> <p>0 2,000 4,000 Feet</p> <p style="text-align: center;">N ▲</p>		<p>UNION PACIFIC RAILROAD PORTLAND SUB MP 28 MUDSLIDE PROJECT MULTNOMAH COUNTY, OREGON</p> <p>PROJECT VICINITY</p> <p> ARCADIS</p> <p style="text-align: right;">FIGURE 1</p>
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- Points
- Temporary Debris Wall
- Railroad Track
- Right-of-Way
- Oregon Parks and Recreation Owned Land
- 5-foot contour
- State Department of Transportation
- State Park & Recreation

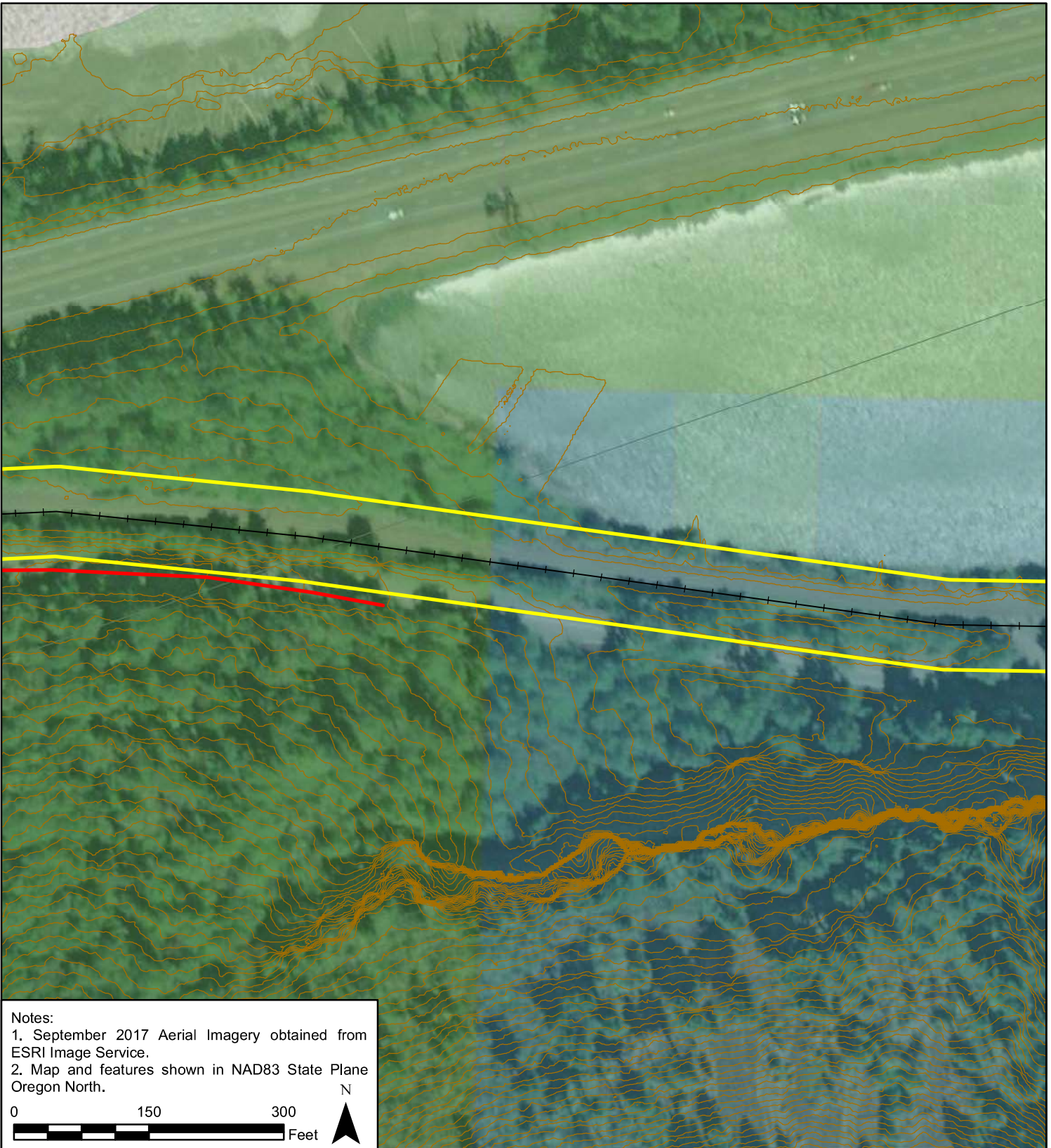


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PORTLAND SUB MP 28
MUDSLIDE PROJECT
MULTNOMAH COUNTY, OREGON

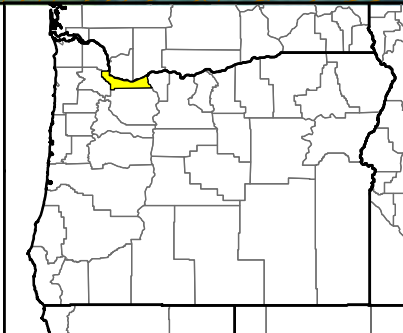
TEMPORARY IMPACTS



FIGURE
2-1



- | | |
|---|---|
| — Temporary Debris Wall | Forest Service (USFS) |
| +— Railroad Track | Private Landowner |
| Right-of-Way | State Park & Recreation |
| — 5-foot contour | |



**UNION PACIFIC RAILROAD
PORTLAND SUB MP 28
MUDSLIDE PROJECT
MULTNOMAH COUNTY, OREGON**

TEMPORARY IMPACTS



**FIGURE
2-2**