



MULTNOMAH COUNTY OREGON

LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

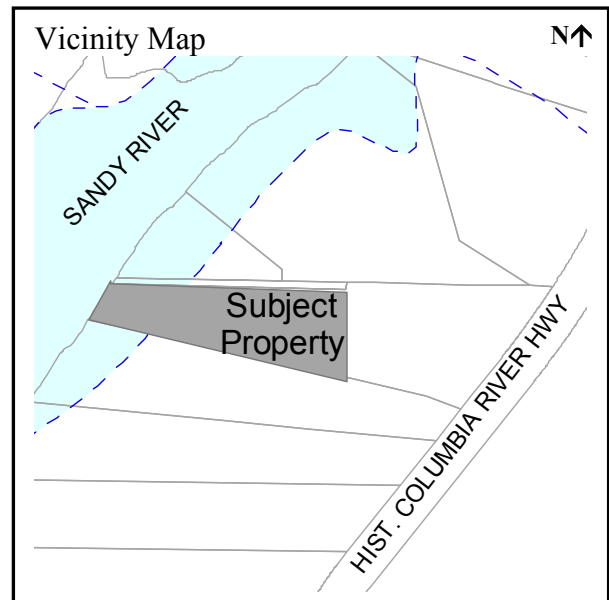
Case File: T2-03-017

Permit: National Scenic Area Site Review

Location: 28310 E. Crown Point Hwy
TL 1200, Sec 06BB, T 1S, R 4E, W.M.
Tax Account #R99406-0700

Applicant: Dale E. Marx, PLS
P.O. Box 565
Gresham, OR 97030

Owner: Robert Espenel
P.O. Box 1694
Sandy, OR 97055



Summary: Site Review for Single Family Dwelling in the Gorge General Residential -5 (GGR-5) Zone District.

Decision: Approved with Conditions

Unless appealed, this decision is effective February 20, 2004 at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen C. Schilling - Planning
Director

Date: Friday, February 6, 2004

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact George Plummer, Staff Planner at 503-988-3043.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 38.0640. An appeal requires a \$108.00 fee prior up to February 15, 2004 (at which time the fee will increase to \$250) 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, February 20, 2004 at 4:30 PM.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 38.0510 et. al: Part 3 Administration and Procedures, MCC 38.3000 et. al: Gorge General Residential and MCC 38.7000 et. al: Site Review. Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at: http://www.co.multnomah.or.us/dbcs/LUT/land_use.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **Pursuant to MCC 38.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 38.0690 and 38.0700. Such a request must be made prior to the expiration date of the permit.**

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 parenthesis.

1. **Within 30 days of this decision becoming final and prior to building permit sign-off, the applicant shall record the Notice of Decision including the Conditions of Approval (pages 1-5) of this decision) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and filed with Multnomah County Land Use Planning. Recording shall be at the applicant's expense. Failure to record the Notice of Decision within the above 30 day time period shall void the decision (MCC 38.0670).**

2. All existing vegetation within the 100 foot riparian buffer shall be protected and maintain in living condition. All existing vegetation outside the development area shall be protected and maintained exempting any tree that is an eminent threat to the dwelling. The development area is defined to include up to ten feet outside of the building envelope as shown on the applicant's revised site plan (Exhibit 1(r)), the area in which the septic system is to be installed (including access to this area) and ten feet on either side of the center of the driveway. To protect existing vegetation and roots, a construction fence shall be erected around the perimeter of the development area prior to any earth work. Operation of heavy equipment outside the defined development area is forbidden. The is responsible to communicate these restrictions to all contractors and construction workers working on-site. The construction fence shall include sign notification that communicates that beyond the fence, operation of heavy equipment is forbidden. If protect vegetation is removed or dies this vegetation shall be replaced to provide visual subordination of the dwelling and garage. (MCC 38.7035(A)(4), 38.7035 (B)(1) and (7))
3. The property owner shall plant 10 trees in the area between the dwelling and the river prior to construction on the dwelling. The trees are to be native species such as Douglas fir, western red cedar, big leaf maple, and cottonwood with protective measures taken to prevent animal damage (MCC 38.7065(D)).
4. The house exterior shall be painted with the approved color a forest green, "Shadow Ridge" and/or any additional colors shall be comparable similar dark earth-tone or dark natural-tone color as dark or darker than the approved color, comparable to those on the County NSA paint chip display chart. Materials used on the exterior of the dwelling shall be low-reflective such as wood siding and trim and shall be consistent with what is described in the attached architectural elevations. The roofing shall be composite roof shingle and equivalent to the sample submitted (Exhibit 1(f)). No changes can be made to the method of exterior treatment identified on an approved building permit plans, without written confirmation from Multnomah County Land Use Planning that proposed changes in treatment comply with this approval (MCC 38.7035(B)(9)).
5. The property owner shall submit documentation of window reflectivity prior to County sign-off of the Building Permit. The window reflectivity shall be 13 percent or less. (MCC 38.7035(B)(9)).
6. The stone work for the chimney shall be dark earth-tone colors with documentation of that submitted prior to County sign-off of the Building Permit. (MCC 38.7035(B)(9)).
7. The proposed light shall be down-facing and shielded and shown on the building plans (MCC 38.7035(B)(9)).
8. If any Cultural Resources and/or Archaeological Resources are located on the property during this project, this includes finding any evidence of historic campsites, old burial grounds, food/medicine plants, if found, the following procedures shall be implemented (MCC 38.7045 (L)):

All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

- (a) Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

- (b) Notification – The project applicant shall notify the Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours. Procedures required in MCC 38.7045 (L) shall be followed.
- (c) Survey and Evaluation – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (*see* ORS 273.705 and ORS 358.905 to 358.955). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC 38.7045 (C) (2) and MCC 38.7045 (E).
- (d) Mitigation Plan – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J). Construction activities may recommence when the conditions in the mitigation plan have been executed.

9. The following procedures shall be effected if human remains are discovered during excavation or construction [human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts (MCC 38.7045 (M))]:

- (a) Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (b) Notification – Local law enforcement officials, the Multnomah County Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.
- (c) Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (d) Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.
- (e) Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760.
 - If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report standards of MCC 38.7045 (I).
 - The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the standards of MCC 38.7045 (J) are met and the mitigation plan is executed.

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building area are needed for building permits signed off.

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.

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicants comments identified as **Applicants:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

1. **PROJECT DESCRIPTION**

Staff: The submitted application request is for a 2849 square foot, two-story, single family dwelling with an attached garage newly developed driveway access, and septic system.

2. **SITE AND VICINITY CHARACTERISTICS**

Staff: The subject site is zoned Gorge General Residential-5 (Exhibit 2(d)) with the NSA boundary at the western edge of the Sandy River. The subject property is location in a meandering stretch of the Sandy River Canyon with canyon walls rising up about a hundred feet. In this vicinity the east side of the river is on the inside of a meander bend forming relatively flat bottomland with a width of couple hundred feet to about 700 feet at its widest point and about 30 feet above ordinary high water. Both canyon walls are densely forested with the western wall rising abruptly from the river and the eastern wall from the highway. The land above the canyon wall to the east is slightly sloped farmland with small forested side canyon drainages and above the wall to the west is urban development of the City of Troutdale. The bottomland is a residentially developed area along the Historic Columbia River Highway with parcels ranging in size is from about a quarter acre to nearly two acres.

The subject property is located along the east bank of the river with parcel between it and the Historic Columbia River Highway. The property is approximately 240 feet from the highway right-of-way, measured at center lot. The property is about approximately 300 feet depth and about 130 feet wide at the east property boundary and about 70 feet wide at the western side. The property is accessed by an easement enter at its northeast corner. The property rises with a steep bank of about 29 feet from the river to a relative flat benched bottomland which drops slightly (a few inches) in elevation moving east from the top of the bank. The property is well vegetated with numerous fir, cedar, maple and alder trees. The river bank is well vegetated with maples and bushes. The proposed building site is located about 100 feet from the ordinary high water.

3. **INITIATION OF ACTION BY PROPERTY OWNER**

MCC 38.0550: Except as provided in MCC 38.0760, Type I - III applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: The application applies to the western property of the two commonly owned properties known as Tax Lot 1200, Section 06BB, Township: 1 South, Range: 4 East. Assessment & Taxation records show that the land is owned by Robert A. Espenel & Betty Espenel. The property owners have signed Robert A. Espenel the application (Exhibit 1(a)). *This criterion has been met.*

4. ADMINISTRATIVE PROCEDURES

4.1 Administrative Procedures for a Type II Case

MCC 38.0530(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are typically assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses, and it's relationship to scenic, natural, cultural and recreational resources of the area. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the Gorge Commission; the U.S. Forest Service; the Indian tribal governments; the State Historic Preservation Office; the Cultural Advisory Committee; and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed, except for comments regarding Cultural Resources, which will be accepted for 20 days after the notice is mailed. The Planning Directors decision is appealable to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Columbia River Gorge Commission within 30 days after the decision is final. The decision is final the day the decision is signed by the Hearings Officer.

Staff: This decision is a review of the proposed dwelling pursuant to MCC 38.530(B). This application was submitted on March 13, 2003 (Exhibit 1(a)). On April 11, 2003, an Incomplete Letter was generated requesting additional information (Exhibit 2(f)). In a letter dated September 15, 2003 the application was deemed complete as September 8, 2003, the date additional information was provided (Exhibit 2(g)). In a letter dated November 25, 2003 Mr. Espenel requested that the clock be stopped (150 day requirement) on the application approval process to submitted more information. He requested that the clock be stopped until early January (Exhibit 1(n)). On December 30, 2003 we received a fax from Mr. Espenel requesting the clock be stopped until February (Exhibit 1(o)).

A 14 day Opportunity to Comment notice was generated and mailed on to various parties including the property owners within 750 feet, the Gorge Commission, the US Forest Service and the Indian Tribal Governments (Exhibit 2(o)).

Timely comments were received from Brian Litt, Senior Planner, the Columbia River Gorge Commission on March 31, 2003 (Exhibit 3(a)), Jim Grimes, Habitat Biologist, Oregon Department of Fish and Wildlife (ODFW), North Willamette District on March 31, 2003 (Exhibit 3(b)), Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service on April 2, 2003 (Exhibit 3(c)), Glen Fullilove, Land Use Legal Assistant, Friends of the Columbia Gorge on Oct 2, 2003 (Exhibit 3(d)), and an additional letter from Brian Litt on October 1, 2003 (Exhibit 3(e)) each of which is summarized below. This decision was drafted and will be mailed in accordance with MCC 38.0660.

Brian Litt, Columbia River Gorge Commission, in his letter dated March 28, 2003 stated:

“It appears that the applicants are proposing a new dwelling within the riparian buffer zone of the Sandy River. Unless there is no practicable alternative to such siting, the

house site should be relocated outside of this buffer zone. It appears that such relocation is feasible, based on the site plan and lot configuration. In addition, retention of mature trees that provide both screening from Key Viewing Areas (the Historic Highway and the Sandy River) and important riparian habitat should be retained. I have no other comments at this time.”

In Mr. Litt’s letter dated October 1, 2003 he stated:

“It appears that the applicants have moved the proposed dwelling further from the riparian buffer zone of the Sandy River. It is not clear that the entire building will still be outside this 100' buffer zone. The distance of the dwelling from the Sandy, as measured on a horizontal scale that is perpendicular to the high water mark, should be carefully determined. In addition, retention of mature trees that provide both screening from Key Viewing Areas (the Historic Highway and the Sandy River) and important riparian habitat should be retained.”

“I cannot determine from the materials provided if the subject tax lot is actually two legal lots of record. It will be important for the County to carefully review all relevant documents and determine if two legal, buildable lots of record exist as indicated by the applicant. I have no other comments at this time.”

Regarding Mr. Litt’s concerns about the dwelling location in relation to the riparian buffer zone of the Sandy River, the original plans (Exhibit 1(c)) showed the building envelope partially ion with the 100 foot riparian setback buffer area. However, the applicant submitted amended plans (Exhibit 1(r)) showing the proposed building envelope completely outside the 100 foot from ordinary high water line, meeting the riparian buffer requirements of MCC 38.7060 (F)(1) for streams. Riparian concerns are addressed with findings under Section 9 of this decision with a condition of approval requiring the 100 buffer area setback.

Mr. Litt expresses concern the mature trees be retained for screening and for important riparian habitat. These concerns are addressed with findings under Sections 6 and 9 of this decision. Conditions of approval require maintaining screening and riparian trees. Per Mr. Litt’s concern regarding legality of the subject property, a lot of record finding addressing this concern can be found under Subsection 5.2 of this decision.

Jim Grimes, ODFW, also expressed concern about the location of the originally proposed building envelope’s proximity to the river. Mr. Grimes states:

“The Sandy River in the vicinity of the project area provides essential spawning and rearing habitat for native salmon and trout, including Chinook salmon, coho salmon, steelhead trout, and cutthroat trout. The Chinook salmon and steelhead trout stocks are listed under the Federal Endangered species Act and coho salmon are listed under the state Endangered Species Act.”

“We are concerned with the proposed residence due to its proximity to the river and the existing condition of the riparian area within 150 feet of the river. To better serve the important fishery resources of the Sandy River, we recommend that the structure should be located in a minimum of 100 feet from the river to allow for riparian functions...”

Mr. Grimes concerns are addressed with findings under Sections 9: Riparian Buffers & Section 10: Sensitive Wildlife Review of this decision with conditions of approval determined necessary under those findings.

Margaret L. Dryden, US Forest Service, conducted a Heritage Resource Inventory. In the report she states, that there is a decapitated remains of a shed and that the roof is collapsed. She states that, "The structure is clearly ineligible for inclusion on the National Register of Historic Places. Ms. Dryden continues that "No prehistoric materials of any type were located," and "There do not appear to be significant cultural resources at the level of detection on the property."

Ms. Dryden cautions that,

"As there is always the possibility that historic or prehistoric cultural materials may be discovered during activities associated with this undertaking, such discoveries are to be reported as soon as discovered. The applicant is required to cease work within the immediate vicinity of the discovery and immediately notify the Columbia River Gorge Commission as well as the Oregon State Historic Preservation Office. This condition is intended to protect newly discovered cultural resources."

Ms. Dryden concludes, "Development of this parcel will not have any effect on cultural resources."

Findings addressing for Cultural Resources Review can be found under Section 7 of this decision.

Glen Fullilove, Friends of the Columbia Gorge, states concern that the applicant provide elements required for the site plan as outlined in MCC 38.0045(A)(2) and information required by MCC 38.7035(B)(4).

Mr. Fullilove comments that in accordance with MCC 38.3025:

"Only one single-family dwelling is allowed per legally created parcel in Residential zones, and only if the development is consistent with all applicable rules protecting scenic, cultural, natural, and recreational resources. The applicant bears the burden of proving the legality of the parcel and the planning department has the responsibility of making a determination of the parcel's legality prior to a decision. Buffer requirements must be met if land is adjacent to agriculture or forest zones, and general provisions for all forest zones should be met if immediately adjacent to forest zones."

Mr. Fullilove outlines Scenic Review standards of MCC 38.7035 and continues stating:

"New development must be sited on the parcel in the location that is the least visible from KVAs, using existing topography and vegetation for screening before requiring new screening measures. After the development has been sited to minimize visibility from KVAs, the County must ensure that the development will be, at a minimum, visually subordinate."

"The proposed dwelling would likely be highly visible from the Sandy River. Thus; the applicant should significantly reduce the number and size of the windows facing the Sandy River to reduce reflectivity. In addition, the applicant should retain all

existing vegetation between the proposed dwelling and the Sandy River and site the dwelling further from the Sandy River to ensure that the proposed dwelling is visually subordinate.”

“The dwelling should be located as close to the existing access driveway as practicable to ensure that grading and the visibility of cut banks and fill slopes are minimized. The current proposed development site would not likely minimize grading and the visibility of cut banks and fill slopes from the Sandy River.”

“Prior to a decision, the County must require a detailed landscape plan that indicates the exact location, height, species, and size (measured in diameter at breast height) of all screening vegetation. The landscape plan must detail measures that ensure the survival of existing and any additional screening vegetation. In addition, the County should require in-kind replacement of any screening vegetation that is lost.”

“Finally, to ensure that the proposed dwelling remains visually subordinate and to prevent cumulative negative impacts to scenic resources, the County should prohibit, by means of a condition of approval, any future development on the subject parcel unless necessary to repair and maintain the proposed dwelling and garage.”

Mr. Fullilove continues by outlining the Landscape Setting provisions which address compatibility and visual subordination. Mr. Fullilove expresses concerns that the color of the structures should be dark brown to ensure visual subordination.

Additionally Mr. Fullilove outlines the requirements for Natural Resource Review and states that

The proposed dwelling and garage would be less than 1,000 feet from the Sandy River, which is a sensitive wildlife area. The proposed development could potentially impact protected anadromous fish species, including coho salmon, Chinook salmon, and steelhead trout. The County should submit the applicant's site plan to the ODFW for review.”

Mr. Fullilove also outlines requirements for rare plant protection, cultural resources and requirement to record the conditions of approval. These issues are addressed in this decision.

4.2 Code Compliance

MCC 38.0560: The County shall not approve any application for a permit or other approval, including building permit applications, 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 permit or other approval, including building permit applications, may be authorized if it results in the parcel coming into full compliance with all applicable provisions of the Multnomah County Code.

Staff: There are no known code compliance issues for this property.

5. NATIONAL SCENIC AREA SITE REVIEW REQUIRED

5.1 Applicability

MCC 38.7010: With the exception of Primary Uses, no building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in the Columbia River Gorge National Scenic Area except when approved pursuant to MCC 38.0530 (B) or (C) or 38.7090.

* * *

MCC 38.7015: An application for NSA Site Review shall address the applicable criteria for approval, under MCC 38.7035 through 38.7090.

* * *

MCC 38.7020: A decision on an application for NSA Site Review shall be based upon findings of consistency with the criteria for approval specified in MCC 38.7035 through 38.7085 or 38.7090 as applicable.

Staff: The zoning map shows subject property is within GGR-5 (Exhibit 2(b)). The proposed use is listed as a review use in the GGR-5 zoning district. Therefore, a National Scenic Area Site Review is required. MCC 38.0530 requires this application to go through a Type II permitting process. This application request has been processed as a Type II Decision. The application addresses applicable criteria for approval, under MCC 38.7035 through 38.7090. Findings of consistency have been made for the applicable criteria, under MCC 38.7035 through 38.7090.

5.2. Use Is Allowed As a Review Use In The GGR-5 Zoning District

MCC 38.3025(A) The following uses may be allowed on lands designated GGR, 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:

(1) One single-family dwelling per legally created parcel.

(a) If the subject parcel is located adjacent to lands designated GGA or GGF, the use shall comply with the buffer requirements of MCC 38.0060; and

(b) If the subject parcel is located is adjacent to lands designated GGF, the placement of a dwelling shall also comply with the fire protection standards of MCC 38.0085.

Staff: The proposal is for a single-family dwelling with an attached garage on a lot within the GGR-5 Zone District. The subject property was created through a deed filed on May 10, 1961, in Book 2061 Page 280-281 (Exhibit 1(j)) prior to zoning requirements and land division requirements. The adjacent property to the north, south and east are in the GGR-5 District. The sandy river to the west is in the Gorge General Open Space District.

MCC 38.0015 Definitions

(P) (1) Parcel: (a) Any unit of land, satisfying all applicable land division and zoning regulations in effect on the date of creation, created and separately described by a lawful sales contract, deed, partition map or plat, or subdivision plat;

Staff: The subject property was initially described in Warranty Deed filed on May 10, 1961, in Book 2061, Page 280-281 of County Records prior to zoning requirements and land division requirements, (Exhibit 1(j)). Zoning regulations were not applied to this area of the County until 1958, Land division requirements for parcelization was adopted in 1978. The property is about 0.63 acres in size and was legally established as a parcel prior to zoning and land division regulations coming into effect.

5.3 The Proposal Meets The GGA Dimensional Requirements

5.3.1 MCC 38.3060(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Staff: The proposed front yard exceeds 30 feet, the side yards exceed 10 feet and the rear yard will be at least 100 feet from the ordinary high water (Exhibit 1(r)). The proposed dwelling is less than 35 feet at the peak height as shown measured on the submitted plan dwelling elevation views (Exhibit 1(p)). These requirements are met by the proposed development.

MCC 38.3060 (D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

Staff: The front yard for the subject property is not adjacent to the right-of-way. This requirement is not applicable.

6. THE PROPOSAL MEETS NSA GMA SITE REVIEW FOR SCENIC REVIEW CRITERIA

6.1 MCC 38.7035(A) The following scenic review standards shall apply to all Review and Conditional Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

Staff: The subject property is in the General Management Area of the Columbia River Gorge National Scenic Area.

6.1.1 MCC 38.7035(A)(1) New buildings and roads shall be sited and designed to retain the existing topography and reduce necessary grading to the maximum extent practicable.

Applicant: *The new structure will be sited and designed to retain the existing topography. Grading will be minimized to the maximum extent practicable. The developer is the son and heir apparent to the owners who are quite elderly. As this is his birthplace, childhood home and parents' existing home, it is obvious that he will minimize any impact to the natural setting of the area.*

Staff: The proposed dwelling and driveway will be sited in a relatively flat area. Given the flatness of the property the amount of grading will be minimized.

Criterion met.

6.1.2. MCC 38.7035(A)(2) New buildings shall be generally consistent with the height and size of existing nearby development.

Applicant: *The new structure will be consistent with the height and size of existing nearby development. The proposed two story 2,500 square foot single-family dwelling is consistent with many other homes in the area. Please see the attached exhibits where Multnomah County Assessor's maps have been indexed with photographs of homes to the north and south of the proposed site.*

Staff: The applicant states the proposed dwelling is to be 2500 square feet, however, the building plans show it at 2849 square feet (Exhibit 1(i)). In a phone conversation the property confirmed the 2849 square foot size. Staff will use the larger number square footage in our analysis. The applicant included 31 dwellings located along the east side of the Sandy River along the Historic Columbia River Highway in his consistency analysis. The consistency analysis area for nearby housing development which the applicant drew from an area that is generally larger than the County has used in the past.

The residential development in the vicinity that is within the NSA boundaries is located between the Sandy River and Historic Columbia River Highway within the Sandy River Canyon. For our dwelling consistency analysis we compared dwellings and garages within the NSA, staff examined development of dwellings and garages within a quarter of a mile along the highway (Exhibit 2(d)). A quarter mile provides a good representation of dwellings and garages in the vicinity with 24 examples of development from which to compare the proposed dwelling with existing development.

This area was chosen because it shares many characteristics with the proposed building site: all properties in the NSA; all between the Historic Columbia River Highway and the Sandy River, and all are located on a relatively flat benched landform adjacent to the river within the canyon. This area presents a sample that is large enough to provide some diversity while capturing the character of the area. We did not include the development within a quarter mile on the other side of the river because it did not share these similarities. That development is outside the canyon on the bluff above, within the City of Troutdale and not in the NSA.

The dwelling is proposed to be two stories with 2849 square feet and an attached garage of 528 square feet for a total area of 3377 square feet. The average dwelling living space (including finished basements) for dwellings in the vicinity is 2148 square feet. The average garage size is 634 square feet. The average for the combined areas of the dwellings and garages is 2713 square feet.

For this area, staff analyzed data from the County Assessment records for existing development in regards to dwelling and garage area. The following data table shows area of the proposed development, existing dwellings and garages within a quarter mile along the highway. This information was obtained from County Assessment Records (Exhibit 2(e)) organized by address.

The dwellings in this area range from 780 to 4527 square feet. By comparison, there are four dwellings that are larger with the largest being 1678 square feet more than the proposed dwelling. Likewise the proposed garage at 528 square feet in area is consistent in size to the existing garages

in the area. The garages area ranges in size from 1878 to 238 square feet with an average of 634 square feet. There are nine garages or about half the garages larger than the proposed garage.

Our cumulative analysis shows there are six dwelling and garage combinations within a quarter mile of the subject property with area that are larger than the proposed dwelling and garage. The proposed development is within the upper mid level range for dwelling and garage combined area.

AREA OF EXISTING NEARBY RESIDENTIAL DEVELOPMENT					
<i>Address</i>	<i>Year Built</i>	<i>Number of stories (living area)¹</i>	<i>Living Area in Sq. Ft. ¹</i>	<i>Garage Area in Sq. Ft.</i>	<i>Living & Garage Area in Sq. Ft.</i>
Proposed Dwelling	-	2	2849	528	3377
28200 E Hist. Columbia River Hwy	1936	1	780	-	780
28206 E Hist. Columbia River Hwy	1964	2	1800	250	2050
28218 E Hist. Columbia River Hwy	1960	3	2563	238	2801
28236 E Hist. Columbia River Hwy	1968	2	1958	462	2420
28224 E Hist. Columbia River Hwy	1948	1	1782	340	2122
28248 E Hist. Columbia River Hwy	1947	1	1268	528	1796
28254 E Hist. Columbia River Hwy	2002	2	1758	-	1758
28310 E Hist. Columbia River Hwy	1950	1	1344	624	1968
28316 E Hist. Columbia River Hwy	1969	2	2696	593	3289
28320 E Hist. Columbia River Hwy	1969	2	3246	550	3796
28332 E Hist. Columbia River Hwy	1972	1	1863	891	2754
28338 E Hist. Columbia River Hwy	1947	3	3107	357	3464
28352 E Hist. Columbia River Hwy	1985	2	1608	576	2184
28400 E Hist. Columbia River Hwy	1948	2	2100	1428 ²	3528
28408 E Hist. Columbia River Hwy	1941	2	2091	357	2448
28410 E Hist. Columbia River Hwy	1967	2	2292	-	2292
28416 E Hist. Columbia River Hwy	1968	2	2526	728	3254
28420 E Hist. Columbia River Hwy	1981	2	2976	441	3417
28426 E Hist. Columbia River Hwy	1975	3	2400	1080	3480
28432 E Hist. Columbia River Hwy	1956	2	1704	520	2224
28446 E Hist. Columbia River Hwy	1988	3	4527	1878 ³	6405
28504 E Hist. Columbia River Hwy	1967	1	1800	392	2500
28534 E Hist. Columbia River Hwy	1926	1	1224	455	1679
AVERAGE			2148	634	2713

¹. Includes finished basements and/or attics

². Two detached garages

³. One attached garage and one detached garage

The submitted plans show a two story dwelling at its highest point; the proposed dwelling is about 35 feet in height (Exhibit 1(i)). The maximum height limitation in the GGR-5 zoning district is 35 feet. The photographs submitted by applicant and assessment records show there are several other two story dwellings and a few three story dwellings in the vicinity.

Given the size and height of the proposed dwelling and attached garage the proposed development is generally consistent with the height and size of existing nearby development. This criterion has been met.

6.1.3 MCC 38.7035(A)(3) New vehicular access points to the Scenic Travel Corridors shall be limited to the maximum extent practicable, and access consolidation required where feasible.

Applicant: *This proposal will not require a new vehicular access point. The southerly driveway entrance is for the existing home. The northerly "existing 10 foot wide private access easement" is used by the adjoining parcels to the north and will be used by the proposed single-family residence. We are working on obtaining an access permit for using this access from ODOT.*

Staff: The site is accessed by an existing easement off the Historic Columbia River Highway which is a Scenic Travel Corridor. The easement is a multiple use access point. The criterion has been met.

6.1.4 MCC 38.7035(A)(4) Project applicant shall be responsible for the proper maintenance and survival of any required vegetation.

Applicant: *On inspection of the existing premises by staff, it is obvious that the site is exceptionally well cared for. This will continue and the owner knows that he is responsible for proper maintenance and survival of any required vegetation over and above what currently exists.*

Staff: A condition of approval will require proper maintenance and survival of required vegetation. This criterion is met through the condition of approval.

6.1.5. MCC 38.7035(A)(5) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

Applicant: *As shown on the Tentative Plan, the site selected for the proposed development is in an area which will have the least effect on the existing environment. It is in the only open area west of the existing structures. This will prevent any of the existing significant trees from having to be cut and determine compatibility with the landscape setting.*

Staff: Information from the submitted site plan was used to determine the compatibility with the landscape setting as required. This criterion is met.

6.1.6. MCC 38.7035(A)(6) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable.

Staff: The proposal does not include any mining activities. This criterion is met.

6.2 All GMA Review Uses visible from Key Viewing Areas:

6.2.1. MCC 38.7035 (B) (1) Size, height, shape, color, reflectivity, landscaping, siting or other aspects of proposed development shall be evaluated to ensure that such development is visually subordinate to its setting as seen from Key Viewing Areas.

Applicant: *The size, height, shape, color, reflectivity, landscaping and siting shall be evaluated by the owner and his designer to ensure that the proposed development is visually subordinate to its setting as seen from the Key Viewing Areas. As shown on the Tentative Plan and obvious from any topographic map, there exists a large escarpment (i.e., "drop-off"), several feet east of the Sandy River. When one is traversing the river, the proposed structure is going to be very difficult to see due to the escarpment and the siting of the proposed structure. With this application are enclosed photographs from the Key Viewing Areas looking easterly and southeasterly toward the property from the River. Also, some photographs from the Historic Columbia River Highway looking westerly. As mentioned above, we invite staff to join the applicant on-site to achieve first hand knowledge testing visual subordination. Hence, the applicant is hoping to gain knowledge from staff in assisting in our efforts to meet the required criteria.*

"As you are aware from your visit to the site and our subsequent application for Property Line Adjustment, the proposed building is to be located behind an existing dwelling. This dwelling and site additional structures such as the garage, work shop, etc. adds to the new structure not being readily visible from Historic Columbia River Highway, a Key Viewing Area. As you know there are extensive Douglas Firs that, surround these buildings and exist on the proposed site. In addition there are several Cedar trees; Vine Maple and Rhododendrons that minimize visibility from the highway toward the proposed Single Family Residence. The existing dwelling and property that fronts the highway is currently owned by Mr. Espenel."

I would like to address the issue of visual subordination from Historic Columbia River Highway, as if the property was vacant. Visual subordination would be sustained by proposed landscaping between the new structure and the proposed common boundary. An Arborvitae Hedge, evergreens and/or perennials are planned. Combined with the existing vegetation and trees visual subordination will be obtained. Also, I have advised Mr. Espenel, if he were ever to sell the front property, that he insure visual subordination of his structure by enacting a covenant to the sale that no trees are to be removed along the western edge of the property.

The degree of potential impact will be minimized by other factors, including but not limited to, the front property has a road frontage of 220 feet, more or less. People typically travel Historic Columbia River Highway at more than the suggested speed of 35 miles per hour. Looking directly at the proposed site, a person would only be able to get a quick glimpse of the dwelling. Another important factor is that the dwelling will be situated over 340 feet from the highway which will minimize its size and visual impact. Cumulative effects of the proposed development will be mitigated to the greatest extent possible.

Staff: The Sandy River, a "Key Viewing Area," is nearly 30 feet below the property with a steep sloped bank. The submitted plans show the proposed dwelling set back from the top of the bank from about 95 feet at the northwest corner to 125 feet at the southwest corner on relatively flat ground resulting in substantial topographic screening of the dwelling from the river. Staff developed a transectional topographic analysis to determine potential visibility from the river (Exhibit 2(i)). This analysis was developed using measurements from the taken from the applicant's revised site plan (Exhibit 1(r)) and measurements of river from 2002 aerial photo (Exhibit 2(c)). The analysis indicates that from the center of the river about the upper 10 feet of the dwelling would be potentially visible and from the western edge of the river the upper story would be potentially visible, not considering vegetation.

Along the top of the bank is a dense growth of deciduous bushes and trees with some conifers mixed in. Between the bank and the proposed dwelling are seven large conifers (Douglas Fir) that will remain. There is also a fir and maple along the southwest corner of the dwelling. During the summer when the river is mostly used for recreation the deciduous vegetation along the bank combined with the large conifers greatly reduce the visibility of the portion of dwelling that is not screened by the topography. During the winter the visibility of the dwelling while screened by the conifers would be more visible.

Oregon Department of Fish and Wildlife has requested additional planting of native tree species in the riparian area to improve the wildlife habitat for threaten and endangered fish. These plantings will result in an increased screening. After reviewing the submitted materials and maps staff has determined the proposed development, while substantially screened, is potentially visible from the Sandy River. Due to the design and placement of the dwelling, the most visible area will be the roof and a portion of a dormer wing with a stone chimney and windows to the peak of the dormer wing.

The proposed dwelling will be located on a parcel that is setback from the Historic Columbia River Highway, a "Key Viewing Areas." The property is accessed by an easement used jointly with the property to the north. The property between the highway and the subject property has a dwelling, a couple of outbuildings and is heavily vegetated with bushes including those that keep foliage throughout the year such as rhododendrons as well as several large conifers. The subject property between the proposed dwelling and the eastern property is heavily vegetated with bushes, vine maple, maple trees and conifer trees. While the existing vegetation on the property and the property to the east will substantially screen the proposed dwelling it is likely not to be screen 100 percent.

Since there is a potential that the dwelling is not fully screened from both the two Key Viewing Areas in the vicinity, the Sandy River and the Historic Columbia River Highway, the dwelling will need to meet the visually subordinate standard.

The applicant submitted four color paint chips for the dwelling. Three for the trim (Ralph Lauren Shadow Ridge a forest green, Behr Sonora a light brown and Bahr Prairie Dog a light sandy brown), and one for the house body (Bahr Sabara Sku a light sandy gray). The Ralph Lauren Shadow Ridge green meets the requirements for a dark natural color. However the other submitted colors are too light to meet the requirements. The County Land Use Planning maintains a NSA color chip chart with colors that meet the standard. A condition of approval requires that prior to building permit approval that dark earth-tone or dark natural-tone colors comparable to the County's NSA color chart be submitted and the dwelling and garage be painted those colors. The applicant has submitted a dark blackish with brown specks sample of Owens Corning composite asphalt roofing shingle which meets the requirements for a dark color. A condition of approval will require windows with a reflectivity rating of 13 percent or less and outdoor lighting to be hooded. A condition of approval will require the stone work for the chimney be of dark colors.

- 6.2.2 MCC 38.7035 (B)(2) The extent and type of conditions applied to a proposed development to achieve visual subordination should be proportionate to its potential visual impacts as seen from Key Viewing Areas. Primary factors influencing the degree of potential visual impact include: the amount of area of the building site exposed to Key Viewing Areas, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Areas it is visible from, the number of Key Viewing Areas it is visible from, and the linear distance along the Key Viewing Areas from which the building site is visible (for**

linear Key Viewing Areas, such as roads). Written reports on determination of visual subordination and final conditions of approval shall include findings addressing each of these factors.

Applicant: *The extent and type of conditions applied to the proposed development to achieve visual subordination should be proportionate to its potential visual impacts as seen from the Key Viewing Areas. As mentioned above, the siting of the proposed development is several feet east of an existing escarpment high above the Key Viewing Areas of the Sandy River. This siting will be more proportionate than the potential visual impacts as the impacts shall be minimal.*

Staff: Conditions of Approval are proportionate to the development and visibility of the development. Since the dwelling is predominately screened by topography and vegetation, a requirement to retain the existing vegetation and the requirements for dark natural-tone or dark earth-tone colors and low reflectivity building materials is proportionate to its potential visual impacts due the extent of potential visibility of the proposed development from KVA. The conditions are proportionate because they are directed at visible elements of the proposed development. Other conditions of approval ensure that the standards of the NSA shall be met upon obtaining a building permit. Each Condition of Approval will include a note stating which standard and finding it is to which it is connected. Criterion met.

6.2.3 MCC 38.7035 (B)(3) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

Applicant: *Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed development. Potential visual effects and compliance with visual subordination policies should not be a burden to this application due to its siting and the existing topography. There will be no other development other than the Single-Family Dwelling proposed.*

Staff: The cumulative proposed development is the dwelling and the garage. Under Section 6.2.1 of this decision staff made finding addressing the potential visual effects and compliance with visual subordination using the cumulative effects of the proposed development. Given the findings discussed in Section 6.2.1 the potential visual effects will be minor and visual subordinate to the landscape. The impacts of the proposed development can be expected in an area that is zoned for residential development. The criterion is met.

6.2.4 MCC 38.7035 (B)(4) For all buildings, roads or mining and associated activities proposed on lands visible from Key Viewing Areas, the following supplemental site plan information shall be submitted in addition to the site plan requirements in MCC 38.0045 (A) (2) and 38.7035 (A) (5) for mining and associated activities:

(a) For buildings, a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used, number, size, locations of plantings, and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes); and

(b) Elevation drawings showing the appearance of proposed building(s) when built and surrounding final ground grades, for all buildings over 400 square feet in area.

Applicant: *For all buildings, roads or mining and associated activities proposed on lands visible from Key Viewing Areas, the following supplemental site plan information shall be submitted in addition to the site plan requirements in MCC .3568(A)(5) and .3814(A)(5) for mining and associated activities.*

(a) For buildings, a description of the proposed buildings' height, shape, color, exterior building materials, exterior lighting, and landscaping details: As previously mentioned, the proposed single-family dwelling is to be a two-story, +/-2,500 square foot house with an exterior color of medium brown and metal roofing colored to the County's preference, therefore, non-reflective. Applicant does not propose a landscape or irrigation plan. Non-reflective, opaque hooding materials will be used on exterior lighting that will be directed downward and sited and shielded such that it is not highly visible from the Key Viewing Areas. Now included in this application are examples of the proposed paint color and a brochure on the window's specifications.

(b) Enclosed with this application are building plans showing floor plans and elevations showing the appearance of the proposed building. When built the existing grades shall be the final grades surrounding the dwelling as the building envelope and adjacent grades are flat. This will assist staff in visualizing the height, shape, exterior building materials and exterior lighting. Refer to the Site Plan for the note regarding landscaping details. Also, please refer to the Topographic Survey map of the site which includes the proposed building site and the proposed finished grades at the corner on each wall.

Staff: The applicant has submitted the required information regarding building materials, colors, building descriptions, height and elevation plans, lights, and shape for the proposed dwelling and garage.

* * *

6.2.5 MCC 38.7035 (B)(6) New buildings or roads shall be sited on portions of the subject property which minimize visibility from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, sensitive wildlife sites or conflict with the protection of cultural resources. In such situations, development shall comply with this standard to the maximum extent practicable.

Applicant: *As mentioned previously, the proposed building will be sited in an area that will minimize Viewing Areas. Please refer to Topographic Survey map which shows the ordinary high water mark. In addition, the riparian buffer line measured 100 feet landward from the ordinary high water mark on a horizontal scale that is perpendicular to the ordinary high water mark is shown.*

Since our original submittal and our site visit with you, the proposed dwelling site has been adjusted easterly more to the middle of the property. The site will not be in the 100 foot riparian area buffer. Please refer to the revised Tentative Site Plan.

Staff: The applicant proposes a site for the dwelling and garage located east of the 100 foot riparian setback. There is not much area outside the riparian setback and the yard setback to place the dwelling and driveway access. The area for the dwelling is slightly lower than the top of the

river bank. The location of the proposed dwelling site is substantially screened from the river by the topography and vegetation. From the highway the proposed dwelling will be partially screened by existing vegetation minimizing visibility. The proposed location of the dwelling is about the only location possible on the property that provides screening from both of the KVAs. Criterion is met.

6.2.6 MCC 38.7035 (B)(7) In siting new buildings and roads, use of existing topography and vegetation to screen such development from Key Viewing Areas shall be prioritized over other means of achieving visual subordination, such as planting of new vegetation or use of artificial berms to screen the development from Key Viewing Areas.

Applicant: *Use of existing topography and vegetation to screen the proposed building from Key Viewing Areas will be prioritized over other means of achieving visual subordination. If staff does not agree that the proposed building site is not visually subordinate, applicant would welcome their input for an alternative site shown to be less visually subordinated. Applicant feels this has been addressed in the original application.*

Staff: Existing topography and vegetation is used to screen the proposed new development. The topography will remain the same and existing trees outside the building envelope are proposed to remain. Criterion is met.

6.2.7 MCC 38.7035 (B)(8) Driveways and buildings shall be designed and sited to minimize grading activities and visibility of cut banks and fill slopes from Key Viewing Areas.

Applicant: *There should not be any cut banks and fill slopes from the two Key Viewing Areas. The driveway and new house will be designed and sited to minimize grading activities.*

Staff: The subject property is relatively flat. The proposed development will use the existing grade with minimal grading to prepare for the development. Any grading to prepare the site will not be seen from the river because it will be about a 100 feet or more from the top of the bank with the area sloping down slightly from the bank. Due to vegetation and the flatness of the lot grading should not be able to be seen from the highway either. Criterion is met.

6.2.8 MCC 38.7035 (B)(9) The exterior of buildings on lands seen from Key Viewing Areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topographic features.

Applicant: *The exterior of buildings on lands seen from Key Viewing Areas shall be composed of non-reflective materials or materials with low-reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topographic features. As previously mentioned the exterior will consist of non-reflective building materials. Also, due to the topography (escarpment) and existing tree locations, the proposed structure will be very difficult to see from the surface of the Sandy River. (See enclosed pictures).*

Staff: The applicant states that the building materials will be non-reflective or low-reflectivity. The siding will be painted wood. The applicant has submitted a sample of asphaltic roofing that is non-reflective. The applicant has provided a manufacturers brochure for the proposed windows showing a low reflectivity rating of 11 percent (Exhibit 1(i)). There are manufacturers that

produce low reflectivity windows. A condition of approval will require 13 percent or less reflectivity rating demonstrated at building permit review.

A condition of approval requiring use of building materials meet the requirement of nonreflective or low reflectivity materials. The proposed development meets this criterion as conditioned.

6.2.9 MCC 38.7035 (B)(10) Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

Applicant: Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Area. Shielding and hooding materials shall be composed of non-reflective, opaque materials. As mentioned above, non-reflective, opaque hooding materials will be used on exterior lighting that will be directed downward and sited and shielded such that it is not highly visible from the Key Viewing Area

Staff: The proposed lighting is down-facing however is not shielded. A condition of approval will require shielding. A condition of approval requires exterior lighting be downward facing and shield. The proposed development meets this criterion as conditioned.

6.2.10 MCC 38.7035 (B)(13) The silhouette of new buildings shall remain below the skyline of a bluff, cliff or ridge as seen from Key Viewing Areas. Variances may be granted if application of this standard would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use, and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the standard have been made.

Applicant: It is the applicant's opinion that the escarpment leading down to the Sandy River is not the "bluff." The correct geographical bluff within this corridor is actually Broughton's Bluff which is located to the east of the Columbia River Historic Highway. This is why we previously considered this criterion "Not applicable."

Staff: We concur with the applicant the bluff is located east of the proposed development. Due to the height of the bluff east of the highway and the heights of the trees surrounding the dwelling site the proposed dwelling will remain below the skyline. Criterion met.

* * *

6.2.11 MCC 38.7035 (B)(20) New buildings shall not be permitted on lands visible from Key Viewing Areas with slopes in excess of 30 percent. A variance may be authorized if the property would be rendered unbuildable through the application of this standard. In determining the slope, the average percent slope of the proposed building site shall be utilized.

Applicant: Not applicable. The proposed building site is relatively flat.

Staff: The proposed buildings are in an area that has a relative flat with a minor slope down from the top of the river bank.

6.2.12 MCC 38.7035 (B)(21) All proposed structural development involving more than 100 cubic yards of grading on sites visible from Key Viewing Areas and which slope between 10 and 30 percent shall include submittal of a grading plan. This plan shall be reviewed by the Planning Director for compliance with Key Viewing Area policies. The grading plan shall include the following:

Applicant: *The proposed structural development should not involve more than 100 cubic yards of grading on sites visible from Key Viewing Areas and which slope is between 10 and 30 percent. Therefore a grading plan should not be required.*

Staff: For this review the grading plan is not required because the slope is less than 10 percent as noted during a site visit by staff (Exhibit 1(s)). Criterion is met.

6.2.12 MCC 38.7035 (B)(26) Compliance with specific approval conditions to achieve visual subordination (such as landscaped screening), except mining and associated activities, shall occur within a period not to exceed 2 years after the date of development approval.

Applicant: *The owner will comply with specific approval conditions to achieve visual subordination (such as landscape screening), that are to occur within a period not to exceed 2 years after the date of development approval).*

Staff: Given the existing topography and vegetation with the use of dark, earth-tone and natural-tone paint and roofing colors, dark stones for the chimney, low reflectivity windows and hooded lighting the proposed dwelling will be visually subordinate when built.

6.3 MCC 38.7035(C) All Review Uses and Conditional Uses within the following landscape settings: MCC 38.7035(C)(3) Rural Residential

Staff: The subject property is in the Rural Residential Landscape Setting

6.3.1 MCC 38.7035(C)(3)(a) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this standard to the maximum extent practicable.

Applicant: *New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this standard to the maximum extent practicable. The proposed two-story Single-Family Dwelling will be compatible to many other Single-Family Dwellings in this area. Homes of this size are very common to the north and south; and on the westerly side of the Sandy River to the south. Of course, there is a commercial Conditional Use to the north along E; w Point Highway frontage. Please refer to the newly submitted photograph binder with associated Multnomah County Assessor's maps begins submitted with this application.*

Staff: Findings under Section 6.1.2: (MCC 38.7035(A)(2)) in this decision addresses the proposed development's consistency with development in the vicinity (all properties within a quarter mile from the subject property). This analysis compared the general scale of development on these properties with the proposed development. The findings under Section 6.1.2 are adopted as findings for this criterion. Using these finding staff finds the proposed development compatible with the general scale of development in the vicinity. The criterion has been met.

6.3.2 MCC 38.7035(C)(3)(b) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

Applicant: *As shown on the Tentative Plan, existing tree cover will be retained as much as possible. In fact, the owner will be surprised if not more than just a few of the significant trees shown on the site plan will have to be cut. Also, not only do the trees that exist provide cover that won't be disturbed, but the trees shown near the top of the escarpment will continue to provide natural screening.*

As discussed in our meeting, this issue is moot as it is based on the original site plan which has since been revised. Please refer to the revised Tentative Site Plan. We will be exceeding the 100 foot setback from streams edge per the Oregon Department of Fish & Wildlife's request.

Staff: A condition of approval will require all trees remain except those necessary for site development. The submitted site plan shows the trees to be removed and those which will remain between the river and the dwelling. A condition of approval will require bushes and trees east of the dwelling foot print, as shown on the submitted plans, be retained except those necessary to be removed for driveway as shown on the revised plans. During a site visit by staff the applicant demonstrated to staff that only minor vegetation (no large trees) would be removed for siting the driveway.

6.3.3 MCC 38.7035(C)(3)(c) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordination for new development and expansion of existing development:

- 1. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.**
- 2. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.**
- 3. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.**
- 4. Structures' exteriors shall be dark and either natural or earth-tone colors unless specifically exempted by MCC 38.7035 (B) (11) and (12).**

Applicant: *In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visible subordination for new development and expansion of existing development:*

- (1) The owner acknowledges that except for site development or safety purposes, the existing tree cover screening the development from the Key Viewing Area of the Sandy River shall be retained.*
- (2) If required or chosen, the owner acknowledges: that at least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area;*
- (3) that at least of any trees planted for screening purposes shall be coniferous to provide winter screening;*
- (4) that the structure's exterior shall be dark and in either a natural or earth-tone color unless specifically exempted by MCC .3418(B)(11)and (12).*

Staff: Trees that provide screening to obtain visual subordination will be required to be retained by a condition of approval. No trees will be required to be planted for visual subordination, however ODFW requires trees be planted to improve the riparian area. A condition of approval will require dark natural or earth tone colors for the dwelling as proposed by the applicant.

- 6.3.4 MCC 38.7035(C)(3)(d) Compatible recreation uses include should be limited to small community park facilities, but occasional low-intensity resource-based recreation uses (such as small scenic overlooks) may be allowed.**

Staff: The proposal is not for a recreational use. This is criterion is not applicable.

7. THE PROPOSAL MEETS NSA GMA SITE REVIEW FOR CULTURAL RESOURCE REVIEW CRITERIA

7.1 MCC 38.7045(A) Cultural Resource Reconnaissance Surveys

- (1) A cultural reconnaissance survey shall be required for all proposed uses, except:**

*** * ***

- (f) Proposed uses occurring in areas that have a low probability of containing cultural resources**

Areas that have a low probability of containing cultural resources will be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the U.S. Forest Service, public agencies, and private archaeologists.

MCC 38.7045(B) The cultural resource review criteria shall be deemed satisfied, except MCC 38.7045 (L) and (M), if:

- (1) The project is exempted by MCC 38.7045 (A) (1), no cultural resources are known to exist in the project area, and no substantiated comment is received during the comment period provided in MCC 38.0530 (B).**

Staff: Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service submitted a cultural resources report on September 4, 2003 **(Exhibit 3(a)).**

Ms. Dryden, USFS, stated, “No prehistoric materials of any type were located. There do not appear to be any significant cultural resources at the level of detection on the property.” Ms Dryden continues, “As there is always the possibility that historic or prehistoric cultural materials may be discovered during activities associated with this undertaking, such discoveries are to be reported as soon as discovered.”

7.2 MCC 38.7045 (L) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

- (1) Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.**
(2) Notification – The project applicant shall notify the Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or

otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(3) **Survey and Evaluation** – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (*see* ORS 273.705 and ORS 358.905 to 358.955). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC 38.7045 (C) (2) and MCC 38.7045 (E).

(a) The Planning Director shall, based on the survey and evaluation report and any written comments, make a final decision within 10 days of the receipt of the report of the Gorge Commission on whether the resources are significant.

(b) The Planning Director shall require a Mitigation Plan if the affected cultural resources are found to be significant.

(c) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC 38.0530 (B).

(d) The decision of the Planning Director shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC 38.0530 (B). Construction activities may recommence if no appeal is filed.

(4) **Mitigation Plan** – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J). Construction activities may recommence when the conditions in the mitigation plan have been executed.

Staff: A condition of approval will require a halt of work (within 100 feet) when a cultural resource is discovered during construction activities and that the process outlined above be followed. These criteria are met through conditions of approval.

7.3 MCC 38.7045 (M) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(1) **Halt Activities** – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(2) **Notification** – Local law enforcement officials, the Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.

(3) **Inspection** – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(4) **Jurisdiction** – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.

(5) **Treatment** – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760.

(a) If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report standards of MCC 38.7045 (I).

(b) The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the

conditions set forth in the standards of MCC 38.7045 (J) are met and the mitigation plan is executed.

Staff: A condition of approval will require a halt of activities – All survey, excavation, and construction activities shall cease if human remains are discovered during construction. The condition will require any found human remains not be disturbed any further and the procedures outline above be followed.

8 THE SITE DOES NOT CONTAIN GMA WETLANDS

MCC 38.7055 GMA Wetland Review Criteria

(A) The wetland review criteria shall be deemed satisfied if:

(1) The project site is not identified as a wetland on the *National Wetlands Inventory* (U.S. Fish and Wildlife Service, 1987);

Staff: The subject site does not have an identified wetland listed on the National Wetland Inventory maps. Staff did not see any indication of wetlands during the site visit. Criterion is met.

9 THE SUBJECT SITE IS ADJACENT TO A GMA STREAM & RIPARIAN BUFFER

9.1 MCC 38.7060(F)(1) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(a) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet.

Staff: The property is adjacent to the Sandy River which is a stream used by anadromous fish thus a riparian buffer of 100 feet is required. The proposed project area is more than 100 feet from ordinary high water of the Sandy River as shown on surveyed revised site plans as established by Dale Marx, Register Surveyor and reviewed on site by staff (Exhibit 1(j)).

9.2 MCC 38.7060(F)(2) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

Staff: The proposed development will be outside the riparian buffer.

9.3 MCC 38.7060(F)(3) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Planning Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Planning Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

Staff: The applicant is a registered surveyor and has located the ordinary high watermark, showing it on the submitted a stamped survey submitted as revised site plan (Exhibit 1(r)). Staff has visited the site verifying its accuracy.

- 9.4 MCC 38.7060(C) Uses not listed in MCC 38.7060 (A) and (B) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to MCC 38.7060 (E) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085.**

Staff: The proposed development will be located outside the 100 foot stream riparian area thus a rehabilitation and enhancement plan under MCC 38.7060 (E) is not required.

10 SENSITIVE WILDLIFE REVIEW REQUIRED

- 10.1 MCC 38.7065 (C) Uses not listed in MCC 38.7065 (A) may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to MCC 38.7065 (D) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085.**

Staff: The subject property is located within 1000 feet of the Sandy River which is sensitive habitat for Chinook salmon, coho salmon, steelhead trout, and cutthroat trout according to Mr. Grimes, Habitat Biologist, Oregon Department of Fish and Wildlife. The proposed use, a dwelling and attached garage are uses that are not listed in MCC 38.7065 thus must be approved pursuant to MCC 38.7065(D) below. This approval has reviewed to proposed use under applicable provisions of MCC 38.7035 through 38.7085.

- 10.2 MCC 38.7065(D) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:**

- (1) Site plans shall be submitted to Oregon Department of Fish and Wildlife by the Planning Director. State wildlife biologists will review the site plan and their field survey records. They will:**
 - (a) Identify/verify the precise location of the wildlife area or site,**
 - (b) Ascertain whether the wildlife area or site is active or abandoned, and**
 - (c) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons.**

In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.
- (2) The following factors may be considered when site plans are reviewed:**
 - (a) Biology of the affected wildlife species.**
 - (b) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron.**
 - (c) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.**
 - (d) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.**
 - (e) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.**
- (3) The wildlife protection process may terminate if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines:**
 - (a) The sensitive wildlife area or site is not active, or**

- (b) The proposed use 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.
- (4) If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Planning Director will incorporate them into the site review order and the wildlife protection process may conclude.
- (5) The project applicant shall prepare a wildlife management plan if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.
- (6) The Planning Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife. The Oregon Department of Fish and Wildlife will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Planning Director. The Planning Director shall record and address any written comments submitted by the Oregon Department of Fish and Wildlife in its site review order. Based on the comments from the Oregon Department of Fish and Wildlife, the Planning Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and standards. If the final decision contradicts the comments submitted by the Oregon Department of Fish and Wildlife, the Planning Director shall justify how the opposing conclusion was reached. The Planning Director shall require the applicant to revise the wildlife management plan to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

Staff: The procedures listed above were followed. Jim Grimes, Habitat Biologist, Oregon Department of Fish and Wildlife reviewed the proposed development and submitted a letter addressing the proposed development (Exhibit 3(b)).

Mr. Grimes states:

“The Sandy River in the vicinity of the project area provides essential spawning and rearing habitat for native salmon and trout, including Chinook salmon, coho salmon, steelhead trout, and cutthroat trout. The Chinook salmon and steelhead trout stocks are listed under the Federal Endangered species Act and coho salmon are listed under the state Endangered Species Act.”

“Trees that fall into the river are a key habitat for maintaining healthy fish spawning and rearing habitats. The riparian trees are also important bank stability, wildlife travel corridors and stream shading. The trees are commonly delivered to the river from wind-throw, landslides, and river erosion. For this site, mature native trees within 150 feet of the river would provide habitat for fish and wildlife resources in the vicinity.”

“We are concerned with the proposed residence due to its proximity to the river and

the existing condition of the riparian area within 150 feet of the river. To better serve the important fishery resources of the Sandy River, we recommend that the structure should be located in a minimum of 100 feet from the river to allow for riparian functions that are referenced above and the ODFW letter of January 10, 2000. No encroachment in the setback should be allowed as there is adequate room on the lot on to site the structure farther to the east to accommodate for a 100-riparian foot setback.”

“The full size topographic survey map in the review materials indicates that there may be areas within the 100-foot riparian buffer that currently do not have trees. We recommend that the fish and wildlife resources would benefit if these areas were planted with native trees such as Douglas fir, western red cedar, big leaf maple, and cottonwood. We are available to review proposed planting lists and spacing, as necessary. Protective measures around the newly planted trees are strongly encouraged to reduce animal damage.”

ODFW letter of January 10, 2000 referred to by Mr. Grimes addressed a different property along the Sandy River with similar issues.

Mr. Grimes letter addressed the procedures required by MCC 38.7065(D)(4) for wildlife protection. Mr. Grimes has determined that the project would meet MCC 38.765(D)(4) with a 100 foot setback if additional trees are planted in the riparian area. Mr. Grimes noted that there are some open areas without trees in the 100 foot riparian buffer and fish and wildlife would benefit from additional trees in these areas. However Mr. Grimes did not state the number of trees recommended to be planted. During a site visit staff observed that there are a few open areas that could be planted with trees: top of the bank, an area in the southwest corner of the property and an opening about 60 by 40 feet northeast of the proposed dwelling (Exhibit 1(r)).

The applicant would like to maintain a small amount of open space as lawn northwest of the proposed dwelling. This area is the only fully open area on the property and is about 60 feet by about 40 feet. Staff recommends that the west 20 feet of this area be planted provide an area of about 40 by 40 feet of open lawn area. The applicant agreed that trees could be planted along the top of the bank and in another small open area at the southwestern corner of the property. There appears to be enough area to plant at least 10 trees. The trees will need to be native species native trees such as Douglas fir, western red cedar, big leaf maple, and cottonwood. With the planting and proposed location of the dwelling the proposal meets MCC 38.7065(D)(4) as conditioned.

11 **THERE ARE NO KNOWN RARE PLANT SPECIES WITHIN 1000-FEET OF THE SITE**

MCC 38.7070 GMA Rare Plant Review Criteria

Rare Plant Site Review shall be required for any project within 1,000 feet of endemic plants and sensitive plant species.

Staff: There are no known rare plant species within 1000-feet of the subject site according to maps listing such areas and sites provided to Multnomah County by the Columbia River Gorge Commission. Criterion is met.

12 CONCLUSION

Based on the findings, narrative, and other information provided herein, this application, as conditioned, satisfies the applicable approval criteria required for Site Review in the National Scenic Area.

13 EXHIBITS

Exhibits are filed at Multnomah County Land Use Planning office and can be reviewed upon request.

13.1 Exhibits submitted by the Applicant:

- Exhibit 1(a): NSA application form submitted 3/13/03 (1 page);
- Exhibit 1(b): Narrative submitted 3/13/03 (8 pages);
- Exhibit 1(c): Site plan submitted 3/13/03 (1 oversized page);
- Exhibit 1(d): Two photographs of the property taken from the Sandy River submitted 3/13/03 (1 page);
- Exhibit 1(e): Photographs showing nearby dwellings for the consistency analysis and maps identifying location of these dwellings submitted 3/13/03 (16 pages of photos and 5 oversized reference maps);
- Exhibit 1(f): Plaintiff color chips examples & shingle sample 3/13/03 (1 page);
- Exhibit 1(g): Viceroy window brochure submitted 3/13/03 (3 pages);
- Exhibit 1(h): Mission lighting brochure submitted 3/13/03 (2 pages)
- Exhibit 1(i): Proposed dwelling elevations and plans submitted 3/13/03 (6 pages and 6 pages, oversized);
- Exhibit 1(j): Deed for subject property filed 5/10/61 Book 2061 Page 280-281 submitted 3/13/03 (2 pages);
- Exhibit 1(k): Water, septic, fire district and Sheriff's office service provider forms submitted 3/13/03 (7 pages);
- Exhibit 1(l): Addendum to the narrative submitted 9/8/03 (2 pages);
- Exhibit 1(m): Additional site plan submitted 9/8/03 (1 page, oversized);
- Exhibit 1(n): Letter from Mr. Espenel requesting that the clock be stopped until early January submitted 11/25/03 (1 page);
- Exhibit 1(o): Fax from Mr. Espenel requesting that the clock be stopped until February submitted 12/30/03 (1 page);
- Exhibit 1(r): Revised Topographic Map and Tree Location Survey showing proposed dwelling footprint submitted 1/27/04 (1 page, oversized).

13.2 Exhibits included by County:

- Exhibit 2(a): County Assessment Record for the subject property (1 page);
- Exhibit 2(b): County Zoning Map with subject property labeled (1 page);
- Exhibit 2(c): 2002 Aerial Photo showing subject property (1 page);
- Exhibit 2(d): 2002 Aerial Photo showing subject property and vicinity (1 page);
- Exhibit 2(e): County Assessment Records for properties within a quarter of a mile of the subject property (23 pages);
- Exhibit 2(f): Staff letter dated April 11, 2003 to the applicant deeming application incomplete with mail routing slip confirming mailing attached (2 pages);

- Exhibit 2(g): Staff letter dated September 15, 2003 to the applicant deeming application complete on 11/8/03 with mail routing slip confirming mailing attached (2 pages);
- Exhibit 2(h): Notice of Opportunity to Comment with verification of mailing (2 page);
- Exhibit 2(i): Transectional topographic analysis drawing (1 page).

13.3 Exhibits submitted by other parties:

- Exhibit 3(a): Brian Litt, Columbia River Gorge Commission, letter of comment submitted 3/28/03 (1 page);
- Exhibit 3(b): Jim Grimes, Oregon Department of Fish and Wildlife, letter of comment submitted via fax on 3/31/03 (2 pages);
- Exhibit 3(c): Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service Heritage Resource Inventory Report submitted on 4/2/03 (4 pages);
- Exhibit 3(d): Glen Fullilove, Land Use Legal Assistant, Friends of the Columbia Gorge, letter of comment submitted on 10/2/03 (5 pages).
- Exhibit 3(e): Brian Litt, Columbia River Gorge Commission, letter of comment submitted 10/1/03 (1 page);