



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 Hearings Officer Decision

Attached please find notice of the Hearing Officer's decision in the matter of **T2-03-024**. This notice is being mailed to those persons entitled to receive notice under MCC 38.0660(D) and to other persons who have requested the same.

The Hearing Officer's Decision may be appealed to Columbia River Gorge Commission by any person or organization who appeared and testified at the hearing, or by those who submitted written testimony into the record. An appeal must be filed with the Columbia River Gorge Commission within thirty days of when the decision is signed by the Hearing Officer. This decision is final at the close of the appeal period unless appealed.

Instructions and forms are available from the Columbia River Gorge Commission at 288 Jewett Avenue, PO Box 730, White Salmon, Washington 98672 Phone: 509-493-3323 FAX: 509-493-2229 E-mail: crgc@gorge.net

For further information call the Multnomah County Land Use Planning Division at 503-988-3043.



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DECISION OF HEARINGS OFFICER

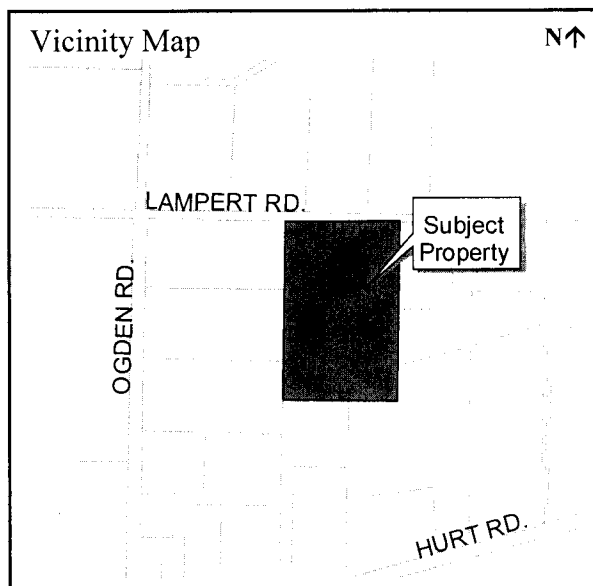
This notice concerns a hearings officer's Decision of an appeal of a Planning Director's Decision on the land use case(s) cited and described below.

Case File: T2-03-024

Permit: National Scenic Area Site Review for Single Family Dwelling

Location: 30600 Lampert Road, Corbett
Lot 13 portion of TL 00600, Sec32B,
T1N, R4E, Willamette Meridian.
Lot 13 portion of Alternative Tax
Account #R053501000

Applicants/ Mark & Cindy Lux
Owner: 30600 NE Lampert
Troutdale, OR 97060



Summary: NSA Site Review for a single family dwelling with an attached garage to replace existing dwelling in the Gorge General Residential – 10 District.

Decision: DENIAL of application for NSA Site Review. Reverse Planning Director's Decision.

Issued this 9th day of March, 2004

Liz Fancher, Hearings Officer

Opportunity to Appeal: This decision is the County’s final decision. It is final at the time specified by the County’s land use regulations. You should consult an attorney or review the relevant laws to determine how and when to appeal this decision.

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*. Findings prepared by the Hearings Officer are identified as **Hearings Officer:** prior to the findings. The hearings officer has also corrected staff and applicant findings where her findings conflict with those provided by staff or the applicant and where it is not necessarily clear from the context whether the hearings officer agrees with the findings. Staff findings, except as noted, are adopted as findings of the hearings officer in support of this decision. In the event of a conflict in findings, those of the hearings officer prevail.

1. **PROJECT DESCRIPTION**

Staff: The submitted application request is for “Replace existing home (Exhibit 1(a)). The project consists of replacing the existing home with a new single family two story dwelling which will be 2756 sq. ft. and about 32 feet tall. The project includes an attached garage with a bonus room above it. The dwelling will have an outdoor porch that wraps around the house on its northern and western sides. The proposed location is about 50 feet to the southwest of the existing dwelling just west of the exiting driveway, as depicted on the site plan (Exhibit 1(u)). The new dwelling will use the existing driveway for access. A portion of the existing agricultural driveway will be relocated to the south of the proposed dwelling. The existing dwelling will be removed within three months of occupancy of the new dwelling.

2. **SITE AND VICINITY CHARACTERISTICS**

Staff: The subject site is zoned Gorge General Residential-10 (GGR-10). The subject property is nearly 10 acres and is part of a Tax Lot that has a combined acreage of 12.86. The property is adjacent to and south of Lampert Road from which the property is accessed. The property is predominately in farm use with existing residential use and an existing 2800 square foot barn. The existing dwelling was built in 1926.

The vicinity has a mix of large acreage residential and farm uses. South of Lampert Road is in the GGR-10 Zone District (Exhibit 2(b)). In the vicinity the GGR-10 district includes properties that range in size from less than an acre are less than an acre to properties that are about ten acres. The properties north of the road are in the Gorge General Agriculture – 40 Zone District. These properties range in size from two to seven acres with one property to the northeast about 96 acres.

The subject property is on the west-southwestern side of hill that peaks at about 170 feet above the proposed dwelling location elevation. The peak is about 1200 feet from the proposed dwelling location. Further to the east the hill slopes down in varying degrees with a sharp drop near Chamberlain Road. The topography to the north drops in a rolling manner from the proposed dwelling site for a distance of about 1900 feet, with a drop of about 120 feet, then the slope increases dramatically with rapid drop about 500 feet in about a 1000 feet distant. The topography then levels off into floodplain as part of the Sandy River Delta with a hummocky landscape of small hills and low laying marshlands. To the west the topography drop off steadily with slopes generally ranging about five to ten percent until there is a significant increase of slope at the Sandy River Gorge at about 5000 feet west of the proposed dwelling site. At the south end of the subject property there is a shallow rounded ridgeline about ten to twenty feet above the elevation at the proposed dwelling location. To the south of that ridge the slope drops off in a southwestern orientation at a similar slope rate as it does to the west.

The property slopes up at about seven percent from the northwest corner toward the southeastern corner across the farm field. The slope increases between the field and the existing developed area forming a relatively flat bench between the existing dwelling and an existing barn. There is about a 22 percent slope south from the driveway road to the existing dwelling as shown on a 2002 aerial photograph with topographic contour lines overlaying the photo (Exhibit 2(d)).

Near the northeastern corner of the property is a relatively dense growth of predominately cedar trees through which the driveway meanders (see Photos 1 & 2).

Hearings Officer Note: The photographs referenced in this part of the decision were included in the staff report. The references herein are to the photographs in the staff report.

Hearings Officer Findings: Maps prepared by the County show that the eastern driveway and most of the trees that line this driveway are not located on the subject property. *See Exhibits 2(c), 2(d), H-6, H-10 & H-11.* The applicants' latest site plan map dated January 21, 2004 continues to show the driveway and trees as being located on the subject property.

As it is possible that the County incorrectly located on the boundaries of the subject property on the aerial photograph, I compared the site plan and the aerial photograph. I reviewed the location of the driveway and trees relative to the location of structures shown by the aerial photograph and site plan drawing. This review revealed that the site plan does not correctly depict the relative locations of the tree-lined driveway and the house. On the site plan, the driveway and trees are located too far to the west. Additionally, the shape created by the existing driveway trees shown on the January 21, 2004 site plan does not match the shape shown on the aerial photographs. The driveway trees are further to the east in a location where they will not screen the proposed new home from the staff-identified Columbia River KVA.

The lack of accuracy of the revised site plan calls into question the accuracy of the rest of the applicants' revised site plan map. This inaccuracy is particularly troubling as it relates directly to a key issue in this case – the location of screening vegetation in relationship to the proposed dwelling. It is also troubling as the applicant's site plan misrepresented, perhaps unintentionally, the location of the proposed new home. Appellant Leipper proved that the location of the proposed new dwelling was inaccurately depicted as being 50 feet from the east boundary of the subject property on the original site plan map. In response, the applicant's revised the site plan to show a setback distance of 70 feet on the revised January 21, 2004 plan.

Staff: From the proposed location dwelling, to the north, a portion of the Columbia River can be seen (Photos 3 & 4).

To the north, west and southwest of the existing and proposed dwellings is an open area of the property that is farmed with hay being the current crop (Photos 5 & 6). Along the northern fence line of the property the owners planted flowering cherry trees in 1993. The western property line was planted in cedars at that time but most have died. A dense mixed growth of conifer and deciduous, mature trees runs along the entire eastern and southern property lines (see Photos 6, 7 & 8).

Hearings Officer: The fact that the cedar trees planted in 1993 along the western property line have died calls in question the feasibility of the applicants' proposed screening plan for the new house. That plan calls for the applicants to plant three 8'-tall cedar trees between the KVA and the house and for the trees to grow and provide screening. The applicants have stated that these trees will be hand-watered, rather than irrigated. This type of arrangement was obviously not successful along the northern fence line. The record does not contain evidence to explain why this same arrangement will be more successful for the three new cedars.

Staff: The relatively flat area between the existing dwelling and the barn includes and existing driveway to the barn (see Photos 7 & 8) and a parking area (see Photo 4). The proposed dwelling site is just south of this parking area in an area that slopes down from the bench with about a four foot drop in about 40 feet. This area is depicted in forefront of photo 8. The photos above have been included in a larger format as Exhibits 1 (k) through (r).

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: Mark & Cindy Lux are listed as the owners of the subject property according to Multnomah County Assessment and Taxation Records (Exhibit 2(a)). The application form is signed by both property owners (Exhibit 1(a)).

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 April 9, 2003 (Exhibit 1(a)). A Completeness Review notice was send to interested agencies and Indian tribes. On May 9, 2003, an incomplete application letter was generated requesting additional information (Exhibit 2(h)). On July 23, 2003 a letter was sent by staff which deemed the application complete as of July 18, 2003 (Exhibit 2(i)). A 14 Day Opportunity to Comment notice was mailed by staff on July 23, 2003 to property owners within 750 feet of the subject tract Gorge Commission, US Forest Service and the Indian Tribal Governments and other interested parties (Exhibit 2(j)). Several letters of comment were received addressing the proposal and each is summarized below. This decision was drafted and will be mailed in accordance with MCC 38.0660.

The following parities submitted comments: Timely comments were received from the Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service on May 14, 2003 (Exhibit 3(a)) and July 15, 2003 (Exhibit 3(c)), Johnson Meninick, Manager, Cultural Resources Program, Yakama Nation, on May 16, 2003 (Exhibit 3(b), Glen Fullilove, Land Use Legal Assistant, Friends of the Columbia Gorge, on August 6, 2003 (Exhibit 3(d)), and Bob Leipper, a neighbor, on August 6, 2003 (Exhibit 3(e)).

A letter of comment was received after expiration of comment period from Susan Haylock, Preservation Assistant, State Historic Preservation Office, Oregon Parks and Recreation Department, on September 3, 2003 (Exhibit 3(f)). Additionally a memorandum was received on October 2, 2003 from Matt Larsen, Multnomah County Transportation Planning Specialist (Exhibit 2(g)).

Hearings Officer: All of the above-referenced documents are a part of the record considered by the hearings officer in making this decision.

Staff: The first document submitted by Ms. Dryden's, U.S.F.S., pertained to and were part of a Columbia River Gorge National Scenic Area Heritage Resource Inventory in which the proposed development and removal of the existing dwelling were assessed. Ms. Dryden stated in the Inventory's Conclusions and Recommendations that, "The proposed project, removal of the house and construction of a new house, will have no effect to potentially significant heritage resources." Ms. Dryden included an amended statement that stated,

"After consultation with Cliff Casseseka – Yakama Nation Cultural Resource Specialist, I recommend that a cultural resource monitor be present when septic system activities are conducted. Applicants should contact the NSA archeologist at least 3 work days prior to ground disturbing activities connected with septic system improvements or construction."

Ms. Dryden second comments were contained within an email message received July 15, 2003 in which she states,

"I spoke to Cliff Casseseka regarding the proposed enlargement of the drainfield for the Lux property. We agreed that I would monitor the drainfield expansion. Please have the applicants call me when the work will be done. It would be best if they could give me a few days warning so I can adjust my schedule to be there."

Staff has notified the applicants that they will need to contact Ms. Dryden three working days prior to installation of the septic system. A condition of approval will require this notification.

Mr. Meninick, Yakama Nation, requests that they be notified pending work before there is ground disturbance work for the septic system and pipe to the septic system. Their main concern relates to the Cultural Resources and Archaeological Resources that may be located in the area. He requests that if any evidence of historic campsites, old burial grounds, food/medicine plants are found, that be reported immediately to the Yakama Nation, Mr. Clifford Casseseka, Cultural Specialist for the Cultural Resources Program at: (509) 865-5121 extension 4720; FAX number (509) 865-4664. A condition of approval will require this notification.

In response to Mr. Meninick's concerns, Ms Dryden and Mr. Casseseka have agreed that Ms. Dryden will monitor the installation of the septic system for concerns related to Cultural Resources and Archaeological Resources.

Mr. Fullilove, Friends of the Columbia Gorge, stated concerns about the submitted site plan lacking required information as required by MCC 38.0600. The applicants submitted a new site plan on September 22, 2003 addressing those concerns. Mr. Fullilove states the proposed dwelling should be reviewed as a new dwelling because it doesn't meet the requirements for a replacement dwelling under MCC 38.0030. The following review will review the proposed dwelling as a new dwelling. Mr. Fullilove states that the only one single family dwelling is allowed per legally created parcel in Residential zones under MCC 38.3025. This decision includes finding on the legality of the parcel and includes a condition of approval that the existing dwelling be removed within three months of occupancy of the proposed new dwelling. Mr. Fullilove pointed out that there are adjacent lands designated Gorge General Agriculture which requires an agricultural buffer zone setback under MCC 38.0060. This decision includes finding addressing the agricultural buffer zone setback. Mr. Fullilove points out that the new dwelling must meet the scenic resource protection and landscape setting standards. This decision includes finding addressing those criteria. Mr. Fullilove points out that if the property is located in the buffer of water resources (MCC 38.7060), within 1000 feet of sensitive wildlife area (MCC 38.7065) or within 1000 feet of endemic plants or sensitive plants species (MCC 38.7070) the appropriate reviews and protection must be provided. These Code sections are addressed in this decision. Mr. Fullilove discussed Cultural Resource requirements (MCC 38.7045). Cultural Resources are addressed in this decision. A condition of approval will require notification of the U.S.F.S. Heritage Resource Program Manager prior to installation of the septic system. Additionally a condition of approval requires immediate stop of work and notification of the Yakama Nation if that if any evidence of historic campsites, old burial grounds, food/medicine plants are found.

Mr. Leipper's letter provided eight comments; they are as follows:

1. "The applicant has failed to address the criteria of MCC 380045(A)(2), 38.7035(B)(4)(a), 38.7035(B)(6)and 38.7035(B)(9)."
2. "The site plan submitted is not drawn to scale, does not show all existing roads and trees, shows no grades (new or existing)and does not accurately show new and existing structures on site."
3. "The second westerly driveway was not legally established and no permit is on file at county for this driveway to Lampert Road. See aerial photos in county files."
4. "Not enough detail has been submitted on plans, elevations and narrative for an effective evaluation."
5. "New home is set in more conspicuous location from KVA than existing home. This location is not one of the more visually subordinate building

sites on property. For example, the new home could be placed where a garage was removed (no demolition permit on file at Gresham) and take more advantage of the existing trees screening the existing house from the KVA.”

6. “3 ‘8’cedars ” of unknown species, planted at an unknown elevation relative to the proposed house, do not constitute ‘visual subordination’ and do not ‘block the home from being seen from KVA’.”
7. “‘north side of house . . . only gets direct sun for a period of approx. 3 weeks during summer solstice’ not factually correct. Window type unknown so reflectivity unknown.”
8. “Location and number of exterior lights not shown so evaluation impossible. Type ‘recessed can’ is vague and may not meet criteria.”

Each of the Code sections listed under number one of Mr. Leipper’s comments are addressed under findings for that Code section later in this decision. The applicants have submitted a new site plan (Exhibit 1(u)) since Mr. Leipper reviewed the file. The new site plan includes the items listed under number two of Mr. Leipper’s comments, except grade which is shown on a topographic map shown on a 2002 aerial photo of the subject property (Exhibit 2(d)). Access driveways will be reviewed prior to County approval of the building permit by the County Right of Way Program. Addressing number four, an additional north side elevation drawing of the dwelling was submitted with an elevation according to sea level labeled on the drawing. Issues listed as comment numbers five and six are addressed in findings for Scenic Review under subheading 6.1 of this decision. The applicants have submitted a new set of paint chips and roofing sample (Exhibit 1(m)) proposed for the dwelling. Addressing the reflectivity of windows for the proposed dwelling, the applicants have submitted window manufacture specification for windows on the north side that have a low reflectivity rating of 11 percent (Exhibit 1(n)). The applicants have submitted a manufacture’s brochure for proposed recessed lighting and narrative addressing additional lighting from the garage (Exhibit 1(s)) which they state, “... will be shielded, down facing and cannot be seen from the KVA.”

Ms. Haylock, State Historic Preservation Office, stated, “... no need to comment on this undertaking as per 36 CFR 800 and Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C.470f).”

Matt Larsen, Multnomah County Transportation Planning Specialist, stated that, “County Transportation does not object to this proposal provided the following measures are included as conditions of approval.”

- “No right-of-way dedications are required at this time”
- “No right-of-way improvements are required at this time.”
- “Only one driveway to replacement dwelling will be allowed, per County standards.”

Mr. Larsen explained that, “County standards allow only one driveway per residential lot. The existing western-most driveway should be closed because it offers the poorest sight-distance and access spacing. It also appears to cross over onto the adjacent property. An access permit will be required for the remaining driveway to the east.”

Since road approaches are handled under a different ordinance than the zoning code we can not include a condition of approval for a road approach. However, this issue will be reviewed for compliance prior to building permit sign off by the County Right-of-way Program staff.

On October 6, 2003 the applicants met with County staff to discuss the need to retain two access driveways, in attendance was Alan Young, County Right-of-Way Permit Specialist, Matt Larsen and George Plummer, County Land Use Planner. The applicants explained why they believed two access driveways are needed for the subject property, one to access the dwelling and the other for predominately agricultural, fire access, and long load access. They were presented the option of requesting a variance to the standard. The criteria for this decision do not include the requirement to address existing access driveways. Thus, this issue need not be resolved with 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: The subject property is described separately as Lot 13 of Banner Acres. A title report from Chicago Title Insurance Company shows that the deed also describes additional property in the same ownership (Exhibit 1(t)). This additional property appears to have been partitioned without the required permits and approvals. While both properties are in the same ownership, Lot 13 is a distinct lot and is not encumbered by any potential violation that may be related to the other property. There is no known violation on the subject property, Lot 13.

Hearings Officer: The site plan map filed January 21, 2004 shows all of the property owned by the applicants, including the part of their property that is not a legal lot of record. The area outside of Lot 13 contains a large number of trees and building labeled “machinery shed.” This area was not considered as a part of the site for purposes of analysis of the approval criteria.

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 proposed use is listed as a review use in the GGR-5 zoning district (Exhibit 2(b)). 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-10 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.

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 proposal is for a single-family dwelling with an attached garage on a lot within the GGR-10 Zone District. The subject property, Lot 13 of Banner Acres, was created according to the map filed February 8, 1910, in Plat Book 515, Page 69. Lot 13 is described separately in the legal description in the Chicago Title Insurance Company of

Oregon title report generated for Mr. & Mrs. Lux on May 28, 1993 (Exhibit 1(t)). The legal description also describes additional property in the same ownership. The subject lot was created as a separately described on a subdivision plat filed with the County in 1910. There were no zoning requirements in 1910 thus the subject lot satisfied all applicable land division and zoning regulations in effect on the date of creation. These criteria have been met.

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 will be more than 150 feet, the side yards will be 50 and more than 400 feet, and the rear yard exceeds 350 feet (Exhibit 1(u)). The proposed dwelling is less than 32 feet at the peak height (Exhibit 1(q)). These requirements are met by the proposed development.

Hearings Officer: The January 21, 2004 revised site plan shows an increased side yard on the east side of the subject property (50 feet to 70 feet). The applicant's site plan incorrectly depicted the proposed location of the home. The actual planned location of the house, on the ground, however, is the same as described by staff.

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: Matt Larsen, Multnomah County Transportation Planning Specialist submitted a memorandum dated October 2, 2003 addressing this criterion (Exhibit 2(g)). He states, "No right-of-way dedications are required at this time" and "No right-of-way improvements are required at this time." The setback distance from the proposed dwelling provides for any future additional right-of-way should any be needed in the future.

5.3.2 Proposal meets Agricultural Buffer Zones

MCC 38.0060: All buildings, as specified, shall satisfy the following setbacks when proposed to be located on a parcel which is adjacent to lands designated GGA– 20 or GGA– 40:

Type of Agriculture	Type of Buffer		
	Open or fenced	Natural or created vegetation barrier	8 foot berm or terrain barrier
Orchards	250'	100'	75'
Row crops/vegetables	300'	100'	75'
Livestock grazing pasture, haying	100'	15'	20'
Grains	200'	75'	50'
Berries, vineyards	150'	50'	30'
Other	100'	50'	30'

Staff: The adjacent property across Lampert Road is zoned Gorge General Agriculture - 40 (GGA-40) and is pastureland with a 100-foot setback. The proposed dwelling will be at least 30 feet south of the existing dwelling which is in excess of 150 feet from Lampert Road (Exhibit 2(c)). This criterion has been met.

6. NSA GMA SITE 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.**

Applicants: *“New building will be positioned on an existing bench that is very level and will require very little excavation and will retain existing topography to reduce necessary grading. The existing driveway to existing home will used and not changed. The driveway from existing home to the barn will moved about 30' to the east to make room for new home, the area for new driveway is flat and will require very little excavation.”*

Staff: During a site visit, staff reviewed the location of the proposed dwelling with Mr. Lux. The east side of property has a slope that rises up to a bench approximately 10 to 15 feet up from the shallow sloped farmed area that makes up most of the property. This area forms a relatively flat bench on which the existing dwelling and driveway to the barn are located. On this bench there is an existing parking area about 75 feet to the southeast of the existing dwelling. Just to the south of this parking area the land drops off about five feet forming a half bowl. The proposed dwelling location will be in this depression

with the first floor about level with the existing parking area to the north. The applicant plans to retain the existing topography as much as possible, reducing the grading to that that is necessary to site the dwelling. The existing access driveway to the dwelling will be used with a minor amount of relocation just to the east of the proposed dwelling. The driveway work will be in an area that is relatively flat with little grading work required.

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.

Applicants: The new home is a single family dwelling, 2756 sq. ft. and about 32' tall, ~~similar to other homes in the area~~ (Exhibits 1(r) and (q)).

Staff: To draw a comparison of nearby housing development, staff examined development of stick-built houses and garages within two lots in all directions of the subject property. This area presented 12 examples of nearby development from which to compare the proposed dwelling with existing development. 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 gives the area of the proposed and existing dwellings and garages obtained from County Assessment Records (Exhibit 2(e)) organized by address.

AREA OF EXISTING NEARBY DEVELOPMENT						
<i>Address</i>	<i>Year Built</i>	<i>Living Area in sq. ft</i>	<i>Unfinished Basement in sq. ft</i>	<i>Detached Room in sq. ft</i>	<i>Garage Area in sq. ft</i>	<i>Living & Garage Area in sq. Ft.</i>
Proposed Dwelling	-	2756	-	-	676	3432
31031 NE Lampert Rd.	1995	13424	850	150	3623	17047
30111 NE Lampert Rd.	1921	1312	-	-	-	-
30728 NE Lampert Rd.	1953	994	464	576	832	1826
30645 NE Lampert Rd.	1990	2026	-	-	432	2458
30335 NE Lampert Rd.	1976	1620	-	-	693	2313
1010 NE Ogden Rd.	1973	4930	300	-	1402	6332
1408 NE Ogden Rd.	1997	4908	4272	-	-	-
1710 NE Marok Rd.	1979	2304	500	-	444	2748
1800 NE Marok Rd.	1950	1432	1264	-	-	-
30485 NE Hurt Rd.	1992	5831	-	748	1406	7237
30515 NE Hurt Rd.	1968	2145	385	-	-	-
30649 NE Hurt Rd.	1920	1126	476	-	-	-

The average dwelling living space, which includes finished basements, is 3504 square feet. Staff excluded the largest dwelling because it is more than two times larger than the next largest. The average dwelling size in the vicinity, excluding the dwelling at 31031

NE Lampert Rd, is 2603 square feet. The average garage size is 1261 square feet. Excluding the largest garage (nearly three time larger than the next largest), the average garage size is 868 square feet. The average for the combined areas of the dwellings and garages is 5708 square feet. Excluding the development at 31031 NE Lampert Rd the combined area average for dwellings and garages in the vicinity is 3819 square feet.

The proposed dwelling at 2756 square feet is consistent in size with the existing homes. The smallest stick built dwelling in the area has a square footage of 990 square feet (with a detached 576 square foot room). The largest is a dwelling with 13,424 square feet of living area. The next three largest are about from 5831 to 4908 square feet. There are several dwellings in the 1100 to 1600 square foot range and a three in the 2000 to 2300 square foot range. The proposed 2756 square foot dwelling would fit in the upper middle range for dwelling size in this area with four dwellings larger and eight smaller.

Likewise the proposed garage at 676 square feet in area is consistent in size to the existing garages in the area. The smallest is 432 square feet and the largest at 3623 square feet. There are a couple at about 1400 square feet and four that range in size from 432 to 832 square feet. The proposed garage is in the lower range of area for garages in the area.

For cumulative analysis of the proposed development the combined area for the proposed dwelling and garage is 3432 square feet which is below the average calculated without the largest dwelling. The cumulative development of the dwelling and garage is in the mid-range of these types of developments in the area.

The submitted plans show a two story dwelling. At its highest point, the proposed dwelling is about 32 feet in height (Exhibit 1(q)). Thirty-two feet is below the maximum height limitation (35 feet) in the GGR-5 zoning district.

Hearings Officer: The fact that the height limit for this zone is 35 feet does not bear on the question of whether the proposed building height is generally consistent with the height of existing development. It is considered to show that the height can be approved if it is also found to be generally consistent with the height of existing development.

Staff: There are four dwellings in the area that are two-story dwellings. The dwelling on the adjacent property to the west is a bit higher than the proposed dwelling.

Hearings Officer: The Appellant has introduced evidence that indicates that the largest house in the study area was approved as a one-story dwelling but constructed as a tall two-story house. The record shows the appellants identify this same structure in an effort to justify the proposed height and placement of their home. *See* applicant's January 21, 2004 post-hearing evidence (Picture #1 labels this house as "13,000 sq. ft. home two stories on Lampert Road.")

The Appellant's evidence that the large house is approved as a one-story house only has not been rebutted by the applicants. The hearings officer finds that it would be

compounding violations of the law to rely upon the apparently illegal construction of a second story on a dwelling approved for one-story construction to justify a two-story dwelling for the appellants. As a result, the number of houses in the area counted as two-story houses must be reduced by one to three houses.

The record lacks factual information about the approximate height of area buildings. It also lacks photographs of all area homes and structures to demonstrate that the height proposed is generally consistent with the height of area homes and structures. The record does contain photographs of homes on adjoining properties. *See Exhibit 1(f)*. These photos show that two of the homes are one story homes with a low height. One of the homes may be a two-story home with a second-story attic or living space that is built under the roof-line for the first story – making the overall height lower than the height of a two-story house that places the roof on top of second-story walls. The design of this house gives it the appearance of a one-story house with a steep roof when viewed from the front. The fourth house appears to be the very large house located west of the subject property that was approved as a single-story house.

County staff determined that four houses, including the house approved as a single-story home but constructed as a two story house, are two-stories tall. At least one of these houses, the house shown in photo #5 of Exhibit 1(f) appears to be designed to be significantly lower in height than is the dwelling proposed by the applicants. On this record, the hearings officer is not convinced that the new residence will be generally consistent with the height of existing nearby development. The applicant bears the burden of proof on this issue and has failed to meet that burden.

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.

Applicants: *No new vehicular access points will be added. We will use existing driveways to existing home.*

Staff: The site is accessed by a private driveway off of Lampert Road, which is not listed as a Scenic Travel Corridor. ~~The criterion has been met.~~

Hearings Officer: This code section is not a relevant approval criterion as the subject property does not adjoin or propose access to a Scenic Travel Corridor.

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

Applicants: *The new building will be set in a spot that is now parking and grass, no other vegetation will be disturbed.*

Staff: A condition of approval will require proper maintenance and survival of required vegetation. This criterion can be 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.

Applicants: *The site plan shows all modifications to landscape, including three cedar trees located between new building and Key Viewing Area.*

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

Hearings Officer: As determined in prior findings, the January 21, 2004 and the originally submitted site plan both fail to accurately depict the existing condition of the subject property and its relationship to the location of the proposed new home.

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.

Applicants: N/A, This is not a quarry. This is a residential home.

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

Hearings Officer: This code provision is not an applicable approval criterion.

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.

Applicants: *The height, shape, colors and landscaping will be evaluated to ensure that new buildings are visually subordinate to it 's setting as seen from Key Viewing Area. New building is to be placed farther away from Key Viewing Area than existing home(which will be removed)to minimize visibility from the Columbia River.*

- 1. No screening vegetation will be removed.*
- 2. All windows, siding and light screens shall be made of non-reflective material.*
- 3. All trees planted for screening purposes will be native to the area.*
- 4. Exterior colors will be dark and either natural or earth-tone.*

The new home is a 2400 sq. ft. home with a ~~29'-6"~~ 32" total height. The ridge of the roof will be running North to South so the horizontal line of the ridge will not be seen from the KVA. ~~This home is approximately 1/2 the square footage of the other two~~

~~homes that have been built on adjoining properties in the past three years.~~ [Note: The hearings officer rejects this claim as the staff chart of recently constructed houses shows that no homes have been built on adjoining properties in the past three years. The most recent dates of construction for an area home is 1997.] *Our existing single story home and our neighbors two story home are 2.75 miles from the KVA and cannot be seen with the naked eye from the KVA, the new home will be a two story but will be set farther away from the KVA and slightly lower in elevation so it will still have the large Alder, Cedar and Cottonwood trees in the background to blend into. New home will have an 8' porch on side viewed from KVA to shade all windows on main floor. Second floor will have only 2 windows on side viewed from KVA and this is the north side of the house so the sun does not shine on these windows to reflect from KVA. We have picked dark colors for the home and trim so it will blend into the surroundings as much as possible. We are going to plant 3 cedar trees on north side of house to break up the horizontal lines of home as seen from KVA.*

There will be 9 recessed lights in the ceiling of the covered porch. They will be the baffle kind shown in the brochure attached. The only other outside lights will be on the east side of the garage. They will be shielded down facing & cannot be seen from the KVA.

Staff: After reviewing the submitted materials, and maps staff determined that the proposed development was only potentially visible from Key Viewing Areas to the north. The KVAs to the north of the subject property are the Interstate Highway – 84 and the Columbia River. After conducting a site visit, staff determined that the river is the only KVA of concern for the proposed project. However, due to the vegetative cover on lands not controlled by the applicants, staff conducted a topographic profiling analysis using Geographic Information System (GIS) software to generate topographic profiles between the dwelling and potential KVA locations.

Using GIS topographic profiling staff analyzed topographic profiles between the proposed dwelling and eight points along Interstate – 84 and the Columbia River (Exhibit 2(f)). The profile analysis for the Interstate using four points shown on the aerial photo map and labeled as Profiles A – D. These profiles indicate that the natural topography entirely blocks any view of the proposed development from the highway. The topographic profile analysis for the river using four points in the river indicates that the proposed dwelling is potentially visible from two of the four points, Profiles E and F. Profiles G and H show the view of proposed development blocked by topography.

The siting of the proposed dwelling and garage (the garage will be completely hidden from KVAs because it is behind the dwelling) will be in an area where the development will be screened from Interstate - 84 and mostly screened from the river due to topography and lesser extent existing vegetation on the property. ~~A grove of cedar trees directly north of the proposed dwelling provide screening from the river.~~ This KVA view is to the north-northeast of the proposed dwelling. This conclusion was confirmed by staff through use of the topographic profiles described above between the proposed dwelling and the potential KVA location.

Additionally, photographs submitted by the applicant (Exhibit 1 (d) and (e)) and the photographs by staff (Exhibit (k) through (r)) provide similar evidence the proposed development site is visible from the river. A photograph by staff shows an island can be seen in the river which appears to be part of the eastern portion of the Sandy River Delta. Existing vegetation, not on the subject property, between the river and the proposed dwelling also provides a minor amount screening from the river, however, the view is predominately blocked by topography. Through the profile analysis and information obtained through site visits staff has determined that the only visible KVA appears to be a portion of river from the north-side of the island to the NSA boundary.

In the area of the river that is visible only the Oregon side of the Columbia River (Exhibit 2(c)) is a KVA because the Washington side of the river is outside the Columbia River Gorge National Scenic Area. A combination of the distance and topographic elevation from the river to the proposed dwelling will substantially reduce the visual impact. The proposed development is about two miles to three miles from the impacted KVA substantially reducing its impact. The north-side of the proposed dwelling is the only portion of the proposed development that is potentially visible from the one impacted KVA. The applicants have proposed planting three eight foot tall cedar trees to the north of the dwelling as shown on the original plans (Exhibit 1(b)) between the proposed dwelling and the KVA to supplement the (MCC 38.7035(B)(9)) screening of the proposed development. Additionally, trees to the east and south of the dwelling provide background which the proposed dwelling will blend in with given the proposed color scheme.

The size of the proposed development is shown in the submittal elevation drawings (Exhibit 1(q)). The proposed dwelling is a two-story dwelling with attached garage with a bonus room above the garage located behind the dwelling. The dwelling will be sited with the ridgeline running north to south with the narrow side towards the KVA. This orientation of the dwelling limits the amount of window area on the KVA viewable side and the porch overhang will reduce the access of sunlight to the windows below the porch overhang.

The applicants also submitted a letter with a manufacturer's brochure attached (Exhibit 1(n)) addressing window reflectivity from their contractor, Adaptive Homes, Shannon Amburn, owner, dated September 23, 2003 stating:

"Our company Adaptive Homes, will be building the Lux's new home on 30600 N. E. Lampert Rd. Troutdale, OR 97060. The windows that will be installed into the home are Milgard Windows. Milgard uses Lo E -178 #2 Glass System by Cardinal IG. Please refer to the specs attached; these windows have-11%visible light reflectance (outdoors)."

The applicants submitted several paint chips of proposed colors for the dwelling and garage. The latest submitted paint chips are for Ralph Lauren brand and are labeled with the paint names; "Amazon – NA60" (dark green) for the dwelling

and garage body, and “Kilim Red – TH53” (dark reddish brown) for the trim (Exhibits 2(m)). This submittal also included a sample of the composite roof shingle and portion of a brochure labeling the shingles “Driftwood” (dark gray and reddish brown) (Exhibit 1(m)). The proposed light will be down-facing and shielded (Exhibit 1(s)).

~~Given the distance from the KVA of two to three miles, existing cedar trees to the north of the development site, proposed nature dark paint colors blending the proposed dwelling into the shadows of the existing trees to the east and trees behind the proposed dwelling, and the design of the and siting of the proposed dwelling, the development will be visually subordinate to its setting as seen from the Columbia River KVA. Because the vegetation, trees to the north, east and south of the proposed development help screen the development, a condition of approval is needed to ensure the vegetation is retained. Conditions of approval will require the development as proposed including planting and maintaining the three proposed cedar trees. The criterion is met through proposed conditions.~~

Hearings Officer: The hearings officer is not convinced by the evidence in the record that the home proposed will be visually subordinate to its setting. The distance of the home from the KVA and the dark materials proposed favor a finding of visual subordination. The siting of the home by the applicants in an open location for view enhancement argues against such a finding.

This was a close question. The applicants’ repeated errors in site plan preparation and the stated intention of their builder to continue to change plans after approval helped tip the balance in favor of a finding of noncompliance.

The applicants’ representations of the relative locations of the proposed house (50’ vs. 70’ from the east boundary) and the screening trees (in front or to the side of the house) have been shown to be inaccurate. The lack of accuracy on these important facts is troubling. It indicates that none of the applicant’s evidence is reliable as this key information is so noticeably inaccurate and the inaccurate facts, if undiscovered, would favor approval of the application.

The applicants’ builder reflects the applicants’ casual approach to the site plan review process. The builder testified that the site plan “will change again” during construction. The builder said that because the house will be a custom home that it “can be changed as built.” He indicated changes may include a change in building elevation and lighting fixtures. The fact that the building actually constructed will not match the building proposed makes it impossible for the hearings officer to make any reliable conclusion regarding visual subordination of an as yet to be designed building.

The hearings officer does not believe that the proposed new 8’-tall cedar trees will do anything to achieve visual subordination as they will be planted at an elevation below the ground floor elevation of a 32’-tall house.

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.

Applicants: ~~The extent and type of conditions applied to the proposed development to achieve visual subordination will be proportionate to its potential visual impacts as seen from Key Viewing Area. The primary factors influencing the degree of potential visual impact include: the amount of area of the building is exposed to the Key Viewing Area, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Area it is visible from, the number of Key Viewing areas it is seen from, and the linear distance along the Key Viewing Area from which the building site it is visible.~~

Any excavation for the new home will not be seen from KVA because of a natural bench on the north side of the building site. No vegetation will be disturbed except for sod. The only KVA that the building site will be seen from is a two mile long section of the Columbia River that is approx. 2.75 miles away.

Staff: ~~Conditions of Approval are proportionate to the development and visibility of the development. Since the dwelling is predominately screened by topography and vegetation, and is only visible at a distance of two to three miles from a small portion of the Columbia River, the proposed planting of three eight foot cedar trees and a requirement to retain the existing vegetation is proportionate to its potential visual impacts. Other conditions of approval ensure that the standards of the NSA shall be met upon obtaining a building permit and that the existing dwelling is removed within three months of the occupation of the new dwelling. Each Condition of Approval will include a note stating which standard and finding it is to which it is connected. Criterion met.~~

Hearings Officer: Conditions of approval were not imposed as the applicant failed to demonstrate compliance with all relevant approval criteria. Additionally, the hearings officer could not achieve compliance with approval criteria by the imposition of reasonable conditions of approval. In particular, a condition that requires the removal of the upper floor of the house is not a reasonable condition of approval. Instead, a redesign of the house or further proof on the height issue is needed.

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.

Applicants: *Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed development. The new home is set back further on the property than the existing home which has minimal visual effects from KVA. The 8 'covered porch will shade all the main floor windows, and the upstairs windows will be shaded by eaves similar to the existing home. The cumulative impact of the new development should be less than the existing home.*

Staff: ~~The cumulative proposed development is the dwelling and the garage. The garage will be behind the proposed dwelling. 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 there are no potential visual effects will be minor and visual subordinate to the landscape. The criterion is met.~~

Hearings Officer: A cumulative effects analysis requires the County to look beyond the boundaries of the subject property to consider the impact of approval on the area, in combination with past or future development or both. The applicants did not address this criterion in a way to assist the hearings officer in determining what cumulative effect the development will have on the area. As a result, the hearings officer cannot find that the applicants have met their burden of proof.

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.

Applicants: *Elevation drawings are included with final ground grade shown.*

A) For buildings, a description of the height, shape, color, exterior siding, exterior lighting and landscaping will be submitted. See site plan and elevation drawings for descriptions and materials to be used.

B) Elevation drawings showing the appearance of proposed building when finished and its surrounding final grade.

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

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.

Applicants: ~~The new building will be sited on a portion of the property behind cedar trees which make a screen between most of the Key Viewing Area. Also three new cedars will be placed to block the home from being seen from the rest of the Key Viewing Area.~~

Staff: The development site chosen by the applicants for the dwelling and garage uses natural topography ~~and existing vegetative screening~~ to minimize visibility from the KVAs (Exhibit 2(c)). The proposed area of development is in the developed area of the property and is between the existing barn and the KVA. ~~By placing the development in this area, the groves of cedar trees in the north-eastern corner of the property have been used to provide screening from the KVA.~~ Placing the dwelling in the field would interfere with agricultural use of the property and would result in more grading. The proposed dwelling location utilizes the existing driveway. The proposed location uses the slope topography to lower the height resulting in the first floor being about level with the parking area to its north. This use of topography reduces the visibility of the dwelling. Locating the dwelling further to the east on the property ~~would potentially results in the dwelling being more visible from the river. The siting orientation of the dwelling with the roof line running north to south reduces impacts as well. The proposed location use existing topography and vegetation to minimize visibility from Key Viewing Areas. Criterion is met.~~

Hearings Officer: A review of the aerial photograph shows that the impact of the applicant's plan is to move the residence location out into the farm field in an area that is more open and more visible (from the KVA) than the location of the existing home. Moving the home back on the property a short distance will not materially alter its visibility from the KVA as the distance from the KVA to the subject property is far greater than the distance the home will be moved. The change to a far more open location will increase the visibility of the home from the KVA compared to the construction of a home in the same location as the existing home or a location to the south of the existing home. The applicant's January 21, 2004 comments support this conclusion. The applicant's state "[w]e chose this site to take advantage of view. . ." The location was not selected to minimize visibility of the home from the Columbia River KVA.

A home location that might meet this criterion is a location further north at a lower elevation. A site behind the existing house or in place of the existing house is another

example of a site that would minimize visibility. The current home site uses the existing trees for screening. When the actual location of the cedar trees and eastern driveway is considered – east of the proposed home, it is very unlikely that the proposed home site will be screened by the existing cedar trees that line the eastern driveway.¹

The eight foot tall cedar trees proposed by the applicants are proposed in a north-south line at elevations below the base elevation of the proposed house. The evidence in the record has failed to demonstrate that in such a location the cedar trees will actually screen the house. It seems very unlikely that they will.

Based on the forgoing findings, the hearings officer finds that the applicants have failed to meet their burden of proving that the new building will be sited on portions of the subject property that minimize visibility from Key Viewing Areas.

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.

Applicants: *In positioning 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.*

Staff: ~~The proposed development uses existing topography and vegetation to screen the development from the KVA. The cedar trees in the north-eastern corner of the property provide screen of the proposed development.~~ The proposed dwelling location is further back on the property than the existing dwelling and will be built into a depression in the side of the hill. This will allow for the first floor to be at about level with the ground to the north. The applicant will use the existing driveways with minor alteration to the predominately agricultural driveway using existing topography. A minor amount of planting, three, eight foot cedar trees will be used to break up the view of the dwelling from the KVA that is not screened. Criterion is met.

Hearings Officer: Moving the site uphill does not materially alter its visibility when compared to the existing dwelling. The elevation of the two locations is about the same. Any difference in elevation is more than offset by the substantial increase in the height of the dwelling proposed compared to the height of the far lower height of the existing dwelling.

¹ The hearings officer does not know the height of the cedar trees. The only trees that might offer screening are found at an elevation about 40 feet below the elevation of the home site and 72 feet below the top of the proposed house (based on USGS map submitted on January 21, 2004 by Bob Leipper). From the aerial photograph, maps and photographs in the record, however, make it appear that none or just one of the mature cedars would be in the line of sight between the proposed house and the KVA. See, Photo 3 of staff decision (shows virtually unobstructed view of KVA). It appears that the only trees that might be located between the house and the KVA in a line of sight are the cherry trees. The applicant and staff do not claim that these trees provide screening.

In this case, moving the home location closer to the KVA and the front property line would be an example of a site that uses existing topography to screen the house from view in the KVA. As the property drops steeply to the north, placing a house at the bottom, rather than the top, of the steep hill would be a site that uses topography to screen development from view in the KVA. As discussed earlier, the applicant has failed to demonstrate that the existing cedar trees will provide any screening between the house and the Columbia River KVA. No other existing vegetation was argued to provide screening. As a result, the hearings officer finds that existing topography and vegetation was not prioritized over the planting of new vegetation (the three 8' tall cedar trees) as a means of achieving visual subordination.

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.

Applicants: *Driveway modification and new building will be sited on a level spot making grading, cut banks and fill slopes not visible from Key Viewing Area.*

Staff: The proposed development will use the existing driveway to access the dwelling/garage. The location of the dwelling will require a minor relocation of the existing agricultural access driveway used for farm equipment, long loads, and in icy weather (Exhibit 1(u)). This drive will need to be moved just to the south at the location where the proposed development will block it. The proposed dwelling is to be placed into a depression in the side of a hill that drops about four feet. The proposed development has been designed to minimized earthwork. 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.

Applicants: Exterior of building will be lap siding, painted a non-reflective dark earth tone color (see example A). The roof will be a dark architectural style composition roof that is non-reflective (see example B).

Staff: The applicants also submitted a letter with a manufactures brochure attached (Exhibit 2(n)) addressing window reflectivity from their contractor, Adaptive Homes, Shannon Amburn, owner, dated September 23, 2003 stating:

“Our company Adaptive Homes, will be building the Lux's new home on 30600 N. E. Lampert Rd. Troutdale, OR 97060. The windows that will be installed into the home are Milgard Windows. Milgard uses Lo E -178 #2 Glass System by Cardinal IG. Please refer to the specs attached; these windows have-11%visible light reflectance (outdoors).”

The applicants submitted several paint chips of proposed colors for the dwelling and garage. The latest submitted paint chips are for Ralph Lauren brand and are labeled with the paint names; “Amazon – NA60” (dark green) for the dwelling and garage body, and “Kilim Red – TH53” (dark reddish brown) for the trim (Exhibits 1(n)). This submittal also included a sample of the composite roof shingle and portion of a brochure labeling the shingles “Driftwood” (dark gray and reddish brown) (Exhibit). The proposed light will be down-facing and shielded (Exhibit 1(s)). ~~The proposed dwelling will be a condition of approval requiring use of building materials as proposed by the applicants to meet the requirement of nonreflective materials or materials with low reflectivity. 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.

Applicants: *All exterior lighting that can be seen from the Key viewing Area will directed downward and shielded with a non-reflective material. There will be 9 recessed lights in the ceiling of the covered porch. They will be the baffle kind shown in the brochure attached. The only other outside lights will be on the east side of the garage. They will be shielded down facing & cannot be seen from the KVA.*

Staff: The proposed light will be down-facing and shielded (Exhibit 1(s)). 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.

Applicants: *The silhouette of the new building shall remain below the skyline of a bluff and trees to not affect the skyline from the Key Viewing Area.*

Staff: The proposed dwelling is located in an area where there are trees behind it to the east and south of the proposed dwelling (Exhibits (q) and (r)). The dwelling and garage will be below the trees and will not break the skyline. A condition of approval requires the property owner preserve and maintain these trees in a living condition. ~~Criterion met.~~

Hearings Officer: The County aerial photographs indicate that many of the trees that assure compliance with this criterion are located on the applicant’s property. As a result, the applicant likely has the ability to comply with this condition. The hearings officer notes, however, that a number of the trees south of the proposed home that prevent the house from breaking the skyline are located on an adjoining property. If the applicant appeals this decision or reapplies, it should be demonstrated that the trees on the

applicant's property alone are of sufficient height and density to allow the building to comply with this code criterion.

- 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.**

Applicants: *New buildings will be built on land in the Key Viewing area that is not in excess of 30 percent.*

Staff: The proposed development is in an area where the slope is less than 30 percent. Criterion is met.

- 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:**

Applicants: *We will not move more than 100 cubic yards of dirt for the new building.*

Staff: The applicants' propose to keep the grading below 100 cubic yards. The proposed location has a slope that is less than 10 percent. Criterion is met.

Hearings Officer: Mr. Leipper argued a grading plan is needed as the applicants will be filing the existing home's basement. The hearings officer disagrees. The filling of the basement does not require a grading review. It is grading that will occur in a site that is not visible from a Key Viewing Area. As a result, this code section does not mandate review of that type of grading. The applicant's propose less than 100 cubic yards of grading for the rest of their site.

- 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.**

Applicants: *All landscaping will be finished within 2 years after home is finished.*

Staff: Criterion will be met through a condition of approval that requires conditions of approval to achieve visual subordination to be met within 2 years of home occupancy.

- 6.3 MCC 38.7035(C) All Review Uses and Conditional Uses within the following landscape settings:**

6.3.1 MCC 38.7035(C)(4) Rural Residential in Conifer Woodland or Pastoral

- (a) New development in this setting shall meet the design standards for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral or Coniferous Woodland), unless it can be demonstrated that compliance with the standards for the more rural setting is impracticable. Expansion of existing development shall comply with this standard to the maximum extent practicable.**
- (b) In the event of a conflict between the standards, the standards for the more rural setting (Coniferous Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such standards would not be practicable.**
- (c) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.**

Staff: The subject property is located in the Rural Residential in Pastoral Landscape Setting Area. Findings for both Pastoral and Rural Residential follow this section.

6.3.2 MCC 38.7035(C)(1) Pastoral

6.3.2.1 MCC 38.7035(C)(1) (a) New development shall be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity. Expansion of existing development shall meet this standard to the maximum extent practicable.

Staff: Findings under Section 6.1.2: MCC 38.7035(A)(2) in this decision address the proposed development's consistency with development in the vicinity (all properties within two properties 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.~~

Hearing Officer: As discussed earlier, the applicants have failed to demonstrate that the height of their proposed home is compatible with the general scale of development in the vicinity of their property. The evidence regarding the height of area development is too sketchy to allow the hearings officer to draw any firm conclusion about whether the height proposed is compatible with the height of other structures.

6.3.2.2 MCC 38.7035(C)(1) (b) Accessory structures, outbuildings and accessways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.

Staff: The proposed development is clustered with the existing development (a barn) on the subject property. The proposed development is on a bench area at the edge of the farm field. This criterion has been met.

6.3.2.3 MCC 38.7035(C)(1)(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. Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.**
- 3. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).**
- 4. At least one-quarter of any trees planted for screening shall be coniferous for winter screening.**
- 5. Structures' exteriors shall be dark and either natural or earth-tone colors unless specifically exempted by MCC 38.7035 (B) (11) and (12).**

Staff: The applicants' proposal includes no removal of existing trees. The vegetative landscaping will be in the general area of the development up on the bench retaining the open character of the farmed fields. The applicants are proposing to plant three cedar trees which are native to the area. All the proposed trees are conifers. The proposed exterior colors are dark natural and earth tones (Exhibit 1 (m)). This criterion can be met through conditions of approval.

6.3.2.4 MCC 38.7035(C)(1) (d) Compatible recreation uses include resource-based recreation uses of a very low or low-intensity nature, occurring infrequently in the landscape.

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

6.3.3 MCC 38.7035(C)(3) Rural Residential

6.3.3.1 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.

Staff: ~~In the findings under Section 6.1.2: MCC 38.7035(A)(2) in this decision address the proposed development's consistency with development in the vicinity (all properties within two properties 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.~~

Hearing Officer: As discussed earlier, the applicants have failed to demonstrate compliance with this requirement of general compatibility.

- 6.3.3.2 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.**

Staff: The applicants' proposal includes no removal of existing trees. This criterion is met.

- 6.3.3.3 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).**

Staff: The applicants' proposal includes no removal of existing trees. The vegetative landscaping will be in the general area of the development up on the bench retaining the open character of the farmed fields. The applicants are proposing to plant three cedar trees which are native to the area. All the proposed trees are conifers. The proposed exterior colors are dark natural and earth tones (Exhibit 1(m)). This criterion will be met through conditions of approval

- 6.3.3.4 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, Archeologist with the United States Forest Service, Columbia River Gorge National Scenic Area as Heritage Resource Program Manager, surveyed the site and determined there was no evidence of prehistoric or historic cultural materials in a Heritage Resource Survey. The Heritage Resource Inventory Report was submitted on May 14, 2003 (Exhibit 3(a)). The results of the survey mean the site has a low probability of containing cultural resources. However, if during excavation remains or resources are found, a condition of approval will require development to stop so that they can be properly removed from site and preserved.

Ms. Dryden's first comments pertained to and were part of a Columbia River Gorge National Scenic Area Heritage Resource Inventory in which the proposed development and removal of the existing dwelling were assessed. Ms. Dryden stated in the Inventory's Conclusions and Recommendations that, "[t]he proposed project, removal of the house and construction of a new house, will have no effect to potentially significant heritage resources."

Ms. Dryden included an amended statement, at the end of the report, that stated,

"After consultation with Cliff Casseseka – Yakama Nation Cultural Resource Specialist, I recommend that a cultural resource monitor be present when septic system activities are conducted. Applicants should contact the NSA archeologist at least 3 work days prior to ground disturbing activities connected with septic system improvements or construction."

Johnson Meninick, Manager, Cultural Resources Program, Yakama Nation, submitted comments on May 16, 2003 (Exhibit 3(b)). Mr. Meninick requests that they be notified pending work before there is ground disturbance work for the septic system and pipe to the septic system. Their main concern relates to the Cultural Resources and Archaeological Resources that may be located in the area. He requests that if any evidence of historic campsites, old burial grounds, food/medicine plants are found, that be reported immediately to the Yakama Nation, Mr. Clifford Casseseka, Cultural

Specialist for the Cultural Resources Program at: (509) 865-5121 extension 4720; FAX number (509) 865-4664. A condition of approval will require this notification

Ms. Dryden submitted further comments contained within an email message received July 15, 2003 (Exhibit 3(c) in which she states,

“I spoke to Cliff Casseseka regarding the proposed enlargement of the drainfield for the Lux property. We agreed that I would monitor the drainfield expansion. Please have the applicants call me when the work will be done. It would be best if they could give me a few days warning so I can adjust my schedule to be there.”

Ms Dryden and Mr. Casseseka have agreed that Ms. Dryden will monitor the installation of the septic system for concerns related to Cultural Resources and Archaeological Resources.

Staff has notified the applicants that they will need to contact Ms. Dryden three working days prior to installation of the septic system. A condition of approval will require this notification.

As indicated in Ms. Dryden’s report no cultural resources are known to exist in the project area. The comment received from Mr. Meninick does not indicate that there are known cultural resource but state a general concern that there may be some in the area thus monitoring should be required during the excavation of the septic system. This criteria can be met through a condition of approval requiring monitoring by Ms. Dryden (or a designee agreed to by the Yakima Nation Cultural Resource Manager) during the excavation work.

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 can be 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 can be written to require a halt of activities – All survey, excavation, and construction activities shall cease if human remains are discovered during construction. The condition can require that 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 DOES NOT CONTAIN GMA STREAMS, LAKES OR RIPARIAN AREAS

Staff: There are no streams, lakes or riparian areas near this property. Criterion is met.

10. THERE ARE NO KNOWN SENSITIVE WILDLIFE WITHIN 1000-FEET OF THE SITE

MCC 38.7065 GMA Wildlife Review Criteria

Wildlife Habitat Site Review shall be required for any project within 1,000 feet of sensitive wildlife areas and sensitive wildlife sites

Staff: There are no known sensitive wildlife areas or sites 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.

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 fails to satisfy the applicable approval criteria required for Site Review in the National Scenic Area.

13 EXHIBITS

13.1 Exhibits submitted by the Applicants:

- Exhibit 1(a): NSA application form submitted 4/9/03
- Exhibit 1(b): Site plan submitted 4/9/03
- Exhibit 1(c): Narrative submitted 4/9/03
- Exhibit 1(d): KVA photographs submitted 4/9/03
- Exhibit 1(e): KVA photograph location and analysis map submitted 4/9/03
- Exhibit 1(f): Photographs of dwellings in the area submitted 4/9/03
- Exhibit 1(g): Floor plan submitted 4/9/03
- Exhibit 1(h): Elevation drawing submitted 4/9/03
- Exhibit 1(i): Paint chips and roofing brochure submitted 4/9/03
- Exhibit 1(j): Water, septic, & fire district service provider forms submitted 4/9/03
- Exhibit 1(k): Addendum to the narrative submitted 7/18/03
- Exhibit 1(l): Elevation drawings showing finished grade submitted 7/18/03
- Exhibit 1(m): Amended paint chip selection and sample of roof shingle
- Exhibit 1(n): Letter from Shannon Amburn, Adaptive Homes and attached brochure from Cardinal IG addressing windows reflectivity submitted 10/24/03
- Exhibit 1(o): North elevation showing amended grade and height submitted 10/22/03
- Exhibit 1(p): Amended floor plan submitted 10/30/03
- Exhibit 1(q): Amended elevation drawing submitted 10/30/03
- Exhibit 1(r): Amended floor plan for both stories submitted 9/1/03
- Exhibit 1(s): Narrative and brochure addressing outdoor lighting submitted 10/22/03
- Exhibit 1(t): Chicago Title Insurance Company of Oregon title report for the subject property submitted 4/9/03
- Exhibit 1(u): Amended site plan submitted 10/22/03

13.2 Exhibits included by County:

- Exhibit 2(a): County Assessment Record for the subject property
- Exhibit 2(b): County Zoning Map with subject property labeled
- Exhibit 2(c): Two 2002 Aerial Photos of the subject property and vicinity at different scales

- Exhibit 2(d): 2002 Aerial photo of the area with contour overlay
- Exhibit 2(e): County Assessment Records for dwelling in the vicinity for comparison analysis
- Exhibit 2(f): KVA contour profiles analysis documents including aerial photo map and profiles
- Exhibit 2(g): Memorandum from Matt Larsen, Multnomah County Transportation Planning Specialist received on 10/2/03
- Exhibit 2(h): Incomplete application letter mailed to applicants by staff on May 9, 2003,
- Exhibit 2(i): Letter deeming the application complete mailed to applicants by staff on July 23, 2003
- Exhibit 2(j): 14 Day Opportunity to Comment notice was mailed by staff on July 23, 2003
- Exhibit 2(k): Photo 1; taken on site by staff, looking north-northeast from first floor level north side of proposed dwelling.
- Exhibit 2(l): Photo 2 taken on site by staff looking northeast from first floor level north side of proposed dwelling.
- Exhibit 2(m): Photo 3 taken on site by staff looking north from first floor level north side of proposed dwelling.
- Exhibit 2(n): Photo 4 taken on site by staff looking north-northwest from first floor level north side of proposed dwelling
- Exhibit 2(o): Photo 5 taken on site by staff looking west-northwest from first floor level north side of proposed dwelling.
- Exhibit 2(p): Photo 6 taken on site by staff looking south-southwest from first floor level north side of proposed dwelling.
- Exhibit 2(q): Photo 7 taken on site by staff looking south-southeast from first floor level north side of proposed dwelling.
- Exhibit 2(r): Photo 8 taken on site by staff looking south from first floor level north side of proposed dwelling.

13.3 Exhibits submitted by other parties:

- Exhibit 3(a): Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service on 8/14/03
- Exhibit 3(b): Johnson Meninick, Manager, Cultural Resources Program, Yakama Nation, on 5/16/03
- Exhibit 3(c): Margaret L. Dryden, USFS, email 7/15/03
- Exhibit 3(d): Glen Fullilove, Land Use Legal Assistant, Friends of the Columbia Gorge, on 8/16/03
- Exhibit 3(e): Bob Leipper, a neighbor, on August 6, 2003
- Exhibit 3(f): Susan Haylock, Preservation Assistant, State Historic Preservation Office, Oregon Parks and Recreation Department, on September 3, 2003

13.4 Other Exhibits In County File (the A through C Exhibits):

- Exhibit A: Notice of Appeal filed by Robert A. Leipper on November 5, 2003
- Exhibit B: Notice of Decision & Notice of Appeal Hearing

- Exhibit C(1): Completeness Review mailed 4/16/03, Application Form dated 4/9/03, Maps of Subject Property (2), Mult. Co. Property Records for R111614, Fire District Review, Certification of Water Service, Certification of On-Site Sewage Disposal, Applicant's Burden of Proof Statement, Applicant's Site Plan, Map Identifying KVAs and Locations Where Photos Taken, Pictures #1 – 6, Floor Plan for First Floor, Floor Plan for Second Floor, East Elevation, West Elevation, North Elevation, South Elevation, Exterior & Roof Colors
- Exhibit C(2) May 9, 2003 Letter from Applicants stating intention to provide additional information to complete application
- Exhibit C(3): Notice List
- Exhibit C(4): Opportunity to Comment letter from George Plummer dated July 23, 2003 plus attachments
- Exhibit C(5): August 27, 2003 letter to Mark & Cindy Lux from Multnomah County Land Use Planning Division re T2-03-024
- Exhibit C(6): Notice List stamped October 22, 2003
- Exhibit C(7): Notice of Public Hearing, Appeal of Planning Director's Decision and Notice List
- Exhibit C(8): Halo Recessed Lighting Information
- Exhibit C(9): May 9, 2003 Note written by George Plummer re mailing documents
- Exhibit C(10): US Postal Service Form – PS Form 3547 (Return to Sender)

13.5 Exhibits Submitted at the Appeal Hearing:

- Exhibit H-1: E-mail to Hearings Officer Liz Fancher from Sandra N. Duffy dated 11/19/03
- Exhibit H-2: Second Notice to Property Owners mailed on 11/12/03
- Exhibit H-3: Affidavit of Publication dated 11/4/03
- Exhibit H-4: Envelope used to mail public hearing notice to Robert Skirving returned by USPS
- Exhibit H-5: November 19, 2003 Letter from Nathan Baker, Friends of the Columbia Gorge to Hearings Officer c/o George Plummer with decision re legal lot of record status of adjoining Lux property
- Exhibit H-6: Color Aerial Photograph of Subject Property with superimposed boundary lines
- Exhibit H-7: Sign-In Sheet for November 21, 2003 Hearing
- Exhibit H-8: November 21, 2003 Letter from Bob Leipper to Hearings Officer, Multnomah County
- Exhibit H-9: Topographical Map of Washington State and Oregon adjacent to Columbia River, including subject property
- Exhibit H-10: Color Aerial Photograph of Subject Property and Surrounding Area with Property Boundaries Superimposed
- Exhibit H-11: Color Topographic Map – aerial photograph with topographic lines superimposed

13.6 Exhibits Submitted After the Appeal Hearing:

- Exhibit J-1: January 19, 2004 Letter to George Plummer and Liz Fancher from mark and Cindy Lux with January 19, 2004 memorandum to Liz Fancher, color photographs of view of KVA from subject property and view of property from KVA, map of KVA and subject property, topographic map, elevation drawings (4), revised site plan (reduced), first floor plan, second floor plan
- Exhibit J-2: January 21, 2004 Revised Lux Site Plan
- Exhibit J-3: January 21, 2004 Comments by Bob Leipper in memorandum to Liz Fancher with exhibits (topographic map, enlarged topographic map, aerial photo with colored markings, enlarged aerial photograph with colored markings, elevation calculations
- Exhibit J-4: February 2004 Rebuttal Comments by Bob Leipper