

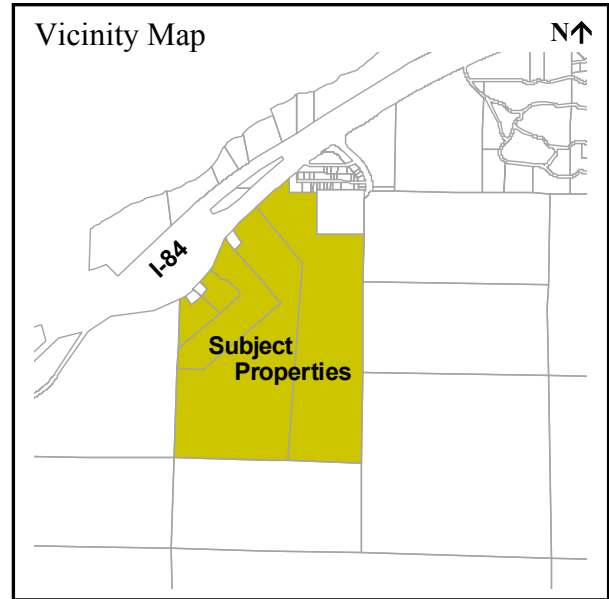


MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/dscd/landuse>

NOTICE OF DECISION

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

Case File: T2-03-078
Permit: National Scenic Area Site Review
Location: 60666 NE Frontage Road
1N6E02 -00500, R946020220
1N6E02 -0600, R946020060
1N6E02B -00500, R946020140
1N6E02B - 00600, R946020180
1N6E02B -00900, R946020210
Applicant: US Forest Service, c/o Dave Tilton
902 Wasco Avenue, Suite 200
Hood River, Oregon 97031
Owner(s): Owner of property known as
Tax Acct R946020180 and R946020210:
JoAnne Mohr
19716 Schaefer Drive
Oregon City, OR 97045



Owner of property known as <u>Tax Acct R946020140:</u>	Owner of property known as <u>Tax Acct R946020060:</u>	Owner of property known as <u>Tax Acct R946020220:</u>	Owner of property known as <u>Tax Acct R946020220:</u>
Hershel and Carol Royce 60404 NE Frontage Road Cascade Locks, OR 97014	Susan Nolan 8568 Bronco Drive Salem, OR 97301	Shawn and Shoshana Bucher 60666 NE Frontage Road Cascade Locks, OR 97014	Joseph and Arlys Bucher 3760 SW 30 th Drive Gresham, OR 97080

Summary: Three parcel partition to facilitate land acquisition by the federal government, including cultural resources review for removal of a barn that is over 50 years of age.

Decision: Approved with conditions.

Unless appealed, this decision is effective Tuesday, September 7, 2004, at 4:30 PM.

Issued by:

By: _____
Derrick I. Tokos, AICP, Planner

For: Karen Schilling - Planning Director

Date: Tuesday August 24, 2004

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

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 38.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Columbia River Gorge Commission (CRGC) until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, September 7, 2004, at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 38.0040(A), Review Uses, Land Divisions; MCC 38.2000 through 38.2095; Gorge Special Forestry (GSF) Zone District; MCC 38.2600 through 38.2695 Gorge Special Open Space (GSO) Zone District; MCC 38.7040, Scenic Review Criteria; MCC 38.7000 through 38.7090, Site Review; MCC 38.7700 through 38.8035, Land Divisions; and MCC 38.0510 through 38.0800, Administration and Procedures.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/dscd/landuse>.

Scope of Approval

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

Condition of Approval

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

1. The applicant is to complete the procedures given in the enclosed "Applicant's Instructions for Finishing a Land Division." They are also to provide their surveyor the enclosed "Surveyor's Instructions for Finishing a Land Division" which provides instructions for drafting required materials. Before the final plat is submitted to the Multnomah County Surveyor's Office, two (2) blue line copies of the plat are to be filed with the Planning Director. Within 10 business days of filing, the

Director will determine whether the plat complies with this decision and the conditions of approval contained herein. At such time as the plat complies with this decision a letter of zoning compliance will be provided to the Multnomah County Surveyor (MCC 38.8015).

2. No building permits will be issued, nor shall any of the parcels be sold, transferred or assigned until the final plat is signed by the Planning Director and County Surveyor and has been recorded with the Multnomah County Recorders Office (MCC 38.8030(C)).
3. Prior to final plat sign-off from County Planning, the applicant or property owners shall submit photographs showing that the shed straddling the north line of proposed Parcel 3 has been removed (MCC 38.7855 and 38.2060).
4. Prior to final plat sign-off from County Planning, the applicant or property owners shall either submit photographs showing that the barn located on the line common to proposed Parcels 1 and 2 has been removed or provide a map, stamped by a licensed surveyor, showing that the structure has been altered such that at its closest point the building is at least 10 feet from the new property line (MCC 38.7855 and 38.2060).
5. Prior to final plat sign-off from County Planning, the applicant or property owners shall submit documentation establishing a binding commitment on the part of the property owners to sell proposed Parcel 3 to the Forest Service (MCC 38.0040(A)(1)(a)).
6. The applicant or property owners shall dedicate easements for the water line, spring, and access road with the final plat or provide evidence that the easements have been recorded prior to final plat sign-off from County Planning (MCC 38.7935 and MCC 38.8025).
7. The applicant shall incorporate the drainage easement note referenced in this decision on the face of the partition plat and dedicate easements along the stream drainages that are of sufficient width for maintenance purposes, as determined by the County Engineer (MCC 38.7935).
8. If, during construction, cultural or historic resources are uncovered that were not documented in the Heritage Resource Inventory Report, dated April 21, 2004, the applicant/owner shall immediately cease development activities and inform the Multnomah County Planning Director, Columbia River Gorge Commission, and U.S. Forest Service of their discovery (MCC 38.7045(L) & MCC 38.7045(M)).

The property owner shall record a copy of the Notice of Decision cover sheet and conditions of approval with the Multnomah County Recorder within 30 days of the date this decision becomes final. A copy of the recorded document shall be submitted to the Land Use Planning Office (MCC 38.0670).

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.

DECISION OF THE PLANNING DIRECTOR

Findings of Fact

(Formatting Note: Staff as necessary to address Multnomah County ordinance requirements provides Findings referenced here. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written comments prepared by the applicant, taken from their March 25, 2004 narrative, are *italicized*. Planning staff comments and analysis may follow applicant comments. Where this occurs, the notation “Staff” precedes such comments.

Comments From Other Agencies/Individuals

Notice of the subject request was mailed to the following agencies/individuals:

Columbia River Gorge Commission/Cultural Advisory Committee
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs
Nez Perce Tribe
State of Oregon Historic Preservation Office
U.S. Forest Service NSA Office
Yakima Indian Nation
Friends of the Columbia Gorge
Oregon Department of Transportation
Oregon Park & Recreation
Oregon Natural Heritage Program
Crown Point Historical Society
Corbett Together
Corbett Community Association
Northeast Multnomah County Community Association
Skamania County Planning Department
East Multnomah Soil and Water Conservation District
Surrounding property owners

Comments were received from the following agencies/individuals:

Friends of the Columbia Gorge
Gorge Commission
US Forest Service NSA Office
State Historic Preservation Office
L. Faust, Property Owner

1. **Proposal:**

This proposed land division involves creating a three-parcel partition in the west half of Section 2, T.1N., R.6E., W. M. situated in Dodson, Oregon. The total area affected is approximately 200 acres, currently under the ownership of Bucher, Nolan, Royse, and Mohr. The last lawful parcel configuration for the property involved in the proposed land division is depicted on a Multnomah County zoning map dated October 5, 1977 (see Attachment 1 with associated deeds in Attachment 2). The parcels included in this proposal are Tax Lots '3', '4' and '6' as shown on the 1977 map. The land

included within Tax Lots '3', '4' and '6 ' was most recently configured in 1981 into the current tax lot arrangement (see Attachment 3 with associated deeds in Attachment 4). The 1981 land division plat never received final approval from the Multnomah County Land Use Planning Division. However, deeds were recorded, new tax lots were created and associated tax accounts were established for the new owners of record at the time. This land division proposal involves only those lands included in the last lawful parcel configuration as depicted on the map in Attachment 1.

This proposal qualifies as a Category III Land Division as determined at the Pre-Application Conference held on April 24, 2003. The partition would rearrange five existing tax account numbers with four property owners into three separate parcels. Two of the parcels would remain in private ownership while the third parcel would be acquired by the USA. This proposed land partition will be processed as Type II decision as addressed in MCC 38.0530. In the event that all landowners do not ultimately sell their property contained within Parcel 3 to the USDA Forest Service, this land division proposal becomes null and void.

The current ownership as shown on the existing tax lot map is as follows:

<u>Landowner</u>	<u>Tax Lot ID</u>	<u>Alt. Tax Lot ID</u>	<u>Assessor's Acreage</u>
Bucher	1N6E02-00500	R946020220	84.35
Nolan	1N6E02-00600	R946020060	83.12
Royse	1N6E02B-00500	R946020140	23.33
Mohr	1N6E02B-00600 & 900	R946020180 & 210	<u>10.23</u>
Total Acreage			201.03

Contained within the 23.33 acres of property owned by Royse is the 3.75-acre parcel that was previously approved by Multnomah County. The 3.75-acre parcel is shown as Tax Lot '14' in Attachment 1 and Tax Lot 500 on the Tentative Plan Map (Attachment 5). This 3.75-acre parcel would be retained by the Royse family and is not included in the land division proposal. In addition, the Royse's own a smaller 0.8-acre adjacent parcel to the east (formerly Tax Lot '20', now designated as Tax Lot 400) containing their current residence. The County had also previously approved this small parcel with an existing house per Multnomah County file designation LE-22-78. This 0.8-acre parcel is not involved in the proposed land division and will also be retained by the Royse family.

The resulting parcels associated with this land division, if implemented, are as follows:

<u>Tract ID</u>	<u>Landowner</u>	<u>Estimated Acreage</u>
Parcel I	Bucher	28.9
Parcel II	Nolan	21.0
Parcel III	USA	147.3
Partition Subtotal		<u>197.2</u>
Retained by Royse		<u>3.75</u>
Total Acreage		200.95

The final figures for the actual acreage will be based on a field survey to be conducted following the approval of this proposed land division application.

Staff: We concur with the applicant's assessment. The maps and deeds referenced by the applicant as Attachments 1 through 5 are included as Exhibits 4 through 8 of this decision.

2. Site Characteristics:

Staff: The properties are located in the Dodson Warrendale area, south of Interstate 84, approximately 5 miles west of the Bonneville Dam. The land is situated at the base of a north facing ridge. Areas closest to the Interstate are gradually sloped and have been partially cleared for pasture. All existing development is clustered on this portion of the property, including a single family residence and several outbuildings. The bulk of the property is undeveloped and forested, with the terrain being more severe as the property extends south up the ridge. The western boundary of the properties coincides with a large debris flow deposit that occurred in 1996 and the entire area has been identified as prone to debris flows as illustrated in a series of maps entitled "*Geologic and Slope Hazard Maps Unincorporated Multnomah County, Oregon (September 1978)*", and later updates. An aerial photograph from 2002 illustrates the present condition of the properties (Exhibit 9).

The properties are within the Special Management Area of the Columbia River Gorge National Scenic Area, with the north half of the site being within a Gorge Special Forestry (GSF) zone district and the steep terrain to the south in a Gorge Special Open Space (GSO) district. A copy of a current zoning is enclosed showing the exact boundary between the two districts (Exhibit 10). A slope hazard zoning overlay also applies to the properties due to the severity of terrain and the risk of debris flows.

3. Proof of Ownership:

MCC 38.0550 Initiation of Action

Except as provided in MCC 38.0580, Type I – IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: The County may only process land use applications with consent from the land owner (MCC 38.0550). All of the land owners have signed a consent forms authorizing the Forest Service to file this application (Exhibit 2) and each is listed as a current owner on County tax assessment records (Exhibit 11).

4. National Scenic Area Site Review Required:

MCC 38.7010 Applicability

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 38.7025 or 38.7030 or 38.7090.

MCC 38.7015 Application for NSA Site Review

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

MCC 38.7020 Required Findings

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: As outlined under Finding #5 below, land divisions are specifically regulated under Scenic Area rules and may only be allowed within the Special Management Area to facilitate land acquisition by the federal government to achieve the policies and standards of the Management Plan (MCC 38.0040(A)(1)(a)). Understanding this, the applicant filed an application for scenic area site review responding to applicable approval standards (MCC 38.7015). This document is the County decision containing findings that explain how the applicant has satisfied all of the criteria relevant to their project (MCC 38.7020).

5. Land Divisions Allowed on Special Management Area (SMA) Lands:

MCC 38.0040(A)(1), Land Divisions, Land Divisions within the NSA shall be classified and found to satisfy the applicable approval criteria specified in MCC 38.7700 through 38.8035, subject to the following:

- A. MCC 38.0040(A)(1)(a), New land divisions, except lot-line adjustments, are not allowed in the Special Management Area, unless the creation of a new parcel will facilitate land acquisition by the federal government to achieve the policies and standards of the Management Plan.**

The USDA Forest Service has proposed this land division specifically to facilitate federal acquisition in order to achieve Management Plan goals. The intent of the proposed partition is for the Forest Service to acquire the undeveloped forest land in order to protect scenic and natural resource values. The majority of the area proposed for federal acquisition is designated as SMA Open Space (County Zoning designation GSO). In addition, the northerly portion is designated as SMA Forest (GSF-40). The property owned by the Royse's (Tax Lot 500) falls under the GMA Large Woodland land use designation as a result of the Section 8(o) process. A continuation of the Gorge Trail 400 may extend through the proposed federal acquisition parcel (Parcel 3) in the future so that the trail could be located on State and federal land south of Dodson and Warrendale rather than terminating on the State highway. The Forest Service would conceal or otherwise protect the existing waterlines for a minimum of 25 feet on each side of any trail crossing. The private landowners would retain primarily the land currently in agricultural and residential use. The Bucher family has operated the agricultural land as a productive farm since 1945. The original Bucher residence and the former dairy barn are most likely historic buildings. The barn was originally constructed around 1900, and the residence was built in 1916 per the Multnomah County Assessors Office records. The Forest Service would not be able to maintain these buildings due to the high associated costs. Therefore, historic structures would most likely be removed under Forest Service ownership. However, these buildings would be retained under private ownership for residential and agricultural use. The estimated construction dates for the buildings involved in this proposal are shown in Attachment 9.

In summary, this proposed land division furthers the National Scenic Area policies for scenic, cultural, natural and recreation resources by: 1) maintaining cultural resource values by retaining buildings that are likely historic, 2) enhancing recreation resources by providing for the possibility of extending the Gorge Trail 400 south of Dodson and Warrendale, 3) protecting scenic and natural resource values as a result of federal

acquisition of lands designated as SMA Open Space and SMA Forest, and 4) helping to support the economy of the Columbia River Gorge by maintaining a viable family farming operation.

Staff: We concur with the applicant that this standard has been satisfied. However, to be clear, the estimated construction dates referenced by the applicant are those of the existing structures. The only development that is to occur in conjunction with this land division is removal of a barn and shed that would otherwise encroach over property lines, as illustrated on the tentative plan (Exhibit 8). Subsequent findings discuss how the removal of these structures, specifically the barn, is consistent with scenic and cultural resource criteria. Attachment 9 referenced by the applicant is Exhibit 12 to this decision.

The explanation made by the applicant relies upon the sale of proposed Parcel 3 to the Federal Government; however, there does not appear to be anything in the record to establish that such a commitment exists. Because of this, it is necessary to impose a condition of approval requiring such evidence be submitted to the Land Use Planning Office prior to the plat being recorded in order to ensure that this criterion is satisfied. The need for this requirement is raised in the Gorge Commission's letter, dated April 22, 2004 (Exhibit 13) and we expect that this condition addresses their concern.

B. MCC 38.0040(A)(1)(b), All land divisions must consider consolidation of access in order to reduce adverse effects on scenic, cultural, natural and recreation resources.

This provision addresses access. All land divisions must consider consolidation of access in order to reduce adverse effects on scenic, cultural, natural and recreation resources. The three proposed parcels are all adjacent to the State highway and have existing gravel access roads.

Staff: The tentative plan shows property configurations, locations of existing development, and vehicle access for the proposed parcels. Parcels 1 and 2 are each developed with several buildings that are clustered together and located in close proximity to the Columbia River Highway. Since access to these buildings is available directly off of the Highway within an existing developed area and runs for a relatively short distance across gradually sloped ground, there is little if any benefit in requiring access consolidation for these parcels in terms of resource protection, including how the properties are viewed from key viewing areas to the north. To the extent that vehicle access is needed to Parcel 3, we concur with the applicant that it is best achieved by using the existing access road (if an easement can be obtained) or directly off of the public road, as requiring its access to be consolidated with Parcels 1 and 2 would compel the construction of a lengthy access road across undeveloped and more steeply sloped terrain.

6. Partition Classified as Type 3 Land Division:

MCC 38.7770, Category 1 Land Divisions

The following proposals are designated Category 1 Land Divisions:

(A) A Rural Area subdivision;

(B) A Rural Area partition which creates a new street when the Planning Director determines that:

- (1) The proposal includes the continuation of an existing or planned street to adjacent property, or,
- (2) The proposal either eliminates or makes impractical the continuation of an existing street or the provision of needed access to adjacent property.
- (C) A subdivision or partition associated with an application affecting the same property for any action proceeding requiring a public hearing under MCC Chapter 38 or for a variance under the Land Division part of this Chapter; and
- (D) Any other land division proposal which, as determined by the Planning Director, will have a substantial impact on the use or development of nearby property such that determination at a public hearing is required, considering:
 - (1) The nature of nearby land uses or the pattern of existing land divisions in relation to the applicable elements of the Comprehensive Plan;
 - (2) Plans or programs for the extension of the street or utility systems on or near the proposed division; or
 - (3) Physical characteristics of the tract or nearby area such as steep slopes, a history of flooding, poor drainage, land slides or other existing or potential hazards.

MCC 38.7775 Category 3 Land Divisions

All other land partition proposals are designated Category 3 Land Divisions.

Staff: As illustrated with the tentative plan (Exhibit 8), this application is not a rural subdivision and will not create or require the continuation of a street. There are also no variances associated with this application and the Planning Director has not identified a need for a public hearing considering the factors listed. Considering this, the application is appropriately considered a Category 3 land division.

7. Compliance with Approval Criteria for a Category 3 Tentative Plan

MCC 38.7855, Criteria for Approval: Category 3 Tentative Plan

In granting approval of a Category 3 tentative plan, the Planning Director shall find that the criteria listed in subsections (B), (C) and (H) of MCC 38.7800 are satisfied and that the tentative plan complies with the area and dimensional requirements of the underlying zoning district.

- A. **MCC 38.7800(B), Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances.**

Under this proposal, Parcels 1 and 2 would remain under the same ownership. Parcel 1 (owned by Shawn and Shoshana Bucher) currently contains one residence with domestic water, a septic system, utilities and associated outbuildings. No additional residences would be allowed. The parcel is adjacent to the State highway and thus has legal access. Parcel 2 (owned by Susan Nolan) would also remain in the same ownership. This parcel contains a large barn, other outbuildings, a water system and utilities. A gravel road from the State highway provides access. The possibility of constructing a residence would exist under this proposed land division, provided that other applicable requirements could be met. The landowners are aware of the geologic hazard designation and the effect on the possibility of future development. An outbuilding located on the boundary between

Parcels 1 and 2 would be partially removed in order to meet lot line setback requirements. The Forest Service would acquire Parcel 3. There are no plans to create any development on Parcel 3 except for the possible extension of the Gorge Trail 400 at some time in the future to enhance recreation values. Parcel 3 has legal access because it abuts the State highway right-of-way in the northwest portion of the tract. The gravel road into the former Mohr residence provides physical access. An outbuilding would be removed along the boundary of Parcel 3 and Tax Lot 500 (owned by Royse) in order to meet lot line setback requirements.

Staff: We concur with the applicant that this standard has been met. In comparing the tentative plan map with a current zoning map (Exhibit 10) it is evident that Parcels 1 and 2, which are to remain in private ownership, fall within a Gorge Special Forestry (GSF) zone district. All of the existing farm buildings are located on these properties, as well as the existing pasture land as shown on a 2002 aerial photograph (Exhibit 9). The County's Scenic Area ordinance provides that existing uses may continue if in the same manner and for the same purposes as they existed prior to February 6, 1993 (MCC 38.0030(A)). Given the age of the farm buildings, and historic aerial photographs on file with the County, it is evident that these properties have been used for agricultural purposes on an ongoing basis well before this date and this land division has no bearing on the property owners ability to continue to use the land for these purposes. Establishment of new agricultural uses is also allowed outright in the GSF district (MCC 38.2020(B)(1)). Considering the above, there is sufficient evidence to show that the approval of the land division will permit development of these properties under the same ownership.

As for Parcel 3, the property is within a GSO district that does not allow, outright, much of anything other than maintaining existing development (MCC 38.2620(B)). This; however, is in line the Forest Service's intended use of the property as discussed in their narrative. Reference is made to future extension of Gorge Trail 400 through the property. Low intensity recreation uses are permitted in this district subject to site review (MCC 38.2625(E)(3)). A separate site review application will be required should the Forest Service choose to pursue this trail project.

The Forest Service makes reference to the potential of a dwelling being constructed on proposed Parcel 2. Such potential relies upon a change of the zoning for the property to a General Management Area, Small Woodland land use designation that is to be made under authority of Section 8(o) of the Scenic Area Act. It is the Forest Service that has authority to change the land use designation under this provision of the act, and they indicate in their narrative that this change has not yet occurred. Consistent with ORS 215.427 the County evaluates land use applications using standards and criteria in effect on the date the application is filed and staff can find no authority in the County scenic area ordinance or Management Plan that allows consideration of such a future designation as part of a pending application. Gorge Commission staff suggest that the County decision clarify the range of actions the Forest Service plans to take under Section 8(o), as they relate to this land division. However, such action on the County's part would be inappropriate, since the County has no role in establishing an appropriate land use designation under this Section of the Act.

This criterion also requires the land division not adversely impact the development potential of adjoining lands or access thereto. An aerial photograph of the area (Exhibit 9)

shows that none of the adjoining properties rely upon access across the proposed parcels, nor does there appear to be anything inherent to this land division that would adversely impact the development potential of surrounding properties.

B. MCC 38.7800(C), The tentative plan complies with the applicable provisions, including the purposes and intent of this Chapter.

This land division has been proposed in order to facilitate a federal land acquisition to further the purposes of the Management Plan as addressed above. In addition, completion of this partition would resolve a long standing issue regarding the existing tax lots. The area contained within the proposed partition originally included three lawful tax lots owned by the Bucher family (Tax Lots '3','4'and '6'-see Attachment 1). In 1981, property was divided among the four current landowners (see Attachment 2). However, the 1981 land division plat never received final approval from the Multnomah County Land Use Planning Division. This land division proposal involves only those lands included in the last legally recognized parcel configuration. Thus, there is a desire to bring this area into compliance with current Multnomah County Code. The three parcels would meet the size requirements stipulated in the proposed zoning ordinances. All of the parcels abut the State highway right-of-way, thereby having legal access.

Staff: We concur with the applicant that this standard has been satisfied. The Purposes of the Columbia River Gorge National Scenic Area Districts are to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, and to protect and support the economy of the Columbia River Gorge by allowing future economic development in a manner that enhances the scenic, cultural, recreational, and natural resources of the Gorge [MCC 38.0000). Acquisition of Parcel 3 by the Forest Service is consistent with the resource protection objectives of the County Scenic Area ordinance. In terms of economic development, this partition corrects an existing land division problem, as discussed by the applicant, meaning the County can now issue development permits for the improvement or use of these properties (MCC 38.7725(B)).

C. MCC 38.7800(H), Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood waters into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent: 1) the infiltration of flood waters into the system; and 2) the discharge of matter from the system into flood waters.

There are no immediate plans for new developments on the three parcels. As previously stated, the Forest Service may extend Gorge Trail 400 across Parcel 3 in the future. A location would be selected that is the least prone to flood waters in order to reduce maintenance costs and provide for safety. If a residence should be proposed on Parcel 2 in the future, all applicable ordinances would need to be followed. This includes all rules and regulation with respect to flood waters. Any septic system design proposed likely not be proposed for at least 5 years. Development of a single-family residence on Parcel 2 may be proposed at any time following the final approval of this Land Division. No other planned improvements have been identified.

Staff: We concur with the applicant that the standard is satisfied. The tentative plan shows two streams, both of which are on proposed Parcel 3 (Exhibit 8). As configured this parcel, at 147.3 acres in size, provides ample area to accommodate development without impacting these tributaries. There are no known areas on any of the properties that have been mapped as prone to flooding or flood hazards, and as indicated by the applicant there is no new development or waste disposal systems proposed with this partition.

8. Compliance with Area and Dimensional Requirements of the GSF and GSO Districts
(GSF and GSO standards are substantially the same so only the GSF standards are listed)

MCC 38.2060, DIMENSIONAL REQUIREMENTS

(A) Except as provided in subsections MCC 38.2030 (A) (3) and (4), the minimum lot size shall be according to the short-title zone district designation on the Zoning Map, as follows:

GGF-20	20 acres
GGF-40	40 acres
GGF-80	80 acres
GSF-40	Not Applicable

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

(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.

(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.

One structure would be removed as a result of this proposed partition in order to meet setback requirements. This involves a storage building on the boundary between Parcel 3 and the 3.75-acre parcel to be retained by the Royse family. Another affected structure is an agricultural building situated on the boundary between Parcels 1 and 2. This structure would be partially removed such that the lot line setback requirements would be met. All other structures meet the specified setback requirements.

Staff: Neither the GSF or GSO districts have a minimum area requirement for new parcels (MCC 38.2060(A) and 38.2660(A)); therefore there is no area standard to meet. As for dimensional requirements, the applicant identifies two structures that encroach over parcel lines proposed with this partition. The location of these structures is shown on the tentative plan. The shed encroaching on proposed Parcel 3 extends across the front property line in violation of the 30 front yard building setback of the GSF district. The applicant is prepared to remove this structure to satisfy this standard. This will need to occur before the plat is recorded to avoid creating an encroachment and a condition of approval is included requiring that this happen. As for the second structure, a barn, the tentative plan shows it on the interior (side) lot line that is to separate Parcels 1 and 2. A 10 foot setback is required from this property line. The applicant indicates that a portion of the building is to be removed to meet this standard. Setbacks are measured to the closest portion of the structure, and a survey will be needed to verify that the building has been pulled back a sufficient distance prior to the plat being recorded. This is addressed with a condition of a approval. MCC 38.7855 requires that the land division meet the area and dimensional requirements of the underlying zoning districts. As conditioned, this standard is satisfied.

9. Compliance with Content Requirements for a Category 3 Tentative Plan

MCC 38.7860 Contents of Category 3 Tentative Plan

A tentative plan for a Category 3 Land Division shall consist of maps, written information and supplementary material adequate to provide the following:

(A) Category 3 tentative plan map contents. A tentative plan map of a sheet size and scale as specified in MCC 38.7810 shall indicate the following:

- (1) Date, north point and scale of drawing.**
- (2) Description of the proposed land division sufficient to define its location and boundaries.**
- (3) Identification as a tentative plan map.**
- (4) Location, names or purpose and width of all streets, rights-of-way or easements on or abutting the tract.**
- (5) Natural features, water courses or areas covered by water.**
- (6) The location and use of any buildings or structures proposed to remain after division.**
- (7) The proposed parcels, their dimensions and areas.**
- (8) Contiguous property under the same ownership.**

Staff: The applicant's tentative plan (Exhibit 8) contains these elements. In their narrative, the applicant explains that Tax Lots 400 and 500 shown on the plan just north of proposed Parcels 2 and 3 are to be retained by the Royce family, a participant in this partition. The Columbia River Highway is shown on the plan, abutting the partition to the north. Right-of-way widths for this roadway vary as shown on the current zoning map (Exhibit 10).

10. Compliance Written Requirements for a Category 3 Tentative Plan

MCC 38.7860(B), Written information; Category 3 tentative plan. Written information shall include:

- A. **MCC 38.7860(B)(1) Name, address and telephone number of the record owner(s), owner's representative, designer(s), engineer(s) or surveyor(s), and the date of survey, if any.**

Staff: This information has been provided. Names, addresses, and contact information for all of the property owners has been provided by the applicant (Exhibit 14). The tentative plan was prepared by Don Karsch, PLS, with the US Forest Service on December 10, 2003.

- B. **MCC 38.7860(B)(2) Proof of record ownership of the tract and the representative's authorization.**

Staff: All of the land owners have signed consent forms authorizing the Forest Service to file this application (Exhibit 2) and each is listed as a current owner on County tax assessment records (Exhibit 11).

- C. **MCC 38.7860(B)(3) Legal description of the tract.**

Staff: Legal descriptions have been provided for all of the proposed parcels (Exhibit 15).

- D. **MCC 38.7860(B)(4) Present and proposed uses.**

Parcel 1: present uses are residential, agriculture (hay production), and occasional forest practices. Proposed uses are the same as the present uses. Parcel 2: present uses are agriculture (hay production) and occasional forest practices. Proposed uses are the same with the additional possibility of residential development if all applicable rules and regulations can be met. Parcel 3: present use is an occasional forest practice in the areas zoned Gorge Special Forestry and Gorge General Forestry. Proposed use is Open Space with the possible development of Gorge Trail 400 in the future. A federal Consistency Determination and National Environmental Policy Act (NEPA) documentation would be required prior to any trail construction activity.

Staff: We concur with the applicant in terms of the present use of these properties. As previously discussed, the potential for an additional residence on Parcel 2 is dependant upon the Forest Service changing the land use designation for the property, a step that has not yet happened.

- E. **MCC 38.7860(B)(5) Description of the water supply, methods of sewage disposal and storm water disposal, and the availability of other utilities.**

Parcel 1: water is supplied from a well located at the residence plus a waterline from a spring situated near the base of Saint Peter's Dome that includes a valid water right (Certificate Number 2520 with a priority date of June 28, 1915). A septic system is located on the north side of the residence. Storm water disposal is by water infiltration into the soil plus runoff in naturally occurring creeks and streams. Electrical and telephone service is available via overhead wires. Parcel 2: water is available from a waterline from the same spring as Parcel 1, also including the valid water right. There is currently no

sewage disposal, nor is there any residence. If a residence were to be constructed in the future, sewage disposal would most likely be from a septic system. Storm water disposal is by water infiltration into the soil plus runoff in naturally occurring creeks and Electrical streams. Parcel 3: water is available from a waterline from the same spring with valid water right. There is no sewage disposal facility, and none is planned. Storm water disposal is by water infiltration into the soil plus runoff in naturally occurring creeks and streams. There are no utilities present, and none are planned for the future.

Staff: The required descriptive information has been provided.

F. MCC 38.7860(B)(6) Statements of the manner in which the criteria for approval listed in MCC 38.7855 are satisfied.

Staff: Compliance with MCC 38.7855 is addressed above, in Finding #7.

G. MCC 38.7860(B)(7) Statement of the improvements to be made or installed and the time scheduled therefore.

Any trail construction associated with the Gorge Trail 400 across Parcel 3 would likely not be proposed for at least 5 years. Development of a single family residence on Parcel 2 may be proposed at any time following final approval of this Land Division. No other planned improvements have been identified.

Staff: The improvements described are speculative in nature, with the trail requiring separate site review approval (MCC 38.2625(E)(3)) and eligibility for development of a residence on Parcel 2 reliant upon a change in land use designation by the Forest Service under Section 8(o) of the Scenic Area Act and subsequent County permits. No improvements are proposed in conjunction with this land division.

11. Compliance With Land Division General Standards and Requirements:

MCC 38.7885, Application Of General Standards And Requirements

Every land division proposal shall comply with the applicable provisions of MCC 38.7890 through 38.7965.

A. MCC 38.7890, Land Suitability, A land division shall not be approved on land found by the approval authority to be both unsuitable and incapable of being made suitable for the intended uses because of any of the following characteristics:

- (A) Slopes exceeding 20%;**
- (B) Severe soil erosion potential;**
- (C) Within the 100-year flood plain;**
- (D) A high seasonal water table within 0– 24 inches of the surface for three or more weeks of the year;**
- (E) A fragipan or other impervious layer less than 30 inches from the surface; or**
- (F) Subject to slumping, earth slides or movement.**

The land included within the proposed partition is subject to periodic debris flows. Rocks

and other debris from the steep slopes in the southern portion of the property (such as St. Peter's Dome) accumulate at the toe of the slope. During peak water flow periods, this debris moves down the various drainages, scouring the creeks and stream channels. Improvements in the path of these debris flows are periodically damaged or destroyed.

The current uses of Parcels 1 and 2 are agriculture and occasional forest practices, with a residence on Parcel 1. These uses have been on going since 1945 while under the ownership of the Bucher family, and possibly earlier. The only change from the current use associated with the proposed partition is that Parcel 2 would have the potential of constructing a future residence. However, the landowner of Parcel 2 is aware any proposed residence would have to meet all applicable regulations regarding construction within a known geological hazard area. The primary use of Parcel 3 would be Open Space (no development) with the possible exception of extending Gorge Trail 400 through this parcel in the future. The need for occasional major trail repair work following debris flows is recognized.

Staff: The use of the property is limited to what is allowed in the underlying zone district. Proposed Parcels 1 and 2 fall within a GSF zone district. Agricultural activities are allowed outright in this district and, as explained by the applicant, the properties have historically been used for these purposes. We are aware of nothing inherent to the terrain, including the risk of debris flow that make the properties unsuitable for this purpose. As for Parcel 3, the applicant is proposing to maintain the property in an undeveloped condition, consistent with the GSO zoning. Trail construction is a review use in this district and in the event that it is proposed, it will be subject to separate review (MCC 38.2625(E)(3)).

The Forest Service makes reference to the potential of a dwelling being constructed on proposed Parcel 2. As previously noted, such potential relies upon a change of the zoning for the property to a General Management Area, Small Woodland land use designation that has not yet occurred and; therefore, cannot be evaluated as part of this application.

Property subject to this partition is within a Hillside Development (HD) zoning overlay, adopted by the County because of the risk of debris flows. The standards of this district require a showing by a Geotechnical Engineer or Certified Engineering Geologist that development can occur without endangering the subject site or adjoining properties (MCC 38.5500 et. seq.), including consideration of the Geotechnical Report prepared by Shannon and Wilson, Inc. dated May of 1996 that was prepared following a large debris flow from earlier that year.

Considering the above, this standard is satisfied.

B. MCC 38.7895(A), Lots and Parcels, The size, shape, width, orientation and access shall be appropriate:

- (1) To the types of development and uses contemplated;**
- (2) To the nature of existing or potential development on adjacent tracts;**
- (3) For the maximum preservation of existing slopes, vegetation and natural drainage;**
- (4) To the need for privacy through such means as transition from public to semi-public to private use areas and the separation of conflicting areas by suitable**

distances, barriers or screens; and

(5) To the climactic conditions including solar orientation and winter wind and rain.

The design of the parcels is appropriate for the contemplated uses. Parcels 1 and 2 are intermediate in size and shape between the smaller private parcels to the north and east, and the large tracts of federal and State land to the south and west. Parcels 1 and 2 would retain all of the agricultural land that has been viable for farming for many decades. Parcel 3 would become integrated with the large area of State and federal land to the south and west. Open space and potential recreation uses are compatible with the large parcel size. All three parcels have frontage on the State highway and parallel the right-of-way. Privacy is provided for the privately owned parcels by the relatively large size (distance from roads and adjacent lots), and vegetation screening. The open agricultural lands allow for solar heating in the cool winter months, and tree cover on the east and west sides provide some degree of protection from the strong winds in the Columbia River Gorge.

Staff: We concur.

- C. **MCC 38.7895(B), Lots and Parcels, The side lot lines shall be perpendicular to the front lot line or radial to the curve of a street, to the extent practicable.**

The side lot lines are generally perpendicular to the front lot line. The front lot line follows the curve of the State highway where abutting the right-of-way.

Staff: The tentative plan shows that this standard has been satisfied.

- D. **MCC 38.7895(C), Lots and Parcels, Double frontage or reverse frontage lots or parcels shall be provided only when essential for separation of land uses from arterials or to overcome specific disadvantages of topography or orientation.**

There are no double frontage or reverse frontage parcels created as a result of this proposal.

Staff: The tentative plan shows that no double frontage or reverse frontage parcels are to be created with this partition.

- E. **MCC 38.7895(D), Lots and Parcels, A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable zoning district, subject to the following:**

(1) When a flag lot does not adjoin another flag lot, as shown in MCC 38.7895 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.

(2) Where two flag lots are placed back to back as shown in MCC 38.7895 Figure 2, the pole portion of each flag lot shall be at least 12 feet wide.

No "flag lots" would be created as a result of this proposed partition.

Staff: We concur. None of the parcels shown on the tentative plan are flag lots.

- F. **MCC 38.7895(E), Lots and Parcels, Within a land division, flag lots shall not be stacked one behind the other as shown in MCC 38.7895 Figure 3. Instead, a private accessway shall be used as shown in MCC 38.7895 Figure 4.**

Staff: No flag lots are proposed.

- G. **MCC 38.7900, Acreage Tracts, Where a tract of land is to be divided into lots or parcels capable of redivision in accordance with this or other ordinance, the approval authority shall require an arrangement of lots, parcels and streets which facilitates future redivision. In such a case, building setback lines may be required in order to preserve future rights-of-way or building sites.**

Staff: Land divisions are only allowed on SMA zoned lands if they will facilitate acquisition by the federal government (MCC 38.0040(A)(1)(a)). That is the purpose of this partition and there does not appear to be any potential for further acquisition once this division is completed.

- H. **MCC 38.7905(A), Street Layout, Except as otherwise provided in subsections (B) and (C) of this section, the arrangement of streets in a land division shall be designed...**

Staff: No streets are proposed or required with this partition.

- I. **MCC 38.7910, Street Design, The width, design and configuration of all streets in or abutting the land division shall comply with applicable ordinance standards as follows:**

(A) For a public street — in accordance with the Street Standards Code and Rules; and

(B) For a private street — in accordance with the Street Standards Code and Rules, subject to the following additional requirements:

(1) Accessways shall be designed in accordance with Permit Requirements for Accessway Construction published by the Multnomah County Department of Environmental Service. Accessways shall have a maximum length of 300 feet.

(C) A cul-de-sac shall be as short as possible and shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a turnaround having a radius of 50 feet.

Staff: No streets are proposed with this partition. The abutting public street is a State Highway and is not subject to the County's street standards ordinance.

- J. **MCC 38.7915, Street Reserve Strips, The land division shall provide for the appropriate extension or widening of streets serving the division or for allocating the improvement costs among future land divisions. A reserve strip or street plug may be required for such purposes. The control and disposition of reserve strips or plugs shall be placed within the jurisdiction of the County.**

Staff: As shown on the tentative plan, there are no streets adjacent to this partition that will need to be extended at a future date; therefore, there is no need for a reserve strip or street plug.

- K. **MCC 38.7920, Temporary Turnarounds, A temporary turnaround shall be provided on any street that is appropriate for continuation, either within the land division or beyond, when the street serves more than six interior lots. However, in the case of a subdivision to be recorded and developed in stages under MCC 38.7875, a temporary turnaround shall not be required on a street to be continued in a subsequent stage. In such case, an appropriate improvement agreement under MCC 38.8010 may be required by the Planning Director to assure that a temporary turnaround will be provided should the subsequent stage not proceed according to the approved schedule.**

Staff: No streets are proposed or required; therefore, there is no need for a turnaround.

- L. **MCC 38.7925, Street Names, Names for public streets shall conform to the street naming system of Multnomah County. In order to discourage unnecessary traffic, the nature of a private street, a dead end street or a cul-de-sac shall be identified by a sign approved as to design, content and placement by the County Engineer.**

Staff: No streets are proposed or required in conjunction with this partition; therefore, this standard is not applicable.

- M. **MCC 38.7930, Sidewalks, Pedestrian Paths and Bikeways**

(A) A sidewalk shall be required along any private street serving more than six dwelling units.

(B) A pedestrian path located outside a street right-of-way may be substituted for a required sidewalk when it serves the same circulation function.

(C) Where a pedestrian path and bikeway is part of an approved plan for the area or has been approved on adjoining property, the approval authority may require the provision of a pedestrian path or bikeway within the land division.

(D) In order to provide for an appropriate circulation system, the approval authority may require a pedestrian path and bikeway across an unusually long or oddly-shaped block.

(E) The width, design and configuration of sidewalks and pedestrian paths and bikeways shall comply with applicable ordinance standards, as follows:

(1) In a public right-of-way — in accordance with the Street Standards Code and Rules; and

(2) On private property — as approved by the Planning Director in accordance with an approved Site Review.

Staff: We are not aware of any pedestrian paths or bikeways that are part of an approved plan for the area and no streets are required for which a sidewalk would be appropriate. This standard is satisfied.

- N. **MCC 38.7935, Easements, Easements shall be provided and designed according to the following:**

(A) Easements for utilities and storm or sanitary sewers may be required where appropriate to serve abutting lots or parcels. Such easements shall be not less than 10 feet in width, centered on side or rear property lines or five feet in width along front property lines.

(B) Where a tract is traversed by a water course such as a drainage way, channel or stream, a storm water easement or drainage right-of-way adequate to conform substantially with the lines of the water course shall be provided. In a drainage district or water control district, such easement or right-of-way shall be approved by the district board, in accordance with ORS 92.110. If not within such District, approval shall be by the County Engineer.

(C) Easements for pedestrian paths and bikeways shall be not less than 10 feet in width.

There would be easements associated with the existing water system to serve Parcels 1 and 2 plus the adjacent land to be retained by the Royse family. The private landowners would reserve easements for the two existing waterlines, spring improvements, large storage tank (damaged in 1996) and associated access road across Parcel 3. These easements would include provisions for maintenance, repair and replacement of improvements. There is a valid existing water right to use the spring near the base of St. Peter's Dome for domestic purposes. The waterlines have been in use for many decades, having a water right priority date of June 28, 1915.

In addition, an easement would be established across Parcel 2 for the existing driveway and utilities that serve Parcel 1. The landowners of Parcel 1 may propose a driveway directly from the State Highway to the residence at a future date if this land division is approved.

Staff: The locations of the water line, spring, and access road are shown on the tentative plan and easements encompassing these improvements can be dedicated either on the face of the partition plat or via separate instrument. A condition of approval is included with this decision to ensure that these easements are dedicated in conjunction with this partition plat.

Proposed Parcel 3 contains two streams, the locations of which are also shown on the tentative plan. This criterion requires that a stormwater easement or drainage right-of-way be provided where property is traversed by a watercourse such as a drainageway, channel, or stream. Such easement or right-of-way must conform substantially to the lines of the watercourse, and is subject to approval by a drainage district or the County Engineer. We are not aware of any drainage districts in this area; therefore, approval authority resides with the County Engineer.

The County has a boilerplate drainage easement note designed to satisfy this standard (Exhibit 16) and the partition plat can be used to dedicate the easements and satisfy this criterion. The easements must coincide with the alignment of the streams and need to be of sufficient width for maintenance purposes, as determined by the County Engineer. The partition plat can be used to dedicate these easements and ample area exists on Parcel 3 to for this to occur.

Considering the above, this criterion is satisfied as conditioned.

- O. **MCC 38.7940, Street Trees, Street trees shall be planted by the applicant according to the street tree planting plan and schedule approved by the County Engineer as an element of the tentative plan. Trees which have not survived for one year after initial**

planting shall be replaced by the applicant within four months of loss.

Staff: This standard is not applicable as there are no streets proposed with this partition.

- P. **MCC 38.7950, Water System, The provision of domestic water to every lot or parcel in a land division shall comply with the requirements of subsections (4) (a), (b), or (c) of ORS 92.090 and MCC 38.7985 of this Chapter.**

Staff: This criterion requires that an applicant provide domestic water for every lot in a subdivision plat. Per statute a subdivision occurs when four or more lots are created in one calendar year (ORS 92.010(15)). Given that this partition will create only three parcels, it is debatable whether or not this criterion is applicable. However, notwithstanding this the applicant explains in their narrative that an existing spring has historically provided water to these parcels and the tentative plan shows that a well also exists on proposed Parcel 1. This criterion is satisfied.

- Q. **MCC 38.7955, Sewage Disposal, The provision for the disposal of sewage from every lot or parcel in a land division shall comply with the requirements of subsection (5) (c) of ORS 92.090 and MCC 38.7990 of this Chapter.**

The residence on Parcel 1 has an existing, approved septic system. If a future residence were ever constructed on Parcel 2, sewage disposal would also be from a septic system meeting all State and County regulations. There is no need for sewage disposal anticipated on Parcel 3.

Staff: As with the prior criterion, the statute referenced is applicable to subdivision plats not partitions so it is debatable whether or not this criterion is applicable. Further neither the GSF or GSO zone districts allows for development of a single family residence so there does not appear to be a need for a sewage disposal system. This criterion is satisfied.

- R. **MCC 38.7960, Surface Drainage, Surface drainage and storm sewer systems shall be provided as required by section 38.7995. The County Engineer may require on-site water disposal or retention facilities adequate to insure that surface runoff volume after development is no greater than that before development.**

Staff: MCC 38.7995 requires new drainage facilities be placed within public or private streets or on parcels as approved by a licensed engineer. No new drainage facilities are required. Each of the proposed parcels is over 20 acres in size, and in the event that additional development is proposed there is ample area within the properties to dissipate the run-off.

- S. **MCC 38.7965, Electrical and Other Wires, Wires serving within a land division, including but not limited to electric power, communication, street lighting and cable television wires, shall be placed underground. The approval authority may modify or waive this requirement in acting on a tentative plan upon a finding that underground installation:**

- (A) Is impracticable due to topography, soil or subsurface conditions;**
- (B) Would result in only minor aesthetic advantages, given the existence of above-ground facilities nearby; or**

(C) Would be unnecessarily expensive in consideration of the need for low-cost housing proposed on the lots or parcels to be served.

Existing overhead electrical and telephone wires serve Parcels 1 and 2. Any new or replacement wiring would be proposed for installation above ground due to the nature of the soil and subsurface conditions (such as presence of large boulders and potential for movement). No utility wires are anticipated to serve Parcel 3.

Staff: We concur with the applicant that burying existing utility lines is impractical for the reasons stated.

12. Compliance With Access Requirements of the GSF and GSO Zone Districts:

(GSF and GSO standards are the same so only the GSF standards are listed)

MCC 38.2090, Access

Any lot in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles.

All three parcels have legal access by virtue of having frontage on the right-of-way for the State highway. The current access into Parcel 1 is a gravel road that extends through Parcel 2. The owners of Parcel 1 may propose to change the access so that there will be a gravel driveway directly from the State highway to the property. Parcel 2 has access along a gravel road from the State highway. Parcel 3 is also adjacent to the State highway right-of-way and has a gravel driveway that provided access to the former residence of JoAnne Mohr.

Staff: We concur. The tentative plan shows that all three parcels will possess street frontage along the Historic Columbia River Highway.

13. Compliance With MCC 38.7040, SMA Scenic Review Criteria:

Per MCC 38.7040, The following scenic review standards shall apply to all Review Uses in the Special Management Area of the Columbia River Gorge National Scenic Area with the exception of rehabilitation or modification of historic structures eligible or on the National Register of Historic Places when such modification is in compliance with the national register of historic places guidelines:

- A. **MCC .7040(A)(1), Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas.**

Staff: Alteration of the barn and removal of the shed is the only development proposed with this partition. The structures are located at the base of the ridge and do not protrude above the line of a bluff, cliff, or skyline as viewed from Key Viewing Areas to the north, such as Highway and Columbia River. This criterion is satisfied.

- B. **MCC .7040(A)(2), Size, scale, shape, color, texture, siting, height, building materials, lighting, or other features of a proposed structure shall be visually subordinate in the landscape and have low contrast in the landscape.**

Staff: This criterion is not applicable. No structures are proposed with this application.

- C. **MCC .7040(A)(3), Colors shall be used in a manner so that developments are visually subordinate to the natural and cultural patterns in the landscape setting. Colors for structures and signs should be slightly darker than the surrounding background.**

Staff: This criterion is not applicable. No structures are proposed with this application.

- D. **MCC .7040(A)(4), Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that compliance with this standard is not feasible considering the function of the structure.**

Staff: This criterion is not applicable. No structures are proposed with this application.

- E. **MCC .7040(A)(5), Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.**

Staff: Both the shed and barn are located within developed areas, relatively close to the Highway as illustrated on the tentative plan and 2002 aerial photograph (Exhibits 8 and 9). There should be minimal grading and site disturbance related to the removal of the shed and alteration of the barn. This criterion is satisfied.

- F. **MCC .7040(A)(6), Any exterior lighting shall be sited, limited in intensity, shielded or hooded in a manner that prevents lights from being highly visible from Key Viewing Areas and from noticeably contrasting with the surrounding landscape setting except for road lighting necessary for safety purposes.**

Staff: No exterior lighting is proposed with this application.

- G. **MCC .7040(A)(7), Seasonal lighting displays shall be permitted on a temporary basis, not to exceed three months duration.**

Staff: No seasonal lighting is proposed.

- H. **MCC .7040(A)(8), Reflectivity of structures and site improvements shall be minimized.**

Staff: No structures or other permanent site improvements are proposed.

- I. **MCC .7040(A)(9), Right-of-way vegetation shall be managed to minimize visual impact of clearing and other vegetation removal as seen from Key Viewing Areas. Roadside vegetation management should enhance views out from the highway (vista clearing, planting, etc.).**

Staff: No vegetation within the right-of-way is to be disturbed in conjunction with this land division.

- J. **MCC .7040(A)(10), Encourage existing and require new road maintenance warehouse and stockpile areas to be screened from view from Key Viewing Areas.**

Staff: The proposed development does not involve any of the activities listed above; therefore, this criterion is not applicable.

- K. **MCC .7040(B), New developments and land uses shall be evaluated to ensure that scenic resources are not adversely affected, including cumulative effects, based on visibility from Key Viewing Areas.**

Staff: Cumulative visual impacts were considered in the evaluation of this application. While all three parcels resulting from this division are visible from key viewing areas to the north, such as the Highway and river, the only development proposed in conjunction with this partition is the removal of a shed and portion of a barn neither of which should adversely impact scenic resources.

- L. **MCC .7040(C), All new developments and land uses immediately adjacent to the Historic Columbia River Highway, Interstate 84, and Larch Mountain Road shall be in conformance with state or county scenic route standards.**

Staff: A barn is to be altered and shed removed in conjunction with this partition. Neither of these activities will have an appreciable impact on the Historic Columbia River Highway. This standard is satisfied.

14. Compliance With MCC 38.7040(D), SMA Scenic Landscape Setting Criteria:

Per MCC 38.7040(D) New land uses or developments shall comply with the following:

- A. **MCC .7040(D)(1) Gorge Walls, and Canyonlands and Wildlands: New developments and land uses shall retain the overall visual character of the natural appearing landscape.**

Staff: This landscape setting covers the more steeply sloped, forested portions of the properties, including much of Parcel 3. No development is proposed in this area.

- B. **MCC .7040(D)(1)(a) New developments and land uses shall meet the VQO of retention as seen from Key Viewing Areas.**

Staff: No development is proposed on the portions of the property that fall within this landscape setting.

- C. **MCC .7040(D)(1)(b) Structures, including signs, shall have a rustic appearance, use non-reflective materials, and have low contrast with the surrounding landscape and be of a Cascadian architectural style.**

Staff: No structures or signs are proposed with this application.

- D. **MCC .7040(D)(1)(c) roads must be promptly closed and revegetated.**

Staff: The existing easement access on proposed Parcel 3 is partially within this landscape setting. This road provides access to the developed spring that serves as a water supply for the existing dwelling on proposed Parcel 2 and other properties north of the partition as illustrated on the tentative plan. In their narrative, the applicant explains that the water rights to this system date back to the early 1900's and the current property owners are reserving easements over the water system and service road to preserve their water supply. This approval standard only applies to property subject to this partition. Since the water system and service road benefit a larger area the standard cannot compel the closure of the road, as it would adversely impact properties that are not a part of this application.

- E. **MCC .7040(D)(1)(d) New utilities must be below ground surface, where feasible.**

Staff: No new utilities are proposed.

- F. **MCC .7040(D)(1)(e) Use of plant species non-native to the Columbia River Gorge shall not be allowed.**

Staff: No planting are proposed with this land division.

- G. **MCC .7040(D)(1)(f) Exterior colors of structures shall be dark earthtones that will result in the structure having low contrast with the surrounding landscape.**

Staff: No structures are proposed.

- H. **MCC .7040(D)(2), Coniferous Woodlands: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous Woodland landscape.**

Staff: This landscape setting covers the developed portions of the property. Removal of the shed and a portion of the barn are the only new development proposed, reducing the overall building mass and contributing to a more naturally appearing landscape. This criterion is satisfied.

- I. **MCC .7040(D)(2)(a), New developments and land uses in lands designated Federal Forest or Open Space shall meet the VQO of retention; all other land use designations shall meet the VQO of partial retention as seen from Key Viewing Areas.**

Staff: The standard of retention requires development visually evident to the casual visitor (MCC 38.0015(R)(11)). Removal of the shed and a portion of a barn are consistent with this objective.

- J. **MCC .7040(D)(2)(b), Forest practices on National Forest lands included in the Mt. Hood National Forest Plans shall meet the VQO identified for those lands in those plans.**

Staff: No forest practices are proposed in conjunction with this land division.

- K. **MCC .7040(D)(2)(c), Buildings in the coniferous landscape setting shall be encouraged to have a vertical overall appearance.**

Staff: No buildings are proposed with this application.

- L. **MCC .7040(D)(2)(d), Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.**

Staff: No plantings are proposed in conjunction with this land division.

- M. **MCC .7040(D)(2)(e), Exterior colors of structures in Coniferous Woodland landscape setting shall be dark earth-tone colors which will result in low contrast with the surrounding landscape as seen from the Key Viewing Areas.**

Staff: No structures are proposed with this application.

15. Compliance With Cultural Resource Review Criteria:

MCC 38.7045(A)(3), requires a historic survey for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or compromise features of the surrounding area that are important in defining the historic or architectural character of the buildings or structures that are 50 years old or older.

* * *

Per MCC 11.15.7045(B), The cultural resource review criteria shall be deemed satisfied, except MCC .7045(L) and (M), if:

* * *

(3) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(a) SHPO concludes that the historic buildings or structures are clearly not significant, as determined using the criteria in the National Register Criteria for Evaluation ("36 CFR Part 60.4); or

(b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and The Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior 1983).

1. The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these standards. If it does not, architectural and building plans, photo-graphs, and archival research may be required. The project applicant shall be

responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

2. The historic survey and report must demonstrate that these standards have been clearly and absolutely satisfied. If SHPO or the Planning Director question whether these standards have been satisfied, the project applicant shall conduct an Evaluation of Significance.

Staff: Since a barn is to be altered and shed removed to facilitate this partition, each of which is over 50 years of age, a historic survey is required (MCC 38.7045(A)(3)). The purpose of this review is to identify whether or not the structure is historically significant and then, if so, to ensure that any changes to the structure do not compromise its historic character (MCC 38.7045(B)(3)). To facilitate cultural resource review, applicants must prepare a "historic survey," documenting the location, form, style, integrity, and physical condition of the structure (MCC 38.7045(D)(3)). This was accomplished by the applicant, with a Heritage Resource Inventory Report prepared by Marge Dryden, US Forest Service, dated April 21, 2004 (Exhibit 17). This report assumed that both the shed and barn are to be removed. While the report found the shed to be of no historic value, it did identify the barn to be historically significant, as a component of the Bucher Farm Complex.

The responsibility for determining whether or not a structure is historically significant lies with the Oregon State Historic Preservation Office (SHPO). Cultural resource review concludes if SHPO, after reviewing a historic survey, determines that the proposed use has no impact on a historic structure because the structure involved is clearly not significant, using criteria in the National Register Criteria for Evaluation (36 CFR Part 60.4) or they determine that the proposed use would not compromise the historic or architectural character of the affected buildings or structures (MCC 38.7045(B)(3)). SHPO determined the latter to be the case in a letter dated May 14, 2004 (Exhibit 18). In this letter, Susan de Freitas, an Archaeologist with SHPO, indicates that they concur with the US Forest Service Report and find that the project will have no affect on any known cultural resources.

Considering the above, the applicable cultural resource criteria have been satisfied, with the exception of MCC 38.7045(L) & MCC 38.7045(M) which relate to the discovery of cultural resources during construction. Compliance with these standards is addressed with a condition of approval.

16. Compliance With SMA Resource Review Criteria:

Per MCC 38.7075, all new developments and land uses shall be evaluated to ensure that the natural resources on a site, or natural resources in danger of degradation or destruction from individual or cumulative off-site impacts, are protected from adverse effects. The Forest Service will provide the analysis and evaluation for all projects except those sponsored by non-Forest Service federal and state agencies.

Staff: While there are natural resources on the site, such as the two streams previously discussed, we do not see how such resources would be adversely impacted by the partition or, removal of the shed, or alteration of the barn, particularly considering that the applicant's stated purpose in applying for this partition is to preserve the 147.3 acres within proposed Parcel 3 as open space.

17. Compliance With SMA Recreation Resource Review Criteria:

Staff: We are not aware of any recreation resource criteria that are applicable to this partition, removal of the shed, or alteration of the barn.

18. Code Compliance and Applications:

MCC 38.0560 Code compliance and applications.

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: To the extent that the current configuration of the properties was a result of an improper land division, that problem is resolved with this partition. The vesting deeds submitted by the applicant show that the properties, as they existed prior to October 5, 1977 (i.e. tax lots '3', '4', and '6') date to 1945 (Exhibit 5), which predates county zoning and land division regulations. As such, those properties would be legal parcels for purposes of the County Scenic Area Ordinance (MCC 38.0015(P)(1)).

19. Public Comments:

Staff: In addition to comments received from the Gorge Commission, US Forest Service, and State Historic Preservation Office, which are addressed in prior findings, letters were received from the Friends of the Columbia Gorge and a property owner by the name of L. Faust. Correspondence from L. Faust came in the form of an e-mail message to the County dated, Monday April 19, 2004 (Exhibit 19). The message is critical of government acquisition of properties within the National Scenic Area, but is very general in nature with no reference to applicable approval criteria. The letter from the Friends of the Gorge, dated April 22, 2004 (Exhibit 20) does not contain any specific concerns about the project, simply indicating that the application needs to meet applicable land division and cultural resource criteria. Compliance with these standards is established within this report.

Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the proposed National Scenic Area Site Review. The applicant's request for a three parcel partition is approved subject to the conditions of approval established in this report.

Exhibits

All materials submitted by the applicant, prepared by county staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record for this application. Exhibits referenced herein are enclosed, and brief description of each are listed below:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
1	1	Application form
2	5	Statements of Property Owner Consent
3	7	Applicant Narrative, received March 26, 2004
4	2	County Zoning Map in effect October 5, 1977, with cover (applicant Attachment 1)
5	8	Deeds for tax lots shown on 10/5/77 Zoning Map, with cover (applicant Attachment 2)
6	2	Current County Assessment Map, with cover (applicant Attachment 3)
7	27	Deeds for tax lots shown on Current Assessment Map, with cover (applicant Attachment 4)
8	2	Reduced copy of the Tentative Plan, with cover (applicant Attachment 5)
9	1	2002 Aerial Photograph of the property
10	1	11" x 17" copy of a Current County Zoning Map
11	5	Current assessment records for the properties
12	2	Map with year built for existing structures, with cover (applicant Attachment 9)
13	2	Letter from Alan Bell, Senior Planner, Gorge Commission, dated April 22, 2004
14	2	Landowner addresses and contact number, with cover (applicant Attachment 6)
15	3	Legal descriptions for the proposed parcels
16	1	County drainage easement note
17	12	Heritage Resource Inventory Report prepared by Marge Dryden, US Forest Service, dated April 21, 2004
18	3	May 27, 2004 fax from Marge Dryden with attached letters from SHPO dated May 12, 2004 and May 14, 2004.
19	2	E-mail from L. Faust, property owner, dated April 19, 2004
20	2	Letter Glenn Fullilove, Friends of the Gorge, dated April 22, 2004