



MULTNOMAH COUNTY OREGON
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

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

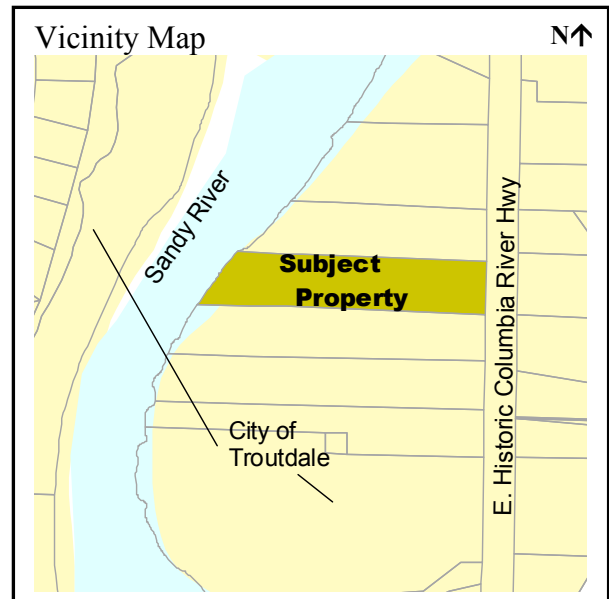
Case File: T2-04-024

Permit: National Scenic Area Site Review

Location: 1969 E. Historic Columbia River Hwy
TL 2000, Sec 34BC, T1NR4E, W.M.
Tax Account #R944310110

Applicant: Wade Ballenger
All County Surveyors
PO Box 955
Sandy, OR 97055

Owner: Wade Johnson
PO Box 159
Troutdale, OR 97060



Summary: The application is to replace an existing home with a new site built single family dwelling.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Wednesday, January 19, 2005 at 4:30 PM.

Issued by:

By: _____
Chuck Beasley, Senior Planner

For: Karen Schilling - Planning Director

Date: Wednesday, January 5, 2005

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted in support of the 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 Chuck Beasley, Staff Planner at 503-988-3043.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was mailed 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 is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is January 19, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 38.7000 through 38.7090 Site Review, 38.2460 GGR-2 Residential District, MCC 38.0200 through 38.0850 General Provisions.

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

Scope of Approval

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

Conditions of Approval

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

1. Within 30 days of this decision becoming final, or prior to building permit sign-off whichever occurs first, the applicant shall record the Notice of Decision (pages 1-4 of this

decision) with the County Recorder pursuant to MCC 38.0670. The Notice of Decision shall run with the land. Proof of recording or a copy of the recorded document shall be submitted to the Land Use Planning Division prior to zoning approval of the building permit.

Recording shall be at the applicant's expense. **Failure to sign and record the Notice of Decision within the prescribed time period shall void the decision.**

2. Prior to zoning approval of the Building Permit, the owner shall sign a Replacement Dwelling Agreement. The agreement is intended to ensure that only one dwelling remains on the property, and requires removal of the existing dwelling, or conversion of the apartment to non-residential use within 90 days of when the new dwelling is completed. This condition is intended to meet the single dwelling requirement in MCC 38.2425 Review Uses.
3. Within 90 days of when the new dwelling is occupied, the applicant will need to remove the kitchen and complete the other described modifications to the garage/apartment structure in order to convert the space from a dwelling to an allowable accessory structure. Within 3 months of occupying the new dwelling, the applicant shall contact the staff planner to schedule a site inspection to verify compliance with this condition.
4. All grading activities shall be conducted in accordance with accepted Best Management Practices such as installation of sediment fencing, covering exposed soils, and replanting as soon as practicable. Grading shall be subject to City of Troutdale procedures, permit, and inspection requirements.
5. In order to ensure that the property is in compliance with C93-0132-M-G-11 as to a requirement to plant screening trees, the applicant will need to submit documentation in the form of a map which shows that the tree planting approved in that decision has been completed. If the trees required by the prior approval were not planted prior to this decision, the trees shall used shall be B&B at least 6 feet in height. Staff will verify that the required trees have been planted prior to zoning approval of the building permit authorized in this decision. MCC 38.0560 Code Compliance and Applications.
6. The vegetation that is required for this decision consists of the maintaining the existing trees and establishing the plants, all of which are shown on the Landscape Plan. In addition, the applicant will need to install and maintain the 3 additional Cedar trees as indicated in the findings under MCC 38.7035(B)(1) (see finding 9.1) and as shown on Exhibit 9. The owner shall carry out the planting plan, including replanting as necessary to establish and maintain the plants shown on the Landscape Plan in Exhibit 1.F. and on Exhibit 9 in order to maintain compliance with MCC 38.7035(A)(4).
7. Prior to zoning approval of the building permit, the applicant shall amend the Landscape Plan in Exhibit 1.F. to show the additional trees required under condition #6, and shall provide the amended Landscape Plan at a scale of 1 inch equals 20 feet.
8. Prior to zoning approval of the building permit, the owner shall re-record the Deed Restriction and all exhibits thereto with the County Recorder, and shall provide a copy of the corrected instrument to staff. Staff notes that "Exhibit C" of the Restriction was apparently

not recorded in the deed records of the county. The Deed Restriction consists of 5 pages including exhibits, and the Recorder indicates that 4 pages were recorded, and that “Exhibit C”, the Landscape Plan, was not recorded. The owner shall carry out the planting plan, including replanting as necessary to establish and maintain the plants shown.

9. If, during construction, cultural or historic resources are uncovered, the applicant/owner shall immediately cease development activities and inform the Multnomah County Land Use Planning Division, Columbia River Gorge Commission, and the U.S. Forest Service of any discovery. [MCC 38.7045(L) & MCC 38.7045(M)].

Note: Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Troutdale. Three (3) sets of the site plan and building plans must be submitted to the Land Use Planning Division for building permit sign off. Please contact Chuck Beasley, case planner, at 503.988.3043 to set up an appointment for zoning approval of the building permit.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.
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Findings of Fact

(Formatting Note: Staff provides the Findings included here as necessary to address Multnomah County ordinance requirements. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written responses to code criteria prepared by or on behalf of the applicant are *italicized*. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation “**Staff:**” precedes the comments.)

1. Project Description:

(Italicized text is from the narrative dated September 11, 2003 submitted by Dale Hult of All County Surveyors and Planners, Inc., Included in Exhibit 1)

Applicant:

The site is zoned GGR-2 above the ordinary high water mark and GGO below. There is a mandatory 100-foot setback from the edge of pavement to the Historic Columbia River Highway. There is a 100-foot setback to the wetlands (as discussed within the Wetland Report). The following application is new and more detailed than previous applications. New site plans have been developed (based on county comments and new wetland and setback issues) for the site along with a revised narrative.

The property is located in Troutdale’s city limits. The site is approximately 1.0 acres in size and has been through numerous land use reviews both in Multnomah County and the City of Troutdale. There is an existing and permitted garage/apartment on the property where the applicant has been living for the past 10 years. As with the previous application, the apartment will be converted to non living space once the new house is constructed and occupied.

The applicant is requesting, under a new application, to construct a single family dwelling on the site. The previous site layout has been modified for this new application and will attempt to show that the site plan meets and exceeds all of the Multnomah County Codes. A new landscape plan has been proposed to meet the Multnomah County Staff concerns regarding visual subordination on the previous applications.

The last application, NSA 22-99, was denied based on findings that the applicant failed to show how the new development would not noticeably contrast with the surrounding landscape as viewed from the Sandy River and the applicant failed to show how the proposed development would not adversely impact sensitive salmonoid species. This new application will specifically address these two issues and also address approval criteria for a site application approval. We have employed Aaron Johnson to place the proposed house into a photo of the property taken from a boat in the Sandy River, near the opposite (west) bank. Later in this application these photos will show how the house is seen from an actual river view and remove all speculation. The applicant also spent a Saturday building a “temp” house and roof structure from poles and black plastic for more photos. All of these photos prove that the house will meet and exceed Multnomah County Codes.

Most importantly, since the last application there have been two changes which affect the application and the location of any new construction on the lot. Since the rejection of the

last application the applicant has been able to grant an acceptable easement to the Oregon Department of Fish and Wildlife for protection to salmonoid species. Also, a wetland area has been identified on the property. Both items are described below as follows:

- 1) The Oregon Department of Fish and Wildlife has recorded and accepted an environmental "Salmonoid" setback and easement area. There is an existing and recorded restrictive easement which is shown on the site plan (See Exhibit).*
- 2) There is an identified Oregon Division of State Lands jurisdictional wetlands located on the property and is identified on the site plan. The wetland report is attached to the application. There is a wetland setback requirement, which is also depicted on the plan.*

Staff: This is the second request by the applicant for a new dwelling on the property under the provisions of Multnomah County ordinances that implement the Gorge Management Plan. The prior application, casefile NSA 22-99, was denied by the Multnomah County Hearings Officer in April, 2001. The reasons for denial were generally that the applicant did not demonstrate compliance with visual subordination criteria, and the plan proposed to meet the natural resources criteria did not adequately define what protection measures would be taken to mitigate development impacts to the Sandy River riparian area.

The applicant is again requesting approval to construct a new 3,480 square foot single family dwelling on a parcel located at 1969 E. Historic Columbia River Highway. The location, dimensions, and height of the proposed structure are illustrated with the applicant's site plan (see Exhibit 1.F.) and exterior architectural elevations and floor plan (Exhibit 2.A.). The new dwelling is proposed to be located 35' west (toward the Sandy River) from the existing 1,440 square foot combined dwelling and garage. The existing structure was constructed in 1994 under Gorge Interim Guidelines Case #C93-0132-M-G-11. It will remain on the property as an accessory structure. Since only one permanent dwelling is allowed on properties in the GGR zoning district, the applicant will need to "decommission" the apartment.

2. Site and Vicinity Characteristics:

The applicant's property lies within the corporate limits of the City of Troutdale. It is rectangular in shape and is located between the Historic Columbia River Highway and Sandy River approximately 1000 feet south of the intersection of the Historic Columbia River Highway and Woodard Road. Other than the existing dwelling/garage structure which is located in the central portion of the site approximately 180' from the Highway, the site is developed with an access road, septic system, and utilities. The site slopes gradually east to west from an elevation of approximately 48' at the Highway, down to 40' at the top of the bank that leads down to the Sandy River. Limited ground cover exists on the property, however, several larger fir trees, as well as cedar, pine and oak exist around the residence and between the residence and highway. The Tree Preservation Plan in Exhibit 1.K. shows the location and species of trees on the property.

The property also contains a small wetland that has been delineated and mapped on the Proposed Site Plan and Setback Plans in Exhibit 1.F. The wetland is new information for this application.

The applicant's property is characteristic of the many residentially developed parcels that exist within a strip of land sandwiched between the Sandy River and the Historic Columbia River Highway, north of the Stark Street bridge. Land upslope of the ordinary high water mark of the Sandy River is zoned Gorge General Residential (GGR-2), a designation which allows single family dwellings and accessory structures provided they do not adversely effect the scenic, cultural, natural, and recreational resources of the National Scenic Area. Land below the ordinary high water mark of the river is zoned Gorge General Open Space (GGO). As illustrated on the applicant's site plan, no development is proposed on GGO zoned portions of the property.

3. The County Adhered To The Required Notification Procedures

Staff: An opportunity to Comment was sent out to the County's list of property owners within 750-feet and to the required Agencies, Confederated Tribes, and Recognized Neighborhood Associations pursuant to MCC 38.0530(B).

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

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

Comments were received from the following agencies/individuals:

U.S. Forest Service NSA Office
Friends of the Columbia Gorge

Comments were received from the US Forest Service in the form of a Cultural Resources Determination, and from the Friends of the Columbia River Gorge. These letters are attached in Exhibit 3 of this decision. The Cultural Resources Determination indicates that no further

investigation is needed. The letter from the Friends includes a list of criteria that they believe apply to the request, and comments regarding alleged violations of land use regulations and of the prior approval. The applicable criteria are addressed in this decision, and the noncompliance issues are addressed under part 4. Code Compliance below.

4. Code Compliance and Applications

Staff: In response to the issues raised by the Friends letter, staff includes these findings regarding compliance of the existing development on the property with prior approvals and the NSA Code. MCC 38.0560 provides that a use must be in compliance with prior approvals in order for a new permit to be approved. The following list references the main points of the Friends letter as staff understands them, along with staff's findings regarding compliance.

1. Property is being used for storage of industrial vehicles. Staff inspected the site on June 17, 2004 and found that a Bobcat loader and backhoe attachment were stored on the property. Property owner indicated that the equipment was no longer used in conjunction with a business. The owner contacted staff the next day and indicated that the equipment had been removed from the property. Staff therefore finds that the property is not being used for storage of industrial vehicles.
2. The existing development does not comply with requirements in prior approval C93-0132-M-G-11 (included here as Exhibit 4) as to a requirement to plant screening trees between the structure and the Highway, and exterior colors. These noncompliance issues were recognized by the Hearings Officer in the April 20, 2001 decision on NSA 22-99 at pages 8 and 9 (see Exhibit 1.M.).

In order to ensure that the property is in compliance with C93-0132-M-G-11 as to a requirement to plant screening trees, the applicant will need to submit a copy of the tree planting plan approved in that decision. If the decision does not contain a planting plan, the applicant will need to indicate where the required 10 to 12 fir trees indicated in condition 9 have been planted. Staff will verify that the required trees have been planted prior to zoning approval of the building permit authorized in this decision.

During site inspection by staff the property owner indicated that he has repainted the structure with the color approved by the Hearings Officer in NSA 22-99. It appeared to staff that the color is "Warmshadow" which was found by the HO to be a dark, earth-toned color (see color chips in Exhibit 2.B. and finding on page 18 of Exhibit 1.M.). Staff therefore finds that the existing structure is in compliance with the prior approval as to color.

5. The Use is Allowed in the GGR-2 Zoning District Subject to Site Review

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: *(Italicized text is from the September 11, 2003 narrative submitted by Dale Hult of All County Surveyors and Planners, Inc.)*

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

Applicant:

The lot was legally created under the City of Troutdale's zoning ordinance and has been well documented. That information is found in the previous record NSA 22-99 and by reference is being made a part of this record. The existing apartment will be converted to non-living space once the new house is constructed, which is allowed. There will be one dwelling on the site. The zoning allows for only one single-family dwelling, which is proposed.

Staff: The findings contained in NSA 22-99 regarding legality of the subject parcel state: "We understand that the land was last divided while inside the corporate limits of the City of Troutdale. As such, the land division requirements of the City would have been applicable. The City commented on this application in letters dated November 24, 1999 and July 3, 2000, respectively. Copies of these letters are included in the case file. In these letters the City did not indicate that any legal problem exists with the creation of the subject property; therefore, we expect that it was lawfully created." The letters referenced in this finding are included here as Exhibit 5. Staff understands that the applicant intends to remove the interior partition walls that separate the garage area from the apartment, converting the apartment area into a part of the larger garage. As a condition of approval, the applicant will also need to remove the kitchen in order to convert the space from a dwelling to an allowable accessory structure, and will be required to sign a Replacement Dwelling Agreement. This standard is met through the condition of approval.

(2) Buildings exceeding 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling.

Staff: The existing structure is a three car garage with temporary walls added to enclose an apartment area in approximately one and one-third of the parking stalls. During the site inspection the owner indicated that on approval the partitions will come out and the structure will be converted to a three stall garage for the applicant's personal use. The structure will then qualify as a detached structure incidental and accessory to the residential dwelling, as defined in MCC 38.0015(2) and as authorized per MCC .3678(A)(2). Staff finds that the parcel is lawful, and the uses of the proposed structures are allowed.

6. Compliance With MCC 38.3060(C), GGR-2 Yard Requirements:

(Italicized text is from the September 11, 2003 narrative submitted by Dale Hult of All County Surveyors and Planners, Inc.)

MCC 38.3060(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.

As depicted by the site plan and elevation drawing the setbacks and height restrictions have been met.

Staff: Agrees. The applicant's site plan and exterior elevations demonstrate that the proposed residence will satisfy the minimum yard requirements of this section. The applicant is advised to contact the City of Troutdale to determine compliance with applicable City code requirements.

7. Compliance With MCC 38.3090, GGR-2 Access Requirement:

MCC 38.3090 provides: **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.**

Staff: The subject lot abuts a street, which is Historic Columbia River Highway, satisfying this standard.

The standard was found in NSA 22-99 to have been satisfied by a letter from ODOT dated January 3, 2000 (Exhibit 5 of NSA 22-99). No new response has been received from ODOT. The findings state: "As indicated in a letter dated January 3, 2000 (Exhibit 6), the Oregon Department of Transportation (ODOT) has an access permit on file for this road. If this application were to be approved, the permit would have to be upgraded to include a paved approach onto the highway. The applicant has not indicated that they would have any problem satisfying this ODOT requirement."

8. Compliance With MCC 38.7035, General Scenic Area Review Criteria:

MCC 38.7035: **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:** *(Italicized text is from the September 11, 2003 narrative submitted by Dale Hult of All County Surveyors and Planners, Inc.)*

- 8.1 | **MCC .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.**

The house is proposed on a flat portion of the site and the existing site topography will be retained. Little or no grading will occur in the proposed home area. A foundation will be excavated into the site (less than 20") with the finished floor being at the elevation shown on the site drawing. The existing driveway will require no additional grading for construction of the new home. The existing topography will remain unchanged with the development of the site.

Staff: We concur that this requirement has been satisfied. Construction of the dwelling on the flat site will not alter topography. The elevation of the area of planned construction is between 42 and 43 feet according to the applicants Proposed Site Plan. The Finished Floor elevation is shown as 44 feet, and the Grading, Erosion Control and Tree Preservation Plan in Exhibit 1.K. indicates no change to existing elevations. Therefore minimal grading will be required.

8.2 MCC .7035(A)(2), New buildings shall be generally consistent with the height and size of existing nearby development.

As depicted by the site plan and elevation drawings, setback and height restrictions have been met. As with application NSA 22-99, a survey of residential structures in the area is being re-submitted. This document was prepared by Wherity Appraisal Service and provides a complete analysis of the area. The existing and surrounding homes have not changed in size since that report was prepared. The applicant proposes to construct 3,350 square feet with a peak roof height of 19 feet. This is less than similar homes in the area and has been reduced to a single story in order to meet Key Viewing Area criteria below. Many of the existing homes are larger than the one proposed for this development.

Staff: This criterion has been satisfied. The survey of residential structures in the area was prepared, on behalf of the applicant, by Wherity Appraisal Service. This survey includes detailed information on the size of dwellings on 25 properties within close proximity of the applicant's site, and serves to provide a reasonable benchmark of the size of existing nearby development. A copy of the survey report is included in the case record under Exhibit 1.E.

The area of analysis used by the appraiser consists of a section of properties along approximately one-half mile of the Historic Columbia River Highway. This area has common elements of dwellings on both sides of the road, a flat road grade, and nearly straight road alignment. The area is further defined by “gaps in development on both the north and south ends of the road segment. Together, these elements define both “nearby” for purposes of this standard, and the “vicinity” for analysis under the Landscape Setting criterion in MCC 38.7035(C(3)(a). Staff has prepared a map showing the distribution of properties used in the appraisal, and it is included as Exhibit 7.

The applicant’s exterior elevation and site plan for the proposed home establish the height and size of the structure. The new residence is a single story, 3,480 square foot structure, with a peak building height of 19 feet. Two of the 25 dwellings listed in the report exceed this size, one at 3,983 square feet (1820 SE Historic Columbia River Hwy) and the other at 4,514 feet (2150 SE Historic Columbia River Hwy). At 19 feet, the building height of the proposed residence is typical for single story construction and considerably less than the peak height of two story dwellings in the area. Since the size of the proposed dwelling falls within the range of what currently exists in the area, it is considered to be generally consistent with that of existing nearby developments.

8.3 MCC .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.

There are no new access points being proposed. The property has a permitted and existing access point to the public roadway. The existing driveway location will not be changed with this proposed development.

Staff: Agrees. This standard does not apply to this proposal.

8.4 MCC .7035(A)(4), Project applicants shall be responsible for the proper maintenance and survival of any required vegetation.

The approval of the Fish and Wildlife permit sets out specific landscape requirements. The applicant has begun the process of planting these materials. The applicant has provided additional landscaping between the Historic Columbia River Highway and the site. The applicant has been and will continue to be responsible for the care and maintenance of all vegetation on the site. There is some additional proposed landscaping for the site which the applicant will also maintain.

Staff: The vegetation that is required for this decision consists of maintaining the existing trees identified on the Landscape Plan in Exhibit 1.F., along with the new proposed plants in their locations as shown thereon. The Landscape Plan has been incorporated as “Exhibit C” into the Deed Restriction between the owner and ODFW. The purpose of the restriction is to mitigate for development impacts to the Sandy River riparian area and is evidence of compliance with MCC 38.7060 Stream, Lake, & Riparian Areas and MCC 38.7065 Wildlife Review. A copy of the recorded Deed Restriction provided by the applicant is included in Exhibit 1.B. Staff notes that “Exhibit C” of the Restriction was apparently not recorded in the deed records of the county. The Deed Restriction consists of 5 pages including exhibits, and the Recorder indicates that 4 pages were recorded, and that “Exhibit C” the Landscape Plan, was not recorded. The applicant will need to re-record the Deed Restriction and provide a new copy to staff. The text of the instrument will need to state that the Deed Restriction is being re-recorded in order to include Exhibit C, the Landscape Plan. The owner shall carry out the planting plan, including replanting as necessary to establish and maintain the plants shown.

In addition to the vegetation discussed above, the applicant is required to plant 3 additional Cedar trees on the north side of the dwelling as described in the findings under MCC 38.7035(B)(1) and as shown on Exhibit 9. These trees are needed to ensure that the dwelling will meet visual subordination as seen from the Sandy River north of the property.

Staff notes however, that the Laurel Hedge identified on the Landscape Plan is a non-native and somewhat invasive shrub. Since the Laurel exists on the property, it is not required to be changed, however staff recommends that it be replaced with native species or with a less invasive plant that can function as a hedge.

8.5 MCC .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.

The proposed landscaping will be planted on the site after the home is constructed. The proposed landscaping is native species to the Sandy River. Landscaping will blend into the existing topography along the Sandy River. The best compatibility is being proposed for this site, which uses all Sandy River Native plants. Landscaping is further discussed belloved under Key Viewing Areas.

Staff: This requirement is noted. Compliance with landscape setting standards is discussed under Finding 8.

9. Compliance With MCC 38.7035(B), Review Criteria For Key Viewing Areas:

Staff: MCC 38.7035(B), provides that the following scenic review standards shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area which are visible from Key Viewing Areas: (*Italicized text is from the September 11, 2003 narrative submitted by Dale Hult of All County Surveyors and Planners, Inc.*)

In the previous land use application, County Staff and the Hearings officer agreed and we concur that there are two Key Viewing Areas for this site. They are the Historic Columbia River Highway and the Sandy River Key Viewing Areas.

Although both are important, the Key Viewing Area from the Historic Columbia River Highway criteria can be met without question and has not been an issue for the previous denial. There are existing large fire trees, shrubs, and under story which blends and obscures any proposed development of the site west of the existing garage. The existing vegetation between the garage and the Historic Columbia River Highway has been found adequate to obscure and blend the site into the landscape. The applicant has provided additional cedars and firs in this Key Viewing Area, even since the last application, which adds more screening and buffering.

The garage has been repainted the color required by Multnomah County to meet land use criteria. Under the previous land use application, County staff has suggested that a new house should be located nearer to the Historic Columbia River Highway (in the area now consisting of a wetland and wetland setback area). The applicant had shown this area to be a partial fill a possibly un-suitable for home construction. The area was moist but no wetland delineation had occurred. The applicant has been sensitive to the ecology of the area and hired Fishman and Associates to determine wetland. The area has now been determined to be a sensitive wetland area requiring a wetlands setback area. If a home were built in this area it would also be highly visible for the Key Viewing Area of the Historic Columbia River Highway and could not meet the criteria and would disturb a wetland area. Adjacent areas are covered with mature fir trees with large drip canopies. Survival of these mature fir trees should be maintained with development of the site to protect Key Viewing Areas and wetland setback areas. The site plan has shown the mature trees and their

respecting canopies, to be saved. Construction near these trees could be harmful to their survival and is not recommended.

As a comparison, the Historic Columbia River Highway carries over 90% of the viewers visiting these two Key Viewing Areas. There are several thousand visitors every month traveling along the Historic Columbia River Highway and only a view (less than 10 average) traveling along the Sandy River. Automobile travel is 90% of the trips with pedestrian and bicycle making up the other 10%. All year, these automobiles, bicycles, and pedestrian access the Historic Columbia River Highway in route to the many panoramic sites further to the East and the Columbia George. These include Crown Point and Multnomah Falls. Travelers along the Sandy River mostly comprise of fisherman, with about 60% drift boats and 40% power boats. Some recreation swimming occurs along this section, however, due to limited public access this number would be small.

Again, there are two separate Key Viewing Areas which are diverse and ironically cannot be viewed from each other due to topographic constraints. The Sandy River cannot be seen from this section of the Historic Columbia River Highway and the Historic Columbia River Highway cannot be seen from this section of the Sandy River. There are no public traffic (scenic) stops within this reach of the Historic Columbia River Highway.

There is no view corridor or Key Viewing Area between the Sandy River and the Historic Columbia River Highway. The Key Viewing areas are limited to areas along the Historic Columbia River Highway and along the Sandy River. The view as seen from the highway is the Highway and the view from the River is the River and riverbanks. There is no cross viewing associated with this site. This is important and must be kept in context with the Key Viewing Areas.

9.1 MCC .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.

As discussed above the proposed house is smaller than other existing homes in the area. The highest peak of the roof is 19 feet above grade. The shape of the new home is modern with several architectural offsets. Natural stone, colors and shadings will blend the home into the setting. Additional plantings are being proposed along the river corridor and along the Highway, which add to existing screening.

The plans include profiles of the Sandy River, the shoreline, bank, proposed landscaping, and the proposed house. A line of sight has been determined from actual elevations. A house elevation plan is included along with color replicas of the new home. Actual photos have been developed which depict views from the east shoreline of the Sandy River and from a boat or swimming in the Sandy River. A mock up structure was built on the site the day the photos were taken. The mock up was built at the proposed home location and built with the proposed roofline. The photos demonstrate that the home and the roofline will be visually subordinate along the Sandy River corridor.

Aaron Johnson (with the aid of software) has taken the original photos and imposed the house into its correct location. These photos have been compared with profiles and they agree. Additional and proposed landscaping has been added to the after photo to show how the proposed house will disappear into the background. The conclusion from these photos, elevations and profiles are that the proposed house is slightly visible (about 10%) from a boat in the river prior to any new landscaping. With new landscaping planted (10' tall red cedars) the house will become almost invisible from the opposite (west) bank of the river. Even when visible, the portion of the new home exposed to viewing is blended into the background with natural stones, shading, and earth tone colors as seen from these photos and meets and exceeds all requirements of being visually subordinate.

This section of the code requires that a development be visually subordinate, not invisible from the Key Viewing area. Some viewing of the river and of the house might be encouraged to provide boating and pedestrian safety. Boating and swimming accidents occur ever year on the Sandy River. The City of Troutdale and Multnomah County have discussed many ways to help with the problem and reduce injury. Families living along the River provide necessary communication links with emergency services and have been the first line of defense in many of the accidents.

No foot or pedestrian traffic can occur along the west shoreline of the Sandy River due to a large bluff and vertical drop into the river. Very limited pedestrian traffic occurs along the east shoreline. Only an occasional fisherman or swimmer ventures into the Key Viewing Area a few times ever year. There is no public access along this reach of the Sandy River and most of the bank remains steep with briars preventing access. The new home will not be seen from the east shoreline as demonstrated.

Some floating of the river occurs during summer months. There is no lifeguard in this area for swimming. From a fishing boat, which accounts for 90% of access to this section of the river, only a small section of the home can be seen. The portion of the house which is seen (and the entire home) will be painted a dark earth tone color with natural stone trims that will blend with the surrounding landscape. Once the new landscaping is planted and matures the house may become invisible.

Window glazing is propose to be non reflective and will not reflect to the Sandy River or the Historic Columbia River Highway. All outdoor lighting will be fully shielded and will blend with the surrounding environment. Landscaping will be native trees, shrubs, stones, and ground cover to shield and blend the home into its new environment.

Visitors along the Sandy River will have their vision dominated by mature landscaping of native fir and cedar trees (as seen by the photos). The home will blend into the surrounding landscape and will be an asset to the area. The new landscaping will enhance the salmon habitat of the Sandy River. A long-term maintenance plan for this river frontage could be developed as a condition of approval.

With past applications some confusion to the definition of subordinate has occurred. Webster's Dictionary 1913 defines subordinate as 1) placed in a lower order, class, rank,

2) *Inferior in order, nature, dignity, power, importance, or the like. The proposed house is subdued by the surrounding trees and mountains and is inferior in every sense to the definition.*

The main focus of the Key Viewing Area of the Sandy River (as viewed from the Sandy River) will continue to be the river, the rocks, the large bluffs, the landscape the gravel beds, the fir trees, the mountains, and the sky. The large bluff area to the west will remain undisturbed for years to come and is very visible and is a dominant viewing area along this stretch of the Sandy River. The proposed house will be slightly visible, but will remain inferior to the power, importance, and dignity of the river view, the mature forest view, and the surrounding mountain view. The visual importance will continue to be focused towards the natural setting along the Sandy River.

Staff: For purposes of this request, it is necessary to use the term “visual subordination” as defined in MCC 38.0015(V)(3). Visual subordination is defined as "The relative visibility of a structure where that structure does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a Key Viewing Area). Structures which are visually subordinate may be partially visible, but are not visually dominant in relation to their surroundings.” Key Viewing Areas from which the subject property is visible are the Historic Columbia River Highway and Sandy River.

Visual subordination of development as seen from the highway is not an issue with this application provided that trees and ground cover between the existing residence and highway are maintained in their existing condition. The Grading, Erosion Control & Tree Preservation Plan (Exhibit 1.K.) shows that existing vegetation that is to be retained substantially screens the existing garage/apartment and the western portion of the site when viewed from the Highway. During the June 17, 2004 site inspection, staff estimated that the existing structure is 80 to 90% screened by existing vegetation from the Highway. There are seven cedar trees about 12’ feet high bordering the west edge of the grove of trees adjacent to the Highway. Staff believes that these trees will result in near 100% screening as they mature. Because the owner has repainted the existing structure with the approved dark earth-tone colors, the structure is now visually subordinate as seen from the Highway.

The visibility of the new dwelling from the Highway is further reduced due to the location to the west of the existing apartment/garage. The new structure is visually blocked from the Highway by the garage and the existing structures on the adjacent parcel to the north. The south half of the proposed new dwelling may be visible from the Highway down the driveway and through the existing vegetation for very brief intervals. However, the proposed color together with the existing vegetation will result in visual subordination of this portion of the building as well.

A finding of visual subordination of the structure as viewed from the Sandy River was not supported in the prior decision. For this application the applicant has provided a cross section drawing or “Visual Perspective” and photographs from the river of a temporary structure that was constructed to the approximate size and location of the proposed

dwelling. Together this evidence supports a finding of visual subordination from the portion of the river on the west side of the house. The Visual Perspective is included here in Exhibit 1.J, and the photographs are in Exhibit 1.G. The Visual Perspective cross-section shows that with the existing vegetation, a person in a boat in the middle of the river would be able to see the gutter line and roof of the proposed dwelling. A person on the river bank in front of the house would not be able to see the structure at all. The Visual Perspective demonstrates that the visibility of the structure increases with distance to the west, therefore a larger portion of the structure will be visible from the west edge of the river. Staff agrees with the analysis provided by the applicant based on observations made during the site inspection in June 2004. In staff's view, the dark roof color and dark siding color achieve visual subordination with the existing vegetation coupled with the proposed vegetation, in particular the new trees.

The extent to which the structure will be visible from downstream (north) is not analyzed in the Visual Perspective. The visibility of the structure from the north was a significant factor in the denial of NSA 22-99 as described on pages 9 through 11 of Exhibit 1.M. A photograph included in the prior decision does show that the structure will be visible in winter from the north (see Exhibit 10). Comparison of the photograph, which was taken at the north end of the dwelling site, with a year 2002 aerial photograph, shows that the structure will be visible from the river beginning at about 400 feet to perhaps 3,000 feet from the dwelling. The Landscape Plan shows that an area of the dwelling approximately 30 to 50 feet wide has the potential to be visible from down stream. The Landscape Plan calls for low growing evergreen shrubs and three deciduous Vine Maple trees to be planted in the area. Staff does not believe that adding these plants will effectively reduce the visibility of the house, and that adding screening trees north of the house is necessary. The applicant will need to plant three Western Red Cedar trees that are at least 8 feet tall in the locations shown on Exhibit 9 in order to screen the structure as viewed from the north. Staff finds that on balance, the dark colors, wide roof overhangs, narrow potential viewable face of the house, and combination of plantings will result in a structure that is not highly contrasting as viewed from the Sandy River north of the property.

Staff also finds that reflectivity will not detract from visual subordination of the structure as seen from the river because the view angle results in only areas higher than the windows being visible. Even if there is some amount of variance in the view angle as shown on the visual perspective, The windows are not likely to become highly reflective because they are set back under the roof overhang at least three feet. Along most of the river side elevation the setback to the windows is six feet or more.

The applicant is proposing to add significant vegetation to the river bank in order to meet the deed restriction accepted by the Oregon Department of Fish and Wildlife for riparian buffer zone mitigation. The additional vegetation is shown on the Landscape Plan in Exhibit 1.F. and consists of an array of native plants including trees and shrubs that will significantly increase vegetative screening of the structure from the river. The assumed result of adding this vegetation is depicted on the Visual Perspective, and results in the dwelling being screened to a significant degree from the river to the west. Staff concludes that the proposed dwelling will achieve visual subordination as proposed with

the additional trees described above and shown on Exhibit 9.

- 9.2 **MCC .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.**

Conditions of approval can be drafted by County Staff for this project. The proposed house as shown in photograph is visually subordinate to the Sandy River and to the Historic Columbia River Highway. The distance from the new house to the river and highway setback areas meets and exceeds Multnomah County and Columbia River George standards. The Oregon Department of Fish and Wildlife has been satisfied that this location can be developed and an easement has already been recorded. Conditions of approval should contain language regarding the long-term survival and planting of native species along the property's river and highway frontages. A condition requiring additional landscaping may be appropriate for the Sandy River frontage.

Staff: The potential visual impacts of the proposed dwelling as seen from the Highway are minor due to the proposed dark color, one story elevation, the location behind the existing structure, and the existing trees between the Highway and the dwelling. While the structure is quite close to the Highway, the linear distance from which it could be visible is limited to very short intervals where it is visible between the trees. Other than a requirement to maintain the existing vegetation, no conditions are necessary to maintain visual subordination of the proposed structure from the Highway.

The potential visual impacts of the dwelling as seen from the Sandy River are limited by the color, one story elevation, and existing and proposed vegetation. The structure is close to the river, and the linear distance from which some portion of it could be visible is perhaps twice the width of the lot or 200' along the river on the west side of the house. To the north at the structure will apparently be visible between 400' and 3,000 feet. Staff is imposing a condition that requires planting of three Cedar trees as shown on Exhibit 9 in order to screen the house as seen from the north. Staff finds that the proposed building location and design elements together with the existing, proposed, and required vegetation result in visual subordination.

- 9.3 **MCC .7035(B)(3), Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.**

Note: This section of the code pertains to cumulative effects of proposed (not existing)

developments. In checking with the City of Troutdale there are currently no proposed developments along the Sandy River viewing area (near this site). This proposed home in one of the few proposed permits.

The application reviewed under proposed developments meets visual subordination requirements. As discussed above this new home will fit into its surrounding environment and be of little visual importance. With development of this site additional (in addition to new and proposed) landscaping and buffering can be required along both the Columbia River Highway and along the Sandy River Key Viewing Areas. Any new landscaping will decrease the visual impacts (of structures) along these two Key Viewing Areas. Many of the existing homes on the Sandy River are fully visible and distract from the natural surroundings. Over time the Multnomah County codes will be accomplished through new developments being built and through existing developments modifying site plans and adding visual subordination. This new home has been (with proposed landscaping) designed and color coordinated to blend and not distract from the Key Viewing Areas. Many of the new planting will help to hide the existing residence to the North as shown in the photographs.

Staff: When reviewing case-by-case development, this criterion requires that the County consider whether or not an individual project contributes to a cumulative visual impact of development as viewed from a key viewing area. Like the applicant's property, most parcels in the area contain single family residences. Many of these residences were constructed prior to the establishment of the National Scenic Area, are clearly visible from the Sandy River, and significantly contrast with the surrounding natural environment. In contrast, the proposed dwelling will be visually subordinate as seen from the river and the Highway. The high visibility of the pre NSA structures will make the proposed dwelling less noticeable. Therefore staff finds that the proposed dwelling will not contribute to increased visual impact of development as seen from the KVAs associated with this site.

- 9.4 **MCC .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.**

The location of the new home was determined from good design and from following this section of the code. The wetlands and associated buffers (as discussed below) as shown on the site plan, prohibit any new building in this restricted area. There is also a wildlife easement granted to the state along the Sandy River. There is an existing driveway and exiting garage and septic system on the remaining property. The trees and setbacks to the Historic Columbia River Highway have also been shown on the site plan. All of these areas have their limitations.

This section of the code allows some minor or limited visibility from a Key Viewing Area due to these other listed setback and protected areas. This section of the code enforces the

example that a new structure need not be totally invisible but only subordinate. Many different house designs and footprints were analyzed. A smaller footprint but a two-story home was analyzed. Sheet 5 depicts a typical two story plan, a smaller foot print, however a higher roof peak and thus not visually subordinate. This plan was ruled out due to the visual dominance within the Key Viewing Areas.

A wider footprint with a lower roof pitch and peak is being proposed to avoid sensitive areas and conform to Key Viewing criteria.

There are no known cultural resources located on the site.

Staff: This criterion sets up a priority that favors avoidance of wetland and riparian buffers over visibility from KVAs. The applicant has provided a Setback Plan that depicts the location of the riparian and wetland buffers relative to the existing and proposed dwelling sites (see Exhibit 1.F.). Staff understands that the wetland was not identified in prior applications. This plan indicates that the only site on the property that is not within environmental resource setbacks or the Highway setback is the proposed site. Staff therefore finds that this criterion is met with the proposed plan.

- 9.5 **MCC .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.**

The existing topography of the site will not be modified with development. The existing topography shields the proposed home from the Key Viewing Areas; No berming is needed for this project. This project has proposed to add native landscaping along the Sandy River as shown. The other means of achieving visual subordination is through using natural colors and textures, such as dark earth tones and stone as proposed. This has been used in addition to the topography and the landscaping of the site.

Staff: The proposed dwelling utilizes the existing vegetation to screen it from the Historic Columbia River Highway. The existing river bank condition substantially screens the dwelling from the Sandy River. Visual subordination is achieved in the location proposed using these elements, therefore this criterion is met.

- 9.6 **MCC .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.**

There will be no cut or fill slopes seen from either of the Key Viewing Areas. There are no proposed cuts of fill associated with development of the house or with the existing driveway. This section is not applicable to this development application.

Staff: We concur. The site plan and photographs of the property show a site that is relatively flat. No significant fill slopes or cut banks should be needed for development

given such terrain.

- 9.7 **MCC .7035(B)(9), The exterior of buildings on lands seen from Key Viewing Areas shall be composed of non-reflective materials or materials with low reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topographic features.**

Although very little is any of the window glazing will be seen from either of the Key Viewing Areas, all non-reflective glazing will be used. A condition of approval can be crafted to require non-reflective glazing. This code section requirement also describes a situation where a “structure would be fully screened”. This lends credence to the argument that not all structures are “invisible” to the Key Viewing Areas. If the structures are visible and seen from the Key Viewing Areas then this section applies and the proposed building conforms or is conditions to conform.

The applicant’s site is partially screened due to existing topography. See the elevation drawing profiles for the Sandy River and see the photos prepared by Aaron Johnson. In any event the applicant has proposed to use non-reflective glazing throughout the structure.

Staff: The exterior materials include a dark, nearly black roof tile, dark grey-black stone on the walls, and non-reflective glazing. The roofing and wall materials are non-reflective. The combination of the use of glazing with low reflectivity and the wide roof overhangs will result in the glazing portion of the exterior achieving the “low reflectivity” standard.

- 9.8 **MCC .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.**

Some outdoor lighting will be used for security. All lighting will be fully shielded and will meet the International Dark Skies criteria. Their web site can be visited at sss.darksites.com. The lighting will face downward and will be fully screened from the Key Viewing Areas. The materials used for hoods and shielding will be non-reflecting as required by this section of the code.

Staff: Compliance with this requirement can be achieved with a condition of approval.

- 9.9 **MCC .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.**

As seen from the photographs, there is a large bluff east of the site and the building will not be silhouetted from the Sandy River. The proposed house will also not be silhouetted from the Historic Columbia River Highway, since it is slightly above the property.

Staff: Agrees.

- 9.10 **MCC .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.**

There are no slopes in excess of 30% on the site, therefore no development is proposed in steep sloped areas. The house is being proposed on a very flat portion of the site with very little grading.

Staff: The site plan and photographs of the property illustrate that portions of the property proposed for development are relatively flat, with slopes of less than 10 percent.

- 9.11 **MCC .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...**

A grading plan has been submitted. Less than 100 cubic yards will be graded with this development. None of the grading will be seen from the Key Viewing Areas. The graded areas cannot be seen from the Sandy River due to existing topography of the site. Grading cannot be seen from the Historic River Highway due to the amount of existing vegetation and trees.

Staff: Since slopes are less than 10 percent in areas proposed for development, a grading plan is not required.

- 9.12 **MCC .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.**

Staff: Based on the Visual Perspective, the dwelling appears to be visually subordinate under existing conditions. Plantings proposed for the river bank will need to be of a size that will allow them to become established in competition with the existing vegetation. Trees should be balled and burlaped (B&B) in the range of 6 feet high, or of the standard "five gallon" container size.

10. Compliance With MCC 38.7035(C), Landscape Setting Requirements:

Per MCC 38.7035(C)(3), Uses Under Prescribed Conditions, the following scenic review standards shall apply to all Review Uses in the General Management Area of the

Columbia River Gorge National Scenic Area which reside in a Rural Residential landscape setting:

- 10.1 **MCC .7035(C)(3)(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.**

As discussed above and in the previous land use case this proposal meets the requirement. The scales of existing homes within the project area are similar in size. Many of the homes are larger and can be seen from the Sandy River. The proposed home is smaller and has been placed on the site to obscure its view from the Sandy River. The location of the proposed home is outside of the wetland and wetland setback areas. The wetland is being protected by the development of this site.

Staff: This criterion has been satisfied. This proposal constitutes expansion of existing development, therefore both the existing garage/apartment and the proposed dwelling must be considered. The report prepared by Wherity Appraisal Service, included in the case file as Exhibit 1.E., shows that two of the 25 properties within close proximity of the applicant's site contain an overall mass of development (all structures) in excess of the 4,920 square feet proposed by the applicant. These two are shown as property numbers 10 and 16 in the report (Exhibit F). A third property, number 20 in the report, contains approximately 266 square feet less than the area of structures proposed on the subject property, but is nevertheless useful in the overall mass analysis because it contains a large two story dwelling. In terms of overall mass, the development on properties 10, 16, and 20 define the upper range of development in this area. The lower height of the development that will occur on the subject property, coupled with the equal or smaller square footage of the structures, results in development that is compatible with the general scale of development in the vicinity.

- 10.2 **MCC .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.**

All existing trees are to be saved. All tree cover is proposed to remain the same or be improved with new native species landscaping. There is a large stand of mature Douglas Fir trees that remain with the proposed development. No new development has been proposed in the wetland area or within the wetland setback area.

Staff: No tree cutting is proposed, therefore this standard is met.

- 10.3 **MCC .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:**

This section of the code suggests that some of the new development can be seen from the Key Viewing Areas. This section of the code agrees with others and concedes that there

will (may) be some visibility of new structures. This section establishes guidelines for making a structure visually subordinate. This section establishes standards for attaining visual subordination when a structure has not been completely screened from view. There will be no cutting or disturbance of tree cover. Limited grading is proposed which cannot be seen from the Key Viewing Areas. Lighting, landscaping, and glazing are discussed below and exceed the code requirements.

- (i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.**

All existing trees are proposed to be saved. All tree cover is proposed to remain the same or be improved with new native species landscaping.

- (ii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.**

All existing trees are proposed to be saved. All tree cover is proposed to remain the same or be improved with new native species landscaping. New trees will be planted with 100% native species which exceeds this code requirement.

- (iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.**

All existing trees are proposed to be saved. All tree cover is proposed to remain the same or be improved with new native species landscaping. As can be seen from the landscaping plan over ½ of the new trees are conifers and will retain their wintertime foliage.

- (iv) Structures' exteriors shall be dark and either natural or earthtone colors unless specifically exempted by MCC .3418(B)(11) and (12).**

The proposed paint color is dark brown and earth tone in color. The existing shop has been painted the same color and has been approved by county planning.

Staff: Staff agrees with the statements provided here by the applicant. Implementation of the Landscape Plan and proposed exterior colors will ensure that this standard is met.

- 10.4 **MCC .7035(C)(3)(d), Compatible recreation uses should be limited to small community park facilities, but occasional low-intensity resource-based recreation uses (such as small scenic overlooks) may be allowed.**

N/A Recreational use is not being proposed.

Staff: Proposed development is not recreational in nature, therefore, this criterion is not applicable.

11. Compliance With MCC 38.7035(D), Scenic Travel Corridor Review Criteria:

Per MCC 38.7035(D), Uses Under Prescribed Conditions, the following scenic review standards shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area which are within scenic travel corridors:

- 11.1 **MCC .7035(D)(1), For the purposes of implementing this section, the foreground of a Scenic Travel Corridor shall include those lands within one-quarter mile of the edge of pavement of the Historic Columbia River Highway and I-84.**

This site is within one-quarter mile of the edge of pavement and is subject to this section of the code.

Staff: The subject property adjoins the Historic Columbia River Highway; therefore, this site review application is subject to scenic travel corridor review criteria listed under this section.

- 11.2 **MCC .7035(D)(2), All new buildings and alterations to existing buildings, except in a GGRC, shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway. A variance to this setback requirement may be granted pursuant to MCC .3576. All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway, to the maximum extent practicable.**

The 100 foot setback is shown and no development is being proposed within the setback area.

Staff: As illustrated on the site plan in Exhibit 1.F., the existing garage is approximately 177 feet from the edge of the right-of-way, and the proposed dwelling is set approximately 265' back. Both the existing residence and the location proposed for the new dwelling satisfy the 100 foot setback requirement.

12. Compliance With MCC 38.7045 GMA Cultural Resource Review Criteria:

Staff: MCC 38.7045(A)(1) provides that a cultural reconnaissance survey shall be required for all proposed uses, except:

(e) Proposed uses that would occur on sites that have been adequately surveyed in the past.

Cultural Resource criteria have been satisfied with this application and the previous application. Multnomah County staff has reviewed a letter dated August 21, 2000 from Michael Boynton (included). He states in his letter that no cultural sites would exist on the site. A copy of the letter is attached for County use.

Staff: The USDA Forest Service has provided a Cultural Resources Survey Determination dated April 13, 2004 (see Exhibit 3). The determination indicates that a cultural

reconnaissance is not required because the area has been adequately surveyed in the past. The letter refers to the August 2000 work done by Michael Boynton (NSA 22-99), and by Tom Turck in 1993 (C93-0132-M-G-11), indicating that neither survey identified cultural resources on the property.

Pursuant to MCC 38.7045(B)(1), the cultural resource review criteria shall be deemed satisfied, except MCC .7045(L) and (M), if the project is exempted by MCC .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). No comment other than the Forest Service Determination was received. Therefore, staff finds that this application satisfies all cultural resource review criteria, except MCC .3818(L) and (M), which relate to the discovery of cultural resources during construction (MCC .3818(B)(1)). Compliance with the requirements of MCC .7045(L) and (M) can be ensured with conditions of approval.

13. Compliance With MCC 38.7055 GMA Wetlands Review Criteria:

MCC 38.7055(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);**
- (2) The soils of the project site are not identified by the *Soil Survey of Multnomah County, Oregon* (U.S.D.A. Soil Conservation Service, 1983) as hydric soils;**

* * *

(4) The project site is not within a wetland buffer zone; and

(5) Wetlands are not identified on the project site during site review,

Buffer zones have been shown on the site plan. The wetland report outlines the requirements for a buffer requirement and is shown on the plans.

Staff: A wetland has been found on the site pursuant to the report prepared by Fishman Environmental Services, LLC (Exhibit 1.D.). The location of the wetland is shown in the report and on the applicants Setback Plan in Exhibit 1.F. The wetland buffer required under NSA provisions ranges from 150 feet for areas with a herbaceous plant community, to 75 feet for a forested community. The wetland report evaluates the different vegetation communities in portions of the buffer and determines that the buffer width required under the NSA guidelines varies from 75' to 100'. The consultant also indicates that if a buffer is not required under NSA provisions, the City of Troutdale will likely require a buffer of 50'.

Staff finds that the NSA provisions do require a buffer, and accepts the wetlands report as substantial evidence that a wetland does exist as indicated. Further, the buffer areas appear to be properly identified pursuant to the procedures of this code section. The site plan indicates that the new development proposed is outside of the 100' buffer area therefore the wetland criteria have been met.

14. Compliance With MCC 38.7060, Stream, Lake, & Riparian Area Review Criteria:

MCC .3824(F), Stream, Pond, and Lake Buffer Zones

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

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

* * *

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

There is no proposed development within 100-foot setback area to the stream buffer per subsection (a) (areas along the Sandy River.) There is no new development proposed within any setback or buffer areas. The ordinary high water mark has been determined for the site and is shown on the site plan. In addition the Department of Fish and Wildlife has been granted a permanent setback and buffer easement. See also the sections regarding wetlands and wetland setback areas for additional buffers and special setbacks per subsection (c).

Staff: In the National Scenic Area, the ordinary high water mark is defined as "the mark on all streams, ponds, and lakes where the presence and action of waters are so common and usual, and so continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting land (MCC .3556)." Using this definition, Dale Hult, PLS, with All County Surveyors visited the subject property and determined the ordinary high water mark for the Sandy River to be at an elevation of 25 feet.

The 25 foot elevation line and, the 100 foot setback from this line required under MCC .3824(F)(1)(a), are illustrated on the applicant's Setback Plan in Exhibit 1.F. The site plan shows the closest part of the development area, the deck, as not encroaching into the setback.

In the prior decision, NSA 22-99, staff found that areas within the 100' river buffer had been disturbed. Comparison of the 1998 and 2000 aerial photos of the property and the Setback Plan do indicate that a portion of the river buffer was disturbed by grading/clearing of vegetation. The amount of area within the buffer that was disturbed appears to be approximately 50' at the north property, narrowing down to approximately 20' at the south property line. The Landscape Plan shows that all but a small "turf" area is to be replanted with native plants. This treatment is included in the setback buffer easement approved by ODFW. Staff therefore finds that implementation of the Landscape Plan will ensure that the Stream buffer requirements will be met.

15. Compliance With MCC 38.7065, Wildlife Review Criteria:

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

- (1) Site plans shall be submitted to Oregon Department of Fish and Wildlife by the Planning Director. State wildlife biologists will review the site plan and their field survey records. They will**

(a) Identify/verify the precise location of the wildlife area or site,

(b) Ascertain whether the wildlife area or site is active or abandoned, and

(c) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons.

In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

* * *

- (5) The project applicant shall prepare a wildlife management plan if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.**

- (6) The Planning Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife. The Oregon Department of Fish and Wildlife will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Planning Director.**

The Planning Director shall record and address any written comments submitted by the Oregon Department of Fish and Wildlife in its site review order.

Based on the comments from the Oregon Department of Fish and Wildlife, the Planning Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and standards. If the final decision contradicts the comments submitted by the Oregon Department of Fish and Wildlife, the Planning Director shall justify how the opposing conclusion was reached.

The Planning Director shall require the applicant to revise the wildlife management plan to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

The site has had extensive review. Several field studies have been performed. The site has been determined to be within 1000 feet of the Sandy River. The Oregon Department of Fish and Wildlife have sent many letters to the County regarding this site. After the denial of the previous application by Multnomah County, the applicant and the Department of Fish and Wildlife reached an agreement on the required setback and buffer areas near the Sandy

River. This agreement has been submitted with this application and specifically addresses the issues raised in this section of the code. As discussed here and many times above, the parties have recorded an easement and re-vegetation plan which meets the Oregon Department of Fish and Wildlife requirements. Some of the plantings have been installed by the applicant and some weeds have been controlled. Some additional plantings are waiting for further land use approvals by this application. A copy of the recorded agreement is attached to this application.

Staff: As indicated in the findings of NSA 22-99, the applicant is proposing development that will adversely impact sensitive wildlife areas. In these cases the applicant is required to prepare a wildlife management plan (MCC .3826(D)(5)). Wildlife management plans must be prepared by a professional biologist (MCC .3826(E)) and offer the applicant an opportunity to redesign the project and propose alternative mitigation to alleviate any adverse impacts on sensitive wildlife habitat. The applicant's March 2004 submittal included a wildlife mitigation plan prepared by Pacific Habitat Services, Inc. (Exhibit 1.D.). The mitigation report indicates that grading of the river bank is not appropriate as was proposed in the prior application. The current conditions are that native and non-native plants have filled in the bank stabilizing it, and grading could change that. The plan recommends hand removal coupled with spot application of specified herbicide to eliminate exotic species, and proposes a detailed mitigation plan using all native species.

The Replanting Plan was submitted to ODFW, along with a modified deed restriction as required in standard (6) above. Todd Ashbury of ODFW accepted the Planting Plan in his letter dated September 28, 2004 (Exhibit 8). The letter states that the native vegetation that is becoming established will prevent potential harm to aquatic and fish resources, and the new plan adequately replaces the previous plan. Staff finds that the additional native vegetation included in the deed restriction (Exhibit 1.B.) is needed to support a finding of “no adverse affect” on the sensitive wildlife area or site. Therefore, implementation of this plan satisfies the Wildlife Review standards.

16.Compliance With MCC 38.7070 Rare Plants Review Criteria:

MCC 38.7070 Rare Plant Site Review shall be required for any project within 1,000 feet of endemic plants and sensitive plant species.

As with the previous application, no inventoried Endangered Plant Species have been identified on the site.

Staff: No inventoried Endangered Plant Species have been identified within 1,000 feet of the applicant’s site, therefore, rare plant site is not required.

17.Compliance With MCC 38.7080 Recreation Resource Review Criteria:

The proposed use is not recreational in nature and this section of the code does not apply to the application.

Staff: The proposed development is not a recreational use, therefore, the Recreational Review Criteria listed under MCC .7080 are not applicable.

Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary to receive National Scenic Area Site Review approval for construction of the proposed new dwelling. Conditions of approval are imposed to ensure that all criteria are met.

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.

<u>Exhibit</u>	<u>Description</u>
<u>Label</u>	

- | | |
|-----|--|
| 1. | Applicant's Submittal, Narrative |
| | A. Vesting Deed |
| | B. Deed Restriction (river buffer) #2004-184799 recorded 10/11/04. |
| | C. Flood Plain Report |
| | D. Wetland Report (9/15/03 by Benjamin and French) |
| | E. Adjacent Properties Survey |
| | F. Site Plan, Setback Plan, Landscape Plan |
| | G. Existing Condition Photos |
| | H. Proposed House Photos |
| | I. House Elevations |
| | J. Cross Sections (Visual Perspective) |
| | K. Grading, Erosion Control, Tree Preservation Plan |
| | L. Planning Director Decision NSA 22-99 |
| | M. Hearings Officer Decision NSA 22-99 |
| | N. Elevation Certificate |
| 2. | A. Proposed House and Architectural Plans and Elevations |
| | B. Approved Exterior & Trim Colors |
| | C. Proposed Roof Tile |
| | D. Sand Sample Taken from Sandy River Bank at Site |
| | E. Stone Sample Taken from Sandy River Bank at Site |
| 3. | Comment letters, USDA Forest Service, and Friends of the Gorge. |
| 4. | Prior "Interim Guidelines" Approval C93-0132-M-G-11 |
| 5. | City of Troutdale Letters dated 11/24/99 and 7/3/00 (NSA 22-99 casefile) |
| 6. | ODOT Access Permit Requirements (NSA 22-99 casefile) |
| 7. | GIS Map with Properties Numbered to Correspond to "Adjacent Properties Survey" in Exhibit 1.E., along with Assessment and Taxation Improvement Records for Selected Properties |
| 8. | ODFW Deed Restriction Acceptance letter dated 9/28/04. |
| 9. | Landscape Plan Supplement |
| 10. | Photo of River to North of Dwelling from casefile NSA 22-99. |

