



MULTNOMAH COUNTY

LAND USE AND TRANSPORTATION PROGRAM

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FINDINGS AND DECISION OF MULTNOMAH COUNTY HEARINGS OFFICER

Public Hearing: Opened on April 14, 2006; continued to and held on May 12, 2006.

Case File: T2-05-095

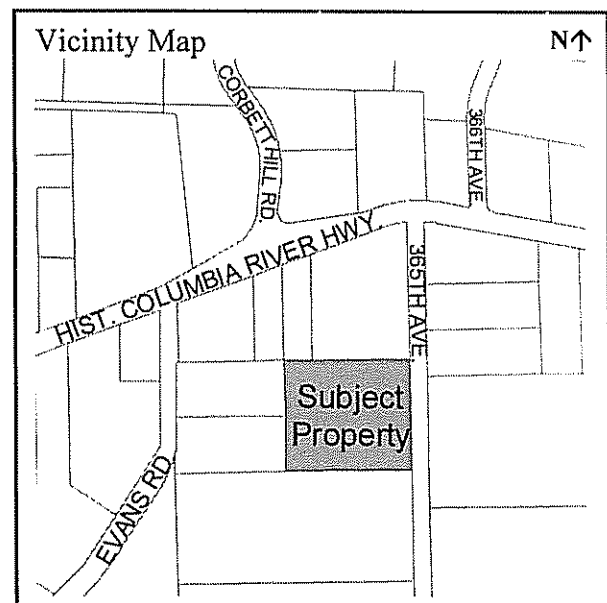
Permit: National Scenic Area Site Review

Location: 1025 NE 365th Ave
TL 1200, Sec 35BB, T1N, R4E, W.M.
Alternative Account #R944350770

Applicant: Boyd Svaren
PO Box 1497
Boring, OR 97009

**Appellants
and
Owners:** Roger & Sandra Wallis
1025 NE 365th Ave
Corbett, OR 97019

**Appellants'
Representatives:** Dale Hult and Daniel Mikota
All-County Surveyors & Planners, Inc.
P.O. Box 955
Sandy, OR 97055



Summary: Appeal of a Planning Director's Decision denying a request for a National Scenic Area Site Review Permit to build a 2,140 square foot attached garage addition onto an existing 3,070 square foot dwelling in the Gorge General Residential - 5 Zone District.

Decision: **The request does not meet the criteria for approval of a Site Review permit in the National Scenic Area. Consequently, the appeal is denied.**

Impartiality of Hearings Officer: As a preliminary to the public hearing, the Hearings Officer stated that she had no financial interest in the outcome of the decision; that she had no prior relationship with the applicant; that she had neither visited the site nor had any ex parte communication with any person concerning the merits of the application; and that she could be fair in rendering a decision based upon the criteria. No person objected to this Hearings Officer hearing and rendering a decision on the case.

Applicable Approval Criteria: Multnomah County Code (MCC): 38.0510 et. seq.: Administration and Procedures; MCC 38.0000 et. seq.: General Provisions; MCC 38.3000 et. seq.: Gorge General Residential; and MCC 38.7000 et. seq.: Site Review.

FINDINGS OF FACT:

Note: Findings herein address Multnomah County ordinance requirements. Multnomah County Code criteria and Comprehensive Plan Policies are in a **bold** font. Planning staff comments and analysis may follow applicant comments. The notation "Applicant" precedes the applicant's comments; the notation "Appellants" precedes the Appellants' comments; and the notation "Staff" precedes staff comments and analysis. The Hearings Officer's analysis and conclusions may follow, preceded by the notation "Hearings Officer." **Unless explicitly noted otherwise, the Hearings Officer adopts and incorporates the comments, analysis, findings and conclusions by Staff, set forth below and in the Decision of the Planning Director dated March 3, 2006, as findings supporting this decision.**

1. PROJECT DESCRIPTION

Applicant: *The applicant is requesting approval to construct a new 2,140 square foot single level garage for storage of vehicles and other personal possessions. The Location, dimensions, and height of the proposed structure are illustrated with applicants site plan (Exhibit 1.3) and exterior architectural elevations (Exhibit 1.5). No grading will be required outside of the proposed buildings footprint. This development will be further screened from the highway with the addition of multiple, large rhododendron plants and possibly a row of Arborvitae along the north property line.*

Staff: The applicant proposes a 2,140 square foot attached garage addition to an existing 3070 square foot dwelling in the GGR-5 Zone District within the Rural Residential Landscape Setting.

2. SITE AND VICINITY CHARACTERISTICS

Applicant: *The applicant is representing the owners of a property which is located at the above address on NE 365th. It is rectangular in shape, is 2.69 acres in size and is located 400'+ South of the Historic Columbia River Highway. Existing on site development consists of a 2,962 square foot two story home, a farm building with 1,680 square ft. and a 860 square foot pool house. On site slopes are gradual, dropping Northeast to Southwest across the property away from the highway. The property is slightly visible to passing vehicles and pedestrians passing by on the Historic Highway through timber and underbrush. Also between the highway and the property are existing homes, garages, shop buildings and tall Arborvitae hedges. Multiple trees fill in voids between the neighboring homes as well as the side yards of the subject property. Tall brush and smaller Douglas Fir Trees of 2"-5" caliper grow within trees to the North providing further damper on visibility from the highway towards this site.*

The applicant's property is characteristic of the many residentially developed parcels that exist in the areas near the highway. The zoning of the property is GGR-5.

Staff: The property is adjacent to the Community of Corbett where the transition to rural residential uses occurs. The properties to the north, west and northeast are within the Rural Center Zone District (Exhibit 2.2). The properties to the south, east and southwest share the GGR-5 District zoning designation with the subject property. The property is located to south and down-slope from the Historic Columbia River Highway with access from NE 365th Ave. The area to the north, northwest and northeast are predominately residential development lands with an abundance of trees (Exhibit 2.3).

The subject property is residentially developed with a couple of accessory buildings described by the applicant. The project site is to the north of the existing dwelling. The area north of the proposed building, about 65 feet to the property line, is a substantial growth of trees consisting of maple, birch, alder and fir species. To the northwest of the proposed development there are only a few trees with predominately blackberry bushes. To the northeast the area is populated with a dense growth of predominately alder trees. Vehicles can be seen as they pass on the Historic Columbia River Highway.

3. INITIATION OF ACTION BY PROPERTY OWNER

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

Staff: Multnomah County Assessment shows Roger W. and Sandra J. Wallis as the property owners. The application is signed by Mr. and Mrs. Wallis (Exhibit 1.1).

4. ADMINISTRATIVE PROCEDURES

4.1 Administrative Procedures for a Type II Case)

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

Staff: This decision is a review of the proposed development pursuant to MCC 38.0530(B). The application was submitted on September 12, 2005 (Exhibit 1.1). A Completeness Review notice was sent on September 26, 2005 to interested agencies and Tribes. Three letters were received in comment on completeness of the application. The application was deemed complete on December 13, 2005. A 14 Day Opportunity to Comment notice was mailed by staff on January 19, 2006 to property owners within 750 feet of the subject tract, the Gorge Commission, the US Forest Service, and the Tribal Governments and other agencies and interested parties. Three letters of comment were received addressing the proposal and each is summarized below. This decision was drafted and will be mailed in accordance with MCC 38.0660.

The following documents were received during the completeness review: An email dated September 27, 2005, from Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service (Exhibit 3.1), a letter dated October 11, 2005 from Dennis Griffin, Ph.D., RPA, State Historic Preservation Office, Oregon Department of Parks and Recreation (Exhibit 3.2) and a letter dated October 10, 2005 from Angie Kenney, Planner, Columbia River Gorge Commission (Exhibit 3.3).

The following letters of comment were received: A letter dated February 1, 2006 from David Richardson, Land Use Law Clerk, Friends of the Columbia Gorge, (Exhibit 3.4), an additional letter dated February 2, 2006 from Ms. Kenney, (Exhibit: 3.5), and a letter dated February 2, 2006 from Johnson Meninick, Manager Cultural Resources Program, Confederated Tribes and Bands of the Yakima Nation (Exhibit: 3.6).

In her email Ms. Dryden, stated, "A cultural resources reconnaissance survey is: Not Required" and "A Historic Survey is: Not Required." Mr. Griffin's letter reflected Ms. Dryden's findings, stating that, "A search through the SHPO archaeological statewide database has revealed that there are no reported sites in the proposed project area.

In her letter dated October 10, 2005, Ms. Kenney noted that the proposed structure needs to meet the KVA guidelines for visual subordination under MCC 38.7035(B)(1). She also notes that, "The garage plans seem rather large..." In her letter dated February 2, 2006, Ms Kenney states:

"The proposed garage appears rather large in overall mass. As proposed, the 2,140 square foot addition will result in the dwelling reaching an overall size of 5,102 square feet. A building of this size may not be consistent with the general scale of existing development within the vicinity."

In his letter dated February 1, 2006 Mr. Richardson, listed several Code sections that are related to the proposed development. Specifically he expresses concern over the size of the proposed structure stating, "This proposal is not compatible with nearby accessory structures..."

In his letter dated February 2, 2006, Mr. Meninick expressed the Cultural Resources Program of the Yakama Nation's main concern relates to cultural and archaeological resources that may be located in that area.

The issues raised in these letters will be addressed in the findings later in this decision.

Hearings Officer: This decision addresses the appeal by Mr. and Mrs. Wallis of the denial of their proposal by the Planning Director. Through their representatives, Dale Hult and Daniel Mikota, both of

All-County Surveyors & Planners, Inc. ("All-County"), the Appellants challenged the Director's decision on several grounds, as follows:

Appellants: "Don't agree with staff findings for reason 5 of denial. ... Staff failed to make correct findings of fact. See sect. 38.7035(A)(2); 38.7035(B)(1); 38.7035(B)(2); 38.7035(B)(3); 38.7035(B)(4); 38.7035(B)(6); 38.7035(C)(3)."

Hearings Officer: The Appellants' list of errors in the Director's decision states only two code sections that were the basis for the Director's denial. The Director found that the request did not comply with MCC 38.7035(A)(2) or MCC 38.7035(C)(3)(a), and that the Applicant had not provided evidence sufficient to demonstrate compliance with MCC 38.7035(B)(6). The Director found that the application either complied with the remainder of the listed code sections, or would comply if certain conditions of approval were imposed and satisfied. At the public hearing, the Appellants and their representatives explained that the time frame for appealing the Director's decision had been short, and rather than omit some necessary code section, they had couched statements in their Notice of Appeal to be as inclusive as possible. Additionally, they believe that the arguments they presented regarding visibility of the site are relevant to compliance with MCC 38.7035(A)(2) and MCC 38.7035(C)(3)(a). I do not understand the Appellants to challenge the Director's conclusions that their proposal either did or could satisfy MCC 38.7035(B)(1)-(B)(4). They also agree with the Director's conclusions of compliance with most of the provisions of MCC 38.7035(C)(3).

5. NATIONAL SCENIC AREA SITE REVIEW REQUIRED

5.1 Applicability

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

* * *

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

* * *

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

Staff: The proposed use is listed as a review use in the GGR-5 zoning district. Therefore, a National Scenic Area Site Review is required. Findings addressing consistency have been made for the applicable criteria, under MCC 38.7035 through 38.7090.

Hearings Officer: MCC 38.7020 makes approval of the Site Review request dependent upon compliance with the applicable criteria of MCC 38.7035 through 38.7090. MCC 38.7020 is mandatory; the Hearings Officer may not waive compliance with any of the applicable criteria named in that provision.

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

5.2.1. MCC 38.3025(A) The following uses may be allowed on lands designated GGR, pursuant to MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

- (1) One single-family dwelling per legally created parcel.**
 - (a) If the subject parcel is located adjacent to lands designated GGA or GGF, the use shall comply with the buffer requirements of MCC 38.0060; and**
 - (b) If the subject parcel is located is adjacent to lands designated GGF, the placement of a dwelling shall also comply with the fire protection standards of MCC 38.0085.**
- (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 subject property has an existing single family dwelling established with a building permit issued on March 19, 1987 (Exhibit 2.6). The proposal is for a 2,140 square foot attached garage addition to a single-family dwelling on a lot within the GGR-5 Zone District. The following sections of this decision include the findings for the NSA Site Review standards of MCC 38.7000 through 38.7085.

5.3 GGA Dimensional Requirements

5.3.1 MCC 38.3060(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Staff: The proposed location of the structure is about 165 feet from the front (east) property line, 134 feet from the north, side property line, more than 150 feet from the back (west) property line, and more than 130 feet from south, side property line (Exhibit 1.3). All required minimum yard requirements are met by the proposal. The narrative states and elevational drawings show that the height of the proposed addition will be 18.5 feet (Exhibits 1.2 and 1.5). The proposed buildings meet the maximum height requirements.

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

Staff: In an email dated January 23, 2006, Alison Winter, County Transportation Planning Specialist (Exhibit 2.5), stated that, "Transportation does not have any issues with the NSA Site Review for a 2,140 sf attached garage at 1025 NE 365th Avenue." The road classification of NE 365th is "Rural Local" with a minimum desired right-of-way width of 50 feet which is met by the current right-of-way. No increase in the yard requirement is needed. The standard is met.

5.4. Review and Conditional Use Applications

MCC 38.0045 (A) The following additional information shall be submitted for all review and conditional uses:

- (1) A list of Key Viewing Areas from which the proposed use would be visible.
- (2) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the reviewing agency to determine the location and extent of the proposed use and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail. If a parcel is very large, the map does not have to show the entire parcel. Rather, it may show only those portions of the parcel affected by the proposed use. The map shall include the following elements (listed in MCC 38.0045(A)(2)(a) through (o).

Staff: The information required that is applicable for the proposed use has been submitted.

6. NSA SITE REVIEW FOR SCENIC REVIEW CRITERIA FOR GMA

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

Staff: The subject property is in the General Management Area of the Columbia River Gorge National Scenic Area thus the GMA criteria are the applicable criteria.

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

Applicant: *No grading will be required outside of the proposed building's footprint. The finish floor grade will be consistent with that of the existing home. 2 to 3 feet of cut will be necessary for the north wall, but the slope will be retained at the natural height against the proposed garage's foundation.*

Staff: The proposed location requires a minor amount of grading to prepare the proposed building site only (Exhibit 2.3). The driveway to this area was developed when the dwelling built. This criterion is met.

Hearings Officer: The Appellants presented graphic evidence at the hearing that a foundation for a portion (less than half) of the proposed garage addition had been laid when the house was originally constructed. That foundation section remains on the property, but is a good deal smaller than the proposed addition.

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

Applicant: *The new building's roofline will be lower than the existing two story, 2,962 square foot home onsite. There are multiple other two story homes in the area of similar height, most of which are more visible than the subject site. Other existing buildings on the property are an out-building with 1,680 square ft. and a 860 square foot pool house. The applicant is requesting approval to construct a new 2,140 square foot single level garage. The height of the new garage is proposed at 18.5 feet. As listed on the attached sheets from Portland Maps, several of the properties in the area have similar developments. For example, 1010 NE 365th Ave. has a two*

story house of 3,495 square feet, an attached garage with 576 square feet and a farm building with 200 square feet. 1252 NE Evans Rd. has home of 2,268 square feet with an attached garage of 672 square feet. 36004-36006 E. Historic Columbia River Hwy. has a four segment, two story home with 3,794 square feet. See the mentioned attachments for further comparisons.

Staff: The area for the proposed attached garage is 2,140 square feet. The existing dwelling is 2,962 square feet with a 108 square foot covered deck for a total area of 3,070 square feet (Exhibit 2.1) . The addition of the attached garage will result in a total structure area of 5,210 square feet. The elevation drawings and narrative state that the proposed addition will be one story at 18.5 feet. The existing dwelling is two stories high.

The meaning of the term "generally consistent" must be deciphered. Following are definitions from Webster 's New Universal Unabridged Dictionary. The term "consistent" means "agreeing or accordant; compatible; not self-contradictory." Synonyms for the word are "congruous, consonant, harmonious and conformable." The term "generally" means "usually, commonly, ordinarily" and "without reference to or disregarding particular persons, things, situations, etc., that may be an exception." Clearly if the proposed dwelling is larger then the dwellings in the nearby area, then it would not be "generally consistent" with the nearby development.

The term "nearby" is not defined in the County Code. According to Webster's New Universal Unabridged Dictionary the definition of the word "nearby", is "close at hand; not far off; adjacent; neighboring." This definition makes its clear that this approval criterion requires the County to look at development that is close, in terms of distance, to the proposed development.

The purpose of this analysis is for structures to be generally consistent with the existing development pattern of the nearby area as a view standard. The standard is whether the proposed structure is consistent with the height and size of development that is nearby. Basically it is a comparison of types of similar buildings that are in the same view and with a similar perspective when viewing the landscape surrounding the subject property. When viewing a landscape, a structure which is larger will stand out and attention will be focused on it. The landscape in this area includes the Rural Residential Landscape Setting and the Village Landscape Setting of the Community of Corbett. Views of dwellings within these landscapes, properties within a quarter-mile distance will present a nearby or "close at hand" type of perspective view. At the existing development density in this area, at distances greater than a quarter-mile the perspective view would distort sizes of the structures, and would provide an overwhelming sample.

Staff has determined that the "existing nearby development" analysis area of properties within a quarter-mile of the subject property is sufficient for this property given the abundant number of dwellings within that area (Exhibit 2.4) and the definition of nearby. Staff has used the quarter-mile standard in other cases when it presented an abundant sample of the type of structure purposed. In addition, the quarter-mile standard has been adopted into the current County Code after this application was submitted under MCC 38.7035(A)(2). The quarter-mile area includes the nearby properties within the same GGR Zone District and Rural Residential Landscape designation as the subject property and the adjacent Rural Center (RC) Zone District and Village Landscape designation which abuts the subject property on the north and west.

The applicant submitted "existing nearby development" information for six dwellings in the quarter-mile area. These are as follows:

- 1010 NE 365th Ave, a two story dwelling with a finished basement and an attached garage at 4,071 square feet (2,661 sq. ft without the basement);

- 1252 NE Evans Rd., a single story dwelling with an attached garage at 2,940 sq. ft.;
- 1264 NE Evans Rd., a manufactured home 1,152 sq. ft.
- 36610 E Hist. Columbia River Highway, a two story dwelling with a covered deck and an attached garage at 4,160 sq. ft.;
- 35927 E. Hist. Columbia River Highway, a dwelling with a finished attic and attached garage at 2,060 sq. ft.;
- 36004 – 36006 two single family dwellings, a two story with enclosed porch at 1,993 sq. ft. and a single story dwelling at 514 square feet.

Given a proposed total structure area of 5,210 square feet the applicant has not provided in this list of “existing nearby development” information indicating the proposed structure is within a range of the sizes of the existing development.

Within the quarter-mile analysis area there are more than 70 properties with development located on them. Due to the large number of properties in the analysis area, staff has not examined the assessment records for each property within the area. However, to assist the applicant, staff examined the 2002 aerial photo for the analysis area in an attempt to locate additional large sized dwellings within that area which the applicant had not included in his list. Out of the 70 properties we only located two additional two properties that have dwellings larger than 2,000 square feet. These two are listed below using information from County Assessment records (Exhibit 2.7):

- 623 NE 365th Ave., a single family dwelling with a finished basement and attached garage at 2812 sq. ft. (1656 without the basement);
- 35943 E Hist. Columbia River Highway, a single family dwelling with an attached garage at 2622 sq. ft.;

After staff informed the applicant that it appeared that this criterion had not been met by the submitted materials, he submitted additional addresses and photographs of large dwellings in the greater Corbett area (Exhibit 1.8). Following is a list of the addition properties the applicant included. Staff added the distances from these dwellings to the subject property:

- 1408 NE Ogden Road, is about 2.9 miles from the subject property;
- 1334 NE Ogden is about 2.9 miles from the subject property;
- 820 NE Seidl Road is about 3.3 miles from the subject property;
- 30811 NE Hurt road is about 2.7 miles from the subject property;
- 31031 NE Lampert Road is about 2.6 miles from the subject property;
- 36375 NE Chamberlain Road is about 0.4 mile from the subject property;
- 30260 E Springhill Road is not located in the NSA and is about 2.9 miles from the subject property;
- SE Littlepage Road property the applicant did not provide as address and staff was unable to locate the property.

The additional dwelling addresses the applicant provided as examples for this finding are not “nearby development.” All but one of these additional dwellings that the applicant submitted in support of his case are nearly three miles or more from the proposed structure. These dwellings can not be used for this analysis because they are too far from the proposed development to be considered “nearby development.” If the dwelling at 36375 NE Chamberlain at about 0.4 miles from the subject property were included as “nearby,” this would not assist the applicant’s clause as its area is 3,748 square feet. The proposed dwelling at 5,210 square feet in area is 1,462 square feet larger than that dwelling.

The proposed dwelling with the addition would be 1,050 square feet larger than the next largest dwelling in the nearby area. Given a proposed total structure area of 5,210 square feet the applicant has not submitted information showing that the proposed dwelling is within the range of dwelling sizes for properties within the nearby area. The applicant has failed to demonstrate that the proposed structure is generally consistent with the size of existing nearby development, therefore this criterion is not met.

Hearings Officer: (1) Properties to be analyzed as “nearby development.” Multnomah County has adopted an interpretation of the “nearby development” standard that is consistent with the view of the staff of the Columbia River Gorge Commission: Nearby development means that within .25 miles of the subject property. Decision of the Hearings Officer in Multnomah County Case File T2-04-007, on the application of David and Becky Annus, November 8, 2004, at 14-21. This standard mandates the Director’s findings as to which properties may be considered pursuant to MCC 38.7035(A)(2). The adopted standard also requires rejection of the Appellants’ list of properties to be analyzed as “nearby development.”

(2) Regulation of large development under the “generally consistent” standard. Mr. Hult further argued on behalf of the Appellants, that the standard was meant to provide guidelines for future development in the Gorge NSA, rather than to prohibit development. He stated that the Director’s view of the requirements of MCC 38.7035(A)(2) would altogether prohibit any development that was larger than existing development. In the decision on T2-04-007, Annus, the Hearings Officer found that the likely interpretation of this standard requires that the analysis of nearby development include “the entire range [of sizes of nearby development,] and require that the development not fall below or above the range.” T2-04-007 at 21-22

This interpretation would actually be the prohibition that Mr. Hult asserts is not correct in view of the general scheme of the NSA Management Plan requirements set forth at MCC Chapter 38. I agree that, given the imprecise requirement that height and size be “generally consistent” with nearby development, the provision is probably not intended to altogether rule out any larger development than that found within one-quarter mile of the subject property.

That is not the situation presented by this appeal, however. The Director’s analysis makes clear that the requested addition to the existing house would create structure that is much larger than the next largest development in the area would be. The requested addition alone would fall within the range of sizes of nearby development; the garage alone would be larger than some nearby dwellings. The size of the development on the subject property after the addition is built would be more than 20% larger than the next largest dwelling. The requested size would therefore not be generally consistent with that of existing development, as required by MCC 38.7035(A)(2).

(3) Consistency of the denial with the county’s decisions on other nearby properties. Ms. Wallis testified that development of another home in the area had been approved, when the result was a home larger than 4,000 square feet, much larger than the Wallis home and other nearby dwellings existing at that time. She questioned how the Director’s denial of her request could be valid, given the recent approval of this other structure.

Ms. Wallis is understandably upset that she does not have the benefit of the same decision that her neighbor might have had. No evidence has been presented to this record, however, to document exactly when the other house was built, the precise standards that governed it, the nature of supporting evidence in the record (for example, the study areas with one-quarter mile radii, centered on the subject properties, would not be equivalent for any two existing properties), or the

reasoning behind the county's interpretation at the time. Ms. Wallis did estimate that the other property had been developed four or five years ago.

County Planner Chuck Beasley noted that the other property had probably received its permit approval years before Multnomah County adopted the interpretation of MCC 38.7035(A)(2) that is set forth in the Annus decision, T2-04-007. The county has determined that its code should be read in a manner consistent with the reading of the Columbia River Gorge Commission, whose management plan is the basis for the provisions in MCC Chapter 38.

The county is not required to repeat past interpretations of its code when it has decided that another interpretation is supported by greater authority, and is therefore correct. Ms. Wallis raises the point that she does not believe that she and her neighbor were treated equally, a concern for which the Hearings Officer has great sympathy. In the best of all worlds, absolute equal treatment would be possible. If one can assume that the county renders decisions in both cases that it believes to implement the correct interpretation of its code at the time of each decision, both neighbors will have been treated equally under the law. One cannot assume that the "correct" view of a legal standard will be unchanging over all time.

(4) MCC 38.7035(A)(2) as a viewing standard only. Mr. Hult argued that this ordinance should be construed as a viewing standard only. He and Mr. Mikota presented evidence that the view of the structure would be so minimal that it would meet the requirement of general consistency, notwithstanding its larger size.

That view of this ordinance is not supported by its own terms, or by the regulatory scheme of MCC 38.7035 as a whole. Subsection A of this section does not set forth standards that apply to views of proposed development only. MCC 38.7035(A)(2) requires that "[n]ew buildings shall be generally consistent with the height and size of existing nearby development." Subsection B of the ordinance regulates views from Key Viewing Areas. Mr. Hult's argument is mistaken.

(5) Conclusion. The appellants have not demonstrated that their request for a garage addition larger than 2,000 square feet would result in a development whose size is generally consistent with existing nearby development. The Director's decision that this criterion was not satisfied is correct.

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

Applicant: *No new access is proposed.*

Staff: The site is accessed by a driveway off of 365th Ave., which is not listed as a Scenic Travel Corridor. The criterion has been met.

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

Applicant: *The home owners will comply with this code section..*

Staff: This criterion can be met through a condition that requires proper maintenance and survival of required vegetation.

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

Applicant: *A site plan has been provided with this submittal.*

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

6.2 All GMA Review Uses visible from Key Viewing Areas:

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

Applicant: *Elevation Drawings, a Site plan and a Line of Sight Profile have been provided for review. The building site is nearly 400 feet from the Historic Columbia River Highway at the nearest point. The materials being used for the construction of the proposed garage's exterior are consistent with that of the existing home. The siding will be vinyl siding of a light blue color and the roof will consist of dark grey asphalt shingles. The vinyl does not produce a reflection due to its matte finish. No windows are proposed on the garage. There is existing vegetation consisting of underbrush and adult trees on the property that all but eliminate visibility of the structures from the highway. To insure visual subordination, the applicant will plant a row of 5 gal Rhododendron bushes along the northwest and northeast sides of the proposed garage 30' from its walls. The proposed bushes will be spaced 10' from base to base. The row will include 8 bushes in a V pattern parallel to the walls of the proposed garages. See the attached maps for visual explanation of planting location.*

Staff: After reviewing the submitted materials, maps and topography we have determined that the proposed development, an attached garage addition, is in a visible location as viewed from the Historic Columbia River Highway Key Viewing Area to the north and northwest. A site visit by staff on December 9, 2005 confirmed that the development site is visible from the Historic Columbia River Highway. The topography, vegetation, and distance screen the proposed attached garage from all other KVAs.

The proposed addition is a single story, 18 foot high garage. The applicant has provided a site map showing the locations and species of trees on the property which provide partial screening for the proposed development site (Exhibit 1.3). The applicant has also provided an additional map that shows the topography between the proposed development site and the Historic Columbia River Highway. This map also shows the locations and species of trees on the adjacent property to the north, however these trees can not be considered as providing screening because the subject property owner does not have the authority to maintain these trees.

The applicant has submitted a sample of the proposed siding, Alcoa, Liberty double 5" Dutch Lap Everest (Exhibit 1.13). The applicant also submitted an asphalt sample describing the roofing material as, "dark grey asphalt shingles." The submitted shingle sample has a black base with light greenish-gray speckles (Exhibit 1.13). The applicant states that the, "...siding will be vinyl siding of a light blue color ..." The applicant also states that, "The vinyl does not produce a reflection due to its matte finish." The sample submitted is a light gray color with a textured finish which we believe meets acceptable reflectivity as described in the *Building in the Scenic Area*

handbook published by the Columbia River Gorge Commission (Exhibit 1.13). While the color of the submitted siding is gray, a condition can require that the siding color match the color of the existing dwelling as allowed under MCC 38.7035(B)(13). A condition can also require that the roofing color match the existing. The applicant has proposed planting a V-shaped row of eight, 5 gallon rhododendron bushes 30 feet north of the proposed building. This criterion can be met through conditions that require the same colors for siding and roofing as the existing dwelling.

Hearings Officer: The Appellants cited the Director's findings on MCC 38.7035 (B)(1) as one of the errors in the Director's decision. At the public hearing, Appellants' representatives and county staff disputed at some length whether the location of the proposed garage would actually be visible from the Historic Columbia River Highway, a Key Viewing Area (KVA) in the NSA. Mr. Hult and Mr. Mikota showed slides that they argued demonstrated the relative invisibility of the site from the Historic Columbia River Highway. Indeed, the existing structures on the property were barely discernable in those photographs. Mr. Hult argued that the Appellants' house is almost entirely hidden from the highway because it is set back from the road, and is obscured by trees and other vegetation. Mr. Plummer of the county staff asserted that on his visit to the site, however, the house was quite visible from the highway KVA.

The extent to which the Appellants argued against Mr. Plummer's perceptions on this matter was somewhat mystifying, because the Appellants and the Director's did not differ about the overall Director's conclusion: that the satisfaction of conditions of approval would render the development visually subordinate to its setting. The Appellants showed color pictures of their house, and provided color samples of the garage siding, which would match the color of the existing house. They testified about the plantings that they had done and could do to more thoroughly screen the garage in the future than it is with existing vegetation.

As a result, conditions of approval could require the plantings that the Appellants proposed, and could also require that the garage roof and siding be of the proposed materials. These conditions would ensure visual subordination and compliance with the ordinance. Without having to resolve the insinuations by the Appellants and by Staff that the other party lacked credibility, I could conclude that, as conditioned, the criterion would be satisfied. This is the same conclusion reached by the Director.

The Appellants' insistence that the house and garage would not be visible from the highway KVA must account for their stated differences with the Director regarding MCC 38.7035(B)(1)-(B)(4). I agree with the Director that the application must be denied for failure to comply with MCC 38.7035(A)(2). I also agree with the Director that the Appellants' proposals on siding and roofing would be appropriate and effective conditions to ensure visual subordination. The Appellants' challenge to the Director's decision regarding MCC 38.7035(B)(1)-(B)(4) need not be addressed further.

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

subordination and final conditions of approval shall include findings addressing each of these factors.

Applicant: *Vegetation on and around this property as well as existing structures on surrounding properties limit the visibility of the proposed garage site. The only visibility of the project might be found through narrow windows between limbs, leaves, fir bows and underbrush. The building site is nearly 400 'feet from the Historic Columbia River Highway at the nearest point. The materials being used for the construction of the proposed garage's exterior are consistent with that of the existing home. The siding will be vinyl siding of a light blue color and the roof will consist of dark grey asphalt shingles. The vinyl does not produce a reflection due to its matte finish. No windows are proposed on the garage. There is existing vegetation consisting of underbrush, young Douglas Fir trees and adult trees on the property that dampen the visibility of the structures from the highway. To insure visual subordination, the applicant will plant a row of 5 gal Rhododendron bushes along the northwest and northeast sides of the proposed garage 30' from its walls. The proposed bushes will be spaced 10 'from base to base. The row will include 8 bushes. See the attached maps for visual explanation of planting location.*

Staff: There are no conditions because the proposal is denied.

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

Applicant: *The proposed garage construction poses no significant visual effects in relation to the Historic Highway's scenery. This development will be further screened from the high way with the addition of multiple, large rhododendron plants and possibly a row of Arborvitae along the north property line. See the previous response.*

Staff: Given the size and bulk of the proposed structure in combination with the existing dwelling as well as the other existing outbuilding at 1,680 square feet in area, the proposed development would contribute significant cumulative effects of development in the area. If approved the structure would add 2,140 square feet to the 3,070 square foot existing dwelling for a total area of 5,210. Added all the development on the property that would result is 6,890 square feet of development on the property. Given the amount of existing and proposed development on this property the size and bulk of the development would lead to cumulative effects for the area.

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

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

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

Applicant: *Elevation Drawings and Architectural Plans will be submitted to demonstrate the*

above requirements. The applicant is requesting approval to construct a new 2,140 square foot single level garage. The height of the new garage is proposed at 18 %feet. The materials being used for the construction of the proposed garage's exterior are consistent with that of the existing home. The siding will be vinyl siding of a light blue color and the roof will consist of dark grey asphalt shingles. The vinyl does not produce a reflection due to its matte finish. No windows are proposed on the garage. There is existing vegetation consisting of underbrush and adult trees on the property that dampen the visibility of structures from the highway. To insure visual subordination, the applicant will plant a row of 5 gal Rhododendron bushes along the northwest and northeast sides of the proposed garage from 30' its walls. The proposed bushes will be spaced 10' from base to base. The row will include 8 bushes. The bushes will be maintained by the owner to assure survival. See the attached maps for visual explanation of planting location.

Staff: In Section 6.2.1. of this decision addressing MCC 38.7035(B)(1) we found that the property is visible from the Historic Columbia River Highway KVA (Exhibit 1.4). The finding in Section 6.2.1. of this decision addressing MCC 38.7035 (B)(1) outlines the building materials and colors proposed for the dwelling. The applicant has submitted the required information regarding building materials, colors, building descriptions, height and elevation plans, lights, and shape for the proposed dwelling and accessory structure.

* * *

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

Applicant: *The proposed garage will be located on the North wall of the existing home which was designed for such a connection. This location is at the toe of the slope between the Highway and this property. No wetlands, sensitive plans, cultural resources, riparian corridors wildlife or areas exist on the subject property.*

Staff: It appears that the entire property is visible from the Historic Highway other than the areas blocked by the existing development. If structure were placed south of the existing development the existing buildings would minimize the visibility of the proposed building. However the design of the dwelling may not allow an addition on the south side of the structure. The applicant has not provided enough information to demonstrate that this criterion is met.

Hearings Officer: If it were possible to approve this development proposal, development would be conditioned upon plantings that would visually screen the garage from the highway KVA. This criterion would be met, even with the garage located on the North side of the house. Because the appeal is denied, it is not necessary to review compliance with this provision further.

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

Applicant: *Trees on the subject between the proposed garage and the property line will be maintained. To insure visual subordination, the applicant will plant a row of 5 gal Rhododendron bushes along the northwest and northeast sides of the proposed garage 30' from its walls. The proposed bushes will be spaced 10' from base to base. The row will include 8 bushes parallel to the proposed building's walls. The bushes will be maintained by the homeowner to assure survival. Keeping with the landscape of the applicant's property, a row of Arborvitae are likely to be planted as well along the north property line.*

Staff: The proposal includes protecting and maintaining existing trees outside the footprint of the proposed building. These trees will provide significant screening. This criterion is met.

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

Applicant: *No cut is proposed outside of the building footprint. The finish Floor grade will be consistent with that of the existing home. No grading will be visible from public right-of-ways.*

Staff: The cut to site the garage will be about 2.5 feet maximum in depth over a third of the garage's length (Exhibit 1.4). The building location will require minimal grading for site the development. This criterion is met.

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

Applicant: *The materials being used for the construction of the proposed garage's exterior are consistent with that of the existing home. The siding will be vinyl siding of a light blue color and the roof will consist of dark grey asphalt shingles. The vinyl does not produce a reflection due to its matte finish. No windows are proposed on the garage.*

Staff: The applicant has submitted an asphalt roofing and a sample of the proposed siding, Alcoa, Liberty double 5" Dutch Lap Everest (Exhibit 1.13). Composition roofing qualifies as low reflective materials. The applicant also states that, "*The vinyl does not produce a reflection due to its matte finish.*" However, the sample submitted has textured finish which we believe meets acceptable reflectivity as described in the *Building in the Scenic Area* handbook published by the Columbia River Gorge Commission (Exhibit 1.13). No windows that face the KVA are proposed for the addition. This criterion has been met.

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

Applicant: *No lights are proposed on walls visible from the highway.*

Staff: A condition can require any exterior lighting meet this criterion.

6.2.10. MCC 38.7035 (B)(11) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of colors specified in the landscape setting for the subject property.

Applicant: *The proposed garage will be the same color as the existing house.*

Staff: The applicant states that the proposed garage will be the same color as the existing house. The applicant submitted a grayish-green and black asphalt roofing sample. For a previous criterion the applicant has stated that color to be "light-blue." However, the sample submitted is a light gray color. We are unsure whether the sample color matches the color of the existing dwelling. A condition could require the color for the siding and roofing to match the color of the existing dwelling. The criterion could be met through a condition.

* * *

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

Applicant: *The silhouette, if ever visible from the highway, will not protrude above the skyline or surrounding tree-line in the view from the highway.*

Staff: We concur with the applicant that the proposed structure will not protrude above the skyline. This criterion is met.

* * *

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

Applicant: *No slopes on this site are equal or greater than 30%.*

Staff: Staff concurs with the applicant. No slopes on the property are in excess of 30 percent (Exhibit 1.4). The criterion is met.

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

(a) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail, with contour intervals of at least 5 feet, including:

1. Existing and proposed final grades;
2. Location of all areas to be graded, with cut banks and fill slopes delineated; and
3. Estimated dimensions of graded areas.

(b) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

1. Its purpose;

2. An estimate of the total volume of material to be moved;
3. The height of all cut banks and fill slopes;
4. Provisions to be used for compaction, drainage, and stabilization of graded areas (preparation of this information by a licensed engineer or engineering geologist is recommended);
5. A description of all plant materials used to revegetate exposed slopes and banks, including type of species, number of plants, size and location, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings; and
6. A description of any other interim or permanent erosion control measures to be utilized.

Applicant: *No slopes on this site meet or exceed 10%.*

Staff: Staff concurs with the applicant. Slopes on the property are less than 10 percent (Exhibit 1.4). The criterion is met.

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

Applicant: *The home owners will comply with this code section.*

Staff: This criterion can be met through a condition.

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

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

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

Applicant: *The proposed garage at 18' feet tall, will not exceed the height of the house to which it will be attached. The existing two story home onsite is 2,962 square foot. There are multiple other two story homes in the area of similar height. Other existing buildings on the property are a farm building with 1,680 square ft. and a 860 square foot pool house. The applicant is requesting approval to construct a new 2,140 square foot single level garage. The height of the new garage is proposed at 18 1/2 feet. As listed on the attached sheets from Portland Maps, several of the properties in the area have similar developments. For example; 1010 NE 365th Ave. has a two story house of 3,495 square feet, an attached garage with 576 square feet and a farm building with 200 square feet. 1252 NE Evans Rd. has home of 2,268 square feet with an attached garage of 672 square feet. 36004-36006 E. Historic Columbia River Hwy. has a four segment, two story home with 3,794 square feet. See the mentioned attachments for further comparisons.*

Staff: Findings under Section 6.1.2: (MCC 38.7035(A)(2)) in this decision [conclude] that the proposed development is not generally consistent the development in the nearby area.

We used an area within a quarter-mile to compare development in the vicinity (Exhibit 2.4). This criterion focuses on the “vicinity.” Webster's New Universal Unabridged Dictionary defines this term as “the area or region near or about a place; surrounding district; neighborhood.” We believe that the term “vicinity” is synonymous with the term “nearby” as used in MCC 38.7035(A)(2).

The significant differences between this code requirement and MCC 38.7035(A)(2) are two-fold: (1) this section specifically requires the applicant to address the mass of development in the vicinity; and (2) the section requires that the scale be compatible with existing development. The latter requirement does not require that the scale be the same. It allows development to be larger provided it is not so large as to be out of harmony with other development. Otherwise, the finding prepared for MCC 38.7035(A)(2) also serve to address the requirements of this code section.

The area for the proposed attached garage is 2,140 square feet. The existing dwelling is 2,962 square feet with a 108 square foot covered deck for a total area of 3,070 square feet (Exhibit 2.1). The addition of the attached garage will result in a total structure area of 5,210 square feet. The elevation drawings and narrative state that the proposed addition will be one story at 18.5 feet. The existing dwelling is two stories high. The proposed dwelling with the addition would be 1,050 square feet larger than the next largest dwelling in the nearby area. Given that the proposed dwelling with the addition will be more than a thousand square feet larger than the next largest dwelling, the proposed structure is not compatible with the general scale of the development in the vicinity. The applicant hasn't carried the burden as to why the proposal would meet maximum extent practicable. This criterion has not been met.

Hearings Officer: I concur with the Director's analysis and conclusion that this criterion has not been satisfied. Although the term “in the vicinity” in MCC 38.7035(C)(3)(a) is not strictly the same as “nearby” in MCC 38.7035(A)(2), the Director has persuasively justified the interpretation of “in the vicinity” to be synonymous with “nearby” for purposes of these ordinances. The further reasoning supporting this conclusion is essentially the same as that supporting denial for noncompliance with MCC 38.7035(A)(2), and the evidence and findings supporting that conclusion are hereby adopted and incorporated as findings regarding MCC 38.7035(C)(3)(a).

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

Applicant: *Only the trees in the footprint of the proposed garage will be removed.*

Staff: The applicant will remove only those trees in the footprint of the proposed structure. This criterion is met.

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

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

Applicant: *Only the trees in the footprint of the proposed garage will be removed. To insure visual subordination, the applicant will plant a row of ten 5gal Rhododendron bushes along the northwest and northeast sides of the proposed garage 30' from its walls. The proposed bushes will be spaced 10' from base to base. New vegetation will be maintained by the homeowner to assure survival. Rhododendrons are evergreen bushes which provide yearlong cover. The proposed garage will be painted light blue to match the existing house.*

Staff: The applicant proposes planting rhododendron bushes. No additional trees are proposed. The applicant states that the proposed garage will be the same color as the existing house which is allowed under MCC 38.7035(B)(11).

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

7.1 MCC 38.7045 (A) Cultural Resource Reconnaissance Surveys

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

* * *

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

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

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

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

Staff: Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service submitted a cultural resources report on September 27, 2005 (Exhibit 3.1).

In her email Ms. Dryden, USFS, stated, "A cultural resources reconnaissance survey is: Not Required" and "A Historic Survey is: Not Required."

These criteria are met.

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

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

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

(2) Notification – The project applicant shall notify the Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

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

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

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

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

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

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

Staff: In a letter dated February 2, 2006, Johnson Meninick, Manager Cultural Resources Program, Confederated Tribes and Bands of the Yakima Nation (Exhibit: 3.6) stated concerns related to cultural and archaeological resources that may be located in that area. However Ms. Dryden, USFS, stated, “A cultural resources reconnaissance survey is: Not Required” Mr. Meninick’s concerns can be addressed through conditions that would include the language in this criterion.

7.3 MCC 38.7045 (M) Discovery of Human Remains

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

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

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

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

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

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

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

(b) The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the standards of MCC 38.7045 (J) are met and the mitigation plan is executed.

Staff: In a letter dated February 2, 2006, Johnson Meninick, Manager Cultural Resources Program, Confederated Tribes and Bands of the Yakima Nation (Exhibit: 3.6) stated concerns related to cultural and archaeological resources that may be located in that area. However Ms. Dryden, USFS, stated, "A cultural resources reconnaissance survey is: Not Required" Mr. Meninick's concerns can be addressed through conditions that would include the language in this criterion.

8. THE SITE DOES NOT CONTAIN GMA WETLANDS

MCC 38.7055 GMA Wetland Review Criteria

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

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

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

9. THE SUBJECT SITE DOES NOT CONTAIN GMA STREAMS, LAKES OR RIPARIAN AREAS

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

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

MCC 38.7065 GMA Wildlife Review Criteria

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

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

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

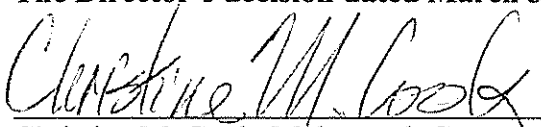
MCC 38.7070 GMA Rare Plant Review Criteria

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

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

12 CONCLUSION

Based on the findings, narrative, and other information provided herein, this application has not satisfied the applicable approval criteria as required for Site Review in the National Scenic Area. The Director's decision dated March 3, 2006 is affirmed, and the appeal is denied.


Christine M. Cook, Multnomah County
Land Use Hearings Officer

Dated 5/24/2006

13 EXHIBITS

13.1 Exhibits submitted by the Applicant:

- Exhibit 1.1: NSA application form submitted 9/12/05 (1 page);
- Exhibit 1.2: Revised narrative submitted 12/13/05 (17 pages);
- Exhibit 1.3: Revised site plan submitted 12/13/05 (1 page);
- Exhibit 1.4: Revised topographic map and profile submitted 12/13/05 (1page);
- Exhibit 1.5: Elevation drawings and floor plan submitted 11/8/05 (2 pages);
- Exhibit 1.6: Aerial photo of property submitted 12/13/05 (1 page);
- Exhibit 1.7: Portland Maps property datasheets submitted 12/13/05 (12 pages);
- Exhibit 1.8: Photographs of dwellings with addresses submitted 1/24/06 (8 pages);
- Exhibit 1.9: Fire District Review Fire Flow Requirements signed by Thomas Layton Fire Chief, District #14 submitted 9/12/05 (6 pages);
- Exhibit 1.10: Fire District Access Review signed by Thomas Layton Fire Chief, District #14 submitted 9/12/05(3 pages);
- Exhibit 1.11: Site Evaluation Report dated March 29, 1991 signed by Phillip Crawford, Environmental Soils Specialist, City of Portland Bureau of Building submitted 9/16/05 (1 page);
- Exhibit 1.12: Storm Water Certificate signed by Ray L. Moore with swale design submitted 9/12/05 (3 pages);
- Exhibit 1.13: Samples of the proposed siding and roofing materials and colors (1 page);

13.2 Exhibits included by County:

- Exhibit 2.1: County Assessment Record for the subject property (1 page);
- Exhibit 2.2: County Zoning Map with subject property labeled (1 page);
- Exhibit 2.3: 2002 Aerial Photo showing subject property;
- Exhibit 2.4: 2002 Aerial Photos showing subject property with ¼ mile nearby vicinity analysis boundary added (1 page);

- Exhibit 2.5: Email dated January 23, 2006 from Alison Winter, County Transportation Specialist (1 pages);
- Exhibit 2.6: Building Permit card record for the dwelling on the subject property (1 page)
- Exhibit 2.7: Addition nearby properties' County Assessment Records (4 pages).

13.3 Exhibits submitted by other parties:

- Exhibit 3.1: Email dated September 27, 2005 with attachment from Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service Heritage Resource Inventory Report (3 pages);
- Exhibit 3.2: Letter dated October 11, 2005 from Dennis Griffin, Ph.D., RPA, State Historic Preservation Office, Oregon Department of Parks and Recreation (1 page);
- Exhibit 3.3: Letter dated October 10, 2005 from Angie Kenney, Planner, Columbia River Gorge Commission (2 apges);
- Exhibit 3.4: Email dated February 1, 2006 with letter attached from David Richardson, Land Use Law Clerk, Friends of the Columbia Gorge (6 pages); and
- Exhibit 3.5: A letter dated February 2, 2006 from Angie Kenney, Planner, Columbia River Gorge Commission (2 pages);
- Exhibit 3.6 Faxed letter dated February 2, 2006 from Johnson Meninick, Manager Cultural Resources Program, Confederated Tribes and Bands of the Yakima Nation (1 page).

Exhibits Submitted at Opening of Public Hearing on April 14, 2006.

H.1. Sign in Sheet.

"Ha" Documents Submitted at Public Hearing on May 12, 2006

- H.1a. Notice of Public Hearing Mailed 4/4/2006. 5 pages
- H.2a. Oregonian Notice Affidavit, dated 4/24/2006
- H.3a. Notice of Appeal received 3/8/2006. 2 pages
- H.4a. Letters in support of Decision from Friends of the Gorge, dated 4/7/2006. 4 pages
- H.5a. Letter from Columbia River Gorge Commission, dated 4/13/2006
- H.6a. Comment from Frieda O'Neil, received 5/9/2006. 1 page
- H.7a. 1/4/ mile Vicinity color aerial map.
- H.8a. Color aerial map showing proposed building location.
- H. 9a Letter of Incompleteness sent from George Plummer to Boyd Svaren, dated 10/11/2005. 4 pages
- H.10a Letter of Incompleteness from George Plummer sent to Boyd Svaren, dated 11/30/2005. 5 pages
- H.11a Letter of Completeness sent to Boyd Svaren, dated 1/11/2006. 3 pages
- H.12a Notice of Appeal for Case File T2-04-007. 5 pages
- H.13a Hearing Officer Decision for Case T2-04-007. 45 pages
- H.14a Notice of Appeal for Case File T2-04-051. 5 pages
- H.15a Hearing Officer Decision for Case File T2-04-051. 29 pages
- H.16a Appellants digital slide show.
- H.17a Appellants scale model of the parcels house. Blue with gray roof.
- H.18a Scale model of proposed garage which is blue with gray roof.
- H.19a Sign In Sheet.