

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

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<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

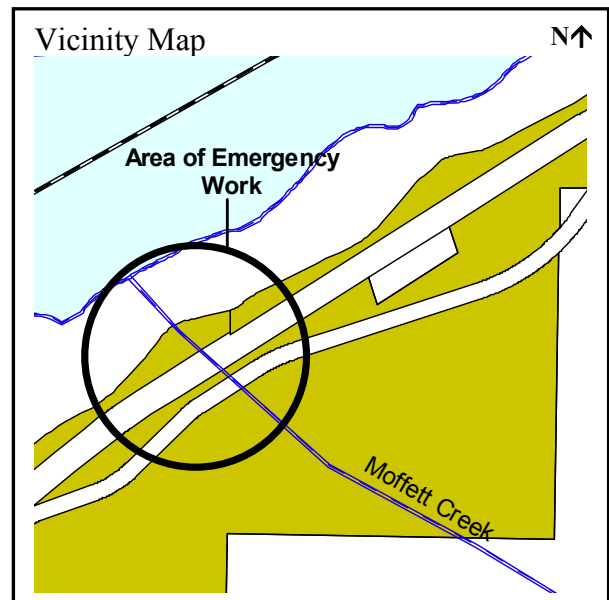
Case File: T2-06-028

Permit: NSA Post Emergency Disaster Response
Site Review

Location: UPRR at Mofett Creek
TL 200 & 300, Sec 29 & 30,
T 2N, R 7E, W.M.
Tax Account #R95729-0030 & R957300-
0100

Applicant: Jay Lorenz
CH2M Hill

Owner: Union Pacific Railroad and US Forest
Service



Summary: Applicant is applying for a Post-Emergency/Disaster Response Site Review for Slide Stabilization to Save Union Pacific Railroad track.

Decision: Approved with conditions.

Unless appealed, this decision is effective Wednesday, May 10, 2006, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, April 26, 2006

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-3043 x22597.

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

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, May 10, 2006 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 38.0510 through MCC38.0850 Administration and Procedures, MCC 38.7090 Responses to an Emergency/Disaster Event

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/landuse>.

Scope of Approval

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

Conditions of Approval

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

1. Within 30 days of this decision becoming final and prior to building permit sign-off, the applicant shall record the Notice of Decision (pages 1-3 of this decision and the Air Photo specifying slide location [Exhibit A.3] with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and filed with the Land Use Planning Division, and a copy of the recorded document shall be submitted to the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 38.0670]

2. By April 1, 2007, the western slide repair area shall be replanted with the specified vegetation as described in section 3.03 below.

Note: The Planning Director's policy is for the case planner to provide zoning approval of the final Plan on an appointment basis. Please contact Lisa Estrin at 503-988-3043 x22597 to set a time for zoning approval.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold font**. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

Project Description:

Applicant: The emergency event consisted of two narrow land slide areas. One slide area is located on either side of Moffett Creek. The slides will be referred to in this description and narrative as the east slide (event and response approximately 250 feet east of Moffett Creek) and the west slide (event and response approximately 50 feet west of Moffett Creek). The time frame for both events was the same. Both slides came to within 10 feet of the Union Pacific Rail Road Tracks. Each slide occupies an average width varying between 25 and 30 feet and extends from the edge of the tracks down to the Columbia River.

Response to the east slide includes construction of a rock base above the Ordinary High Water (OHW) elevation of the Columbia River (29.2 feet NGVD between river miles 143 and 144). The rock base was built with a barge and excavator accessing the toe of the slope from the Columbia River. Rock to stabilize the lower reach of the slide was barged in while rock to stabilize the upper area was placed from rail car to fill the upper scar area and prevent further surface erosion and sliding. Estimated quantity of fill at the east slide is 1,900 cubic yards including 1,800 cubic yards of 3 in. - 2 ft. material and 100 cubic yards of 1 - 4 ft. rock. The rebuilt rock slope was designed to be well-drained open graded fill with little or no organic material to trap or hold water. Water needs to pass freely through and off the rock fill. Rock fill was deposited to rebuild the slope at a gentler more stable angle. Cross section labeled Figure 1 shows the fill profile to a maximum depth of approximately 20 feet above the remnant slope following the slide.

Resource agencies were consulted prior to initiating the response. ODFW and Army Corps of Engineers both concurred that response work must be limited to actions above ordinary high water if at all possible. Avoidance of impacts below OHW is required, where possible, for 404 permits and Joint Removal Fill permits. For this reason the response approach was redesigned to use large rock to form a base with a lower anchoring slope that is nearly vertical. This action precludes planting the base but also limits response area to land above OHW as required by natural resource permitting agencies. The slide also deposited a layer of rock into the Columbia River. Debris deposited below OHW cannot be removed, nor can fill be placed over the rock debris below OHW. Photo 011 shows the rock slope necessary to complete stabilization of the rockery above OHW. The rock slope has been constructed out of basalt rock common to the National Scenic Area. This photo also shows other rock slopes at the rivers edge, presumably adjacent remnant slide slopes.

Response to the west slide includes extension of an existing retaining wall across the remaining span of slide area. Back fill was placed following installation of the retaining wall. All fill is near the top of the bank and well above OHW. The retaining wall extension is constructed of the same or visually similar material to the existing segment to avoid unnecessary visual contrast between the existing wall and the extension. Figure 3 Cross section shows the post slide profile relative to the extended retaining wall at the west slide response area. Figure 2 shows an elevation of the wall construction and how the current wall will be extended in the same materials and pattern as the existing wall. Photo 017 shows the wall and Photo 003 shows the toe of the post event slope and deposits at the base of the hill.

1.00 ***Administration and Procedures***

1.01 **Type II Case Procedures**

MCC 38.0530(B): ...Upon receipt of a complete application, notice of application and an invitation to comment are 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 and renders a decision...

Staff: The application was submitted March 10, 2006 and was an “Opportunity to Comment” notice was mailed on April 11, 2006 to all properties within 750 feet of the subject property and to various Gorge Agencies and Indian Tribes in compliance with MCC 38.0530. Comments were received from the Confederate Tribes and Bands, US Forest Service, the Friends of the Columbia Gorge and SHPO (Exhibit D.1, D.2, D.3 & D.4). The Friend’s comments are related to the approval criteria they believe apply. The US Forest Service, SHPO and the Confederate Tribes comments were directed towards the Cultural Resource Review criteria listed under MCC 38.7090(E)(2).

1.02 Proof of Ownership

MCC 38.0550 Initiation of Action

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

Staff: The proposed project is located on Tax Lot 200 & 300, Sec 29 & 30, Township: 2 North, Range: 7 East. Assessment & Taxation records show that Tax Lot 300 is owned by US Forest Service. Tax Lot 200 is owned by State of Oregon with an easement over a portion of it for Union Pacific Railroad (UPRR). Both, Union Pacific and the US Forest Service have authorized CH2M Hill to apply for the emergency permit. *This criterion has been met.*

1.03 MCC 38.0560 Code Compliance And Applications.

Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or in-install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power;

and actions necessary to stop earth slope failures.

Staff: There are no known violations.

2.00 ***NSA Post-Emergency/Disaster Response Site Review Criteria***

2.01 **MCC 38.7090 RESPONSES TO AN EMERGENCY/DISASTER EVENT**

Responses to an emergency/disaster event are allowed in all zoning districts within the Columbia River Gorge National Scenic Area when in compliance with the following standards:

(B) Notification Requirements

(1) Actions taken in response to an emergency/disaster event, as defined in MCC 38.0015, are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

(a) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.

Staff: The slides occurred at the end of January 2006. Repair of the slides commenced in the week of February 6th. On or around February 10, 2006 the UPRR through their consultant informed the Land Use Planning section that an emergency response was occurring to stabilize the Union Pacific track on the south side of the Columbia River in two spots near Moffett Creek due to slope failure. *This criterion has been met.*

2.02 **(C) Post-Emergency/Disaster Response Site Review Application Requirements**

(1) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Planning Director, or U.S. Forest Service for federal agency actions. In the case of an event with multiple responding parties, the agency providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and no more than two (2) extensions shall be granted.

Staff: The subject application was submitted on March 10, 2006 (Exhibit A.1). *This criterion has been met.*

2.03 **(2) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. The terms “development activities” and “development” include the disposal of any soil materials associated with an emergency/disaster response action. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an**

application for those actions.

Staff: The application addresses only the work done to stabilize the track. No additional work is proposed (Exhibit A.1 – A.7). *This criterion has been met.*

2.04 **(4) Applications shall include the following information:**

(a) Applicant's name and address.

(b) Location of emergency/disaster response.

(c) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.

Staff: The above information has been supplied by the applicant on the NSA Application Form (Exhibit A.1), an air photo with the location of the two slides indicated (Exhibit A.3) and narrative statements addressing the applicable criteria and describing the work completed (Exhibit A.2). *This criterion has been met.*

2.05 **(d) A map of the project area drawn to scale, at a scale of 1"=200' or a scale providing greater detail. The map shall include:**

1. North arrow and scale.

2. Boundaries, dimensions and size of subject parcel(s).

3. Topography at a contour interval sufficient to describe the terrain of the project site.

4. Bodies of water, watercourses, and significant landforms.

5. Existing roads and structures.

6. New structures placed and any vegetation removal, excavation or grading resulting from the response actions.

Staff: This information has been included on the air photo (Exhibit A.3) and work cross-sections (Exhibit A.4 – A.6) submitted for the two slide repairs. *This criterion has been met.*

3.00 **(D) Post-Emergency/Disaster Response Site Review**

All applications for post-emergency/disaster response Site Review shall be processed pursuant to the procedural provisions of MCC 38.0530 (B) and evaluated for compliance with the standards of MCC 38.7090 (E).

Staff: The subject application has been processed in accordance with the procedural provisions listed under MCC 38.0530(B). See additional findings under section 1.01 above. The application has been evaluated and has found to be in compliance with the Site Review criteria listed under MCC 38.7090(E)(1) through (4). *This criterion has been met.*

3.01 **(E) Post-Emergency/Disaster Response Site Review Approval Criteria**

Actions taken in all land use designations that are in response to an emergency/disaster event shall be reviewed for compliance with the following standards:

(1) Scenic Resources

(a) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. Such actions shall be rendered visually subordinate in their landscape setting as seen from key

viewing areas to the greatest extent practicable, except for actions located in the Corbett Rural Center zoning district.

Applicant: The key viewing area that the slide responses can be seen from is the Columbia River. Work is being done to incorporate all necessary steps to achieve visual subordination or to render portions of the project not visually evident to the greatest degree practicable.

Staff: The repair utilized basalt stones to repair the east slide area. This stone material can be found on either side of the east slide area. The repair on the western slide extended an existing retaining wall made out of heavy metal plates and rail road track. These untreated metal materials are rusty and will rapidly weather to create a wall that is non-reflective and of a color that blends with the surrounding landscape. Both repairs are visually subordinate from the Columbia River and will continue to weather to become part of the landscape setting. *This criterion has been met.*

3.02

(b) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

Applicant: The event denuded two narrow strips of land when the ground surface slid. Response activities do not require additional clearing or disturbance beyond the areas already affected by the slides.

The east slide response includes surface stabilization by rock placement over the slide area. Filling pockets with soil would compromise the integrity of the fill and encourage failure of the structure. Cross section labeled Figure 1 shows the fill profile to a maximum depth of 20 feet above the remnant slope following the slide. There is no way to leave gaps through to underlying soils. Photo 005 shows the open graded fill material used to rebuild the slope. The only potential to back fill rock to provide for planting pockets would be to create self contained planting areas with no ties to underlying soils. This is contrary to the need to provide for a fast draining open graded stable surface. Rock is also set at the angle of repose for the material used and walking on the rock to place soil or to install plants is not safe.

There is no soil in which to plant willow cuttings along the toe of the east slide area. Photo 011 shows the rock slope at the rivers edge resulting from the emergency response. It also shows existing rivers edge conditions beyond the slide response area. This length of shoreline is not characterized by dense vegetation at and below the water line. This general edge condition may well be due to prior slide activity in different locations along this same shoreline resulting in an abundance of rock at the water's edge.

The applicant considered an alternative design that could have facilitated the installation of plant materials prior to responding. The alternative would have required deposition of fill below OHW. This action was deemed to be contradictory to the requirement that actions and impacts below OHW be avoided if possible. To qualify for 404 and joint removal fill permits the applicant was told they would need to demonstrate that it was not possible to avoid the resource (River) in their response. The alternative employed successfully avoids the resource.

The west slide response relies on extension of an existing retaining wall across the width of the slide area. Bare ground below the retaining wall is comprised of shallow (2 inches) soil remaining in places over top a steep bedrock wall. Figure 3 Cross section shows the post slide profile relative to the extended retaining wall at the west slide response area. Grass seed can be broadcast on portions that are not very steep, immediately below the retaining wall. A mix of blue wildrye, dwarf red fescue, and creeping bentgrass is recommended at a rate of 1.5 to 2 pounds per 1,000 square feet. Planting on steep areas is not practical because of the shallow soils and the inability to get seed to stay in place. The Consultant considered matting, but

securing matting over and anchoring it into the shallow remnant soils and rock face is not practical. Willow plantings will be placed along the toe of this slide in the depositional area at the base of the slide when response work concludes. Photo 003 shows the depositional area at the base of the west slide response area.

Staff: Staff concurs. *This criterion has been met as limitations permit.*

- 3.03 **(c) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one year requirement may be granted upon demonstration of just cause, with an extension of up to one year.**

Applicant: The possibility of plantings is discussed in some detail above. A seed mix of native plants has been selected for top seeding in appropriate locations along the base of the wall built at the west slide. A mix of blue wildrye, dwarf red fescue, and creeping bentgrass at a recommended rate of 1.5 to 2 pounds per 1,000 square feet will be applied. Vegetation in the area is a mix of natives and non natives. The seed mix is selected to provide native plants with the best chance for success in this steep and isolated location. The toe of the west slide is being planted with willow stakes at and near the waterline. This will help visually blend the bottom of the slide area with surrounding conditions at the river's edge.

Staff: No areas were denuded due to the emergency response. The slides, themselves, denuded the area down to the waterline. No additional areas need to be revegetated due to the emergency response. *This criterion has been met.*

- 3.04 **(d) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.**

Applicant: Structures relied on in the response cannot be fully screened from Key Viewing Areas. Intervention is limited to the narrow slide areas on both sides of Moffett Creek. Rock used to stabilize the east slide is dark basalt common to the gorge. Action at the west slide will extend an existing retaining wall (approximately 30 ft. long) to span an additional (40 ft.) to retain the remaining width of the top of the slide area. The wall is being built to continue the line and form of the existing wall. Figure 2 shows the continuation of the existing wall structure. The existing wall is heavily textured and dark with vertical supports of weathered metal. This is being continued across the width of the slide to continue the dark non reflective retaining wall structure.

Staff: The western slide repair utilizes rusty metal materials to prevent them from being reflective and to help them blend in with the surrounding earthen landscape. The eastern slide utilizes dark basalt stones to blend with existing rocks in the area. These choices of materials help the emergency response achieve visual subordination in the landscape setting. *This criterion has been met.*

- 3.05 **(e) Additions to existing structures, resulting from an emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable.**

Applicant: The existing retaining wall is the only structure being altered in response to the slide movement. The existing retaining wall (approximately 30 ft. long) is being extended to span an additional (40 ft.) to retain the remaining width at the top of the slide area. This is the response favored by ODFW and Army Corps of Engineers to avoid potential impact to wildlife and listed species. The existing retaining wall is dark in color and rough in texture. Extending the wall in the same materials as the existing wall will continue the line and form of the existing structure and follow the line of the existing topographic bench allowing the wall to blend with the landscape to achieve the required visual standard to the greatest extent possible.

Staff: The retaining wall does qualify as a structure, but the expansion is larger than the existing use. The materials used on the existing wall and the proposed section are untreated metal plates and railroad track that are rusty and a dark earthtone. The choice of materials blends with the existing earthen materials and achieves visual subordination in its setting. *This criterion has been met.*

3.06

(f) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action, shall comply with the following standards:

1. The spoil materials shall either be:

a. Removed from the NSA or

b. Deposited at a site within the NSA where such deposition is, or can be, allowed, or

c. Contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

2. The County shall decide whether an applicant removes the spoil materials (MCC 38.7090(E)(1)(f) 1.a.), deposits the spoil materials (MCC 38.7090(E)(1)(f) 1.b.), or contours the spoils materials (MCC 38.7090(E)(1)(f)1.c.) The applicant does not make this decision.

3. The County shall select the action in MCC 38.7090(E)(1)(f) 1. that, to the greatest extent practicable, best complies with the provisions in Chapter 38 that protect scenic, cultural, recreation, and natural resources.

4. Disposal sites created according to MCC 38.070(E)(1)(f)1.b. shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

(g) In the Special Management Area, spoil materials associated with grading, excavation, and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

1. The spoil materials shall either be:

a. Removed from the NSA, or

b. Deposited at a site within the NSA where such deposition is, or can be, allowed within two years of the emergency.

2. After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.

3. All grading (i.e. contouring) shall be completed within 30 days after the

spoils materials are removed.

4. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

5. All revegetation shall take place within one (1) year of the date an applicant completes the grading.

6. MCC 38.7090 (E) (1) (g) shall take effect on August 3, 2006, or approval of a disposal site, whichever comes first.

Applicant: The response was necessary in the Special Management Area. The only spoils were the result of the slides themselves. Most of these slid down to or below ordinary high water and cannot be removed without requiring extensive permitting. Spoil materials washed down by the slide were spread by the river and will not be clearly evident. Planting of willows along the toe of the west slide slope and use of dark basalt rock common in the scenic area at the base of the east slope will help the end of the slides to blend with the Columbia River edge. All spoil materials are being dealt with along with emergency response activities, no stock piles of soil or rock will be retained on site after the response is complete. As discussed above, sites are being reseeded as the response is completed. Seed mixes are selected to be native and stand the best chance of establishment at this location in these conditions.

Staff: Staff concurs. *This criterion has been met.*

3.07 (2) Cultural Resources and Treaty Rights

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect Tribal treaty rights.

(b) The U.S. Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Planning Director.

1. Reconnaissance surveys shall be conducted by the U.S. Forest Service and comply with the standards of MCC 38.7045 (D) (1) and (D)(2)(c).

2. Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.

(c) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the Planning Director shall notify the Tribal governments when:

1. A reconnaissance survey is required, or

2. Cultural resources exist in the project area.

All such notices shall include a copy of the site plan required by MCC 38.7090 (C) (4) (d).

Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty

rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them. The Planning Director shall send a copy of all comments to the Gorge Commission.

(d) When written comments are submitted in compliance with (C) (2) above, the project applicant shall offer to meet within five calendar days with the interested persons. The five day consultation period may be extended upon agreement between the project applicant and the interested persons. A report shall be prepared by the Planning Director following the consultation meeting. Consultation meetings and reports shall comply with the standards of MCC 38.7045 (C) (1) and (2) and 38.0110 (A)(1) and (2).

(e) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources. The survey and evaluation shall be documented in a report that follows the standards of MCC 38.7045 (D) (2)(c) and, (F).

(f) A mitigation plan shall be prepared by the project applicant if the affected cultural resources are significant. The mitigation plan shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J).

(g) The Planning Director shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the Tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and Tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written comments to the Planning Director. The Director shall record and address all written comments in the Site Review decision.

(h) The Planning Director shall make a final decision on whether the emergency/disaster response actions are consistent with the applicable cultural resource goals, policies, and guidelines. If the final decision contradicts the comments submitted by the SHPO, or those submitted by a Tribal government regarding treaty rights, the Director shall justify how an opposing conclusion was reached.

(i) The cultural resource protection process may conclude when it has been determined that Tribal treaty rights have not been affected and one of the following conditions exists:

- 1. The emergency/disaster response does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.**
- 2. The emergency/disaster response action avoided cultural resources that exist in the project area.**
- 3. Adequate mitigation measures to affected cultural resources have been developed and will be implemented.**

4. A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:

- a. The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the National Register Criteria for Evaluation (36 CFR 60.4), or**
- b. The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation [U.S. Department of the Interior 1990] and The Secretary of the Interior's Standards for Historic Preservation Projects [U.S. Department of the Interior 1983].**

Applicant: The project Archaeologist has identified some points of interest around the west slide. No disturbance to the slide area beyond that which occurred due to the slide has resulted or will result from slide response activities. Extension of the existing retaining wall at the west slide site precludes the need for rock placement to stabilize soils in the area and avoids any potential impacts to resources.

A reconnaissance survey was completed. The USFS Archaeologist visited the site with Robin McClintock, a qualified archaeologist working on the project. A cultural survey was prepared by McClintock. The report evaluating resources in the vicinity of the response and the affect of the response on those resources was prepared and submitted to USFS Archaeologist. The report was reviewed by USFS Archaeologist prior to the response taking place. The project was determined to have no effect on cultural or historic resources.

Staff: Staff concurs. The Confederated Tribes and Band of the Yakama Nation was informed of the emergency response and has indicated that cultural and archaeological resources may be located in the area (Exhibit D.1). Margaret Dryden of the USDA Forest Service Heritage Program has determined after visiting the site and review of the CH2M Hill report that no cultural resources occurred in the area of disturbance, all impacts were avoided and the cultural resource process is complete (Exhibit D.2). In addition, no historic properties were affected. *The Cultural Resource has been met.*

3.08

(3) Natural Resources

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.

(b) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in MCC .7060(F).

[MCC 38.7060(E) 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.

(b) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet.]

Applicant: The slides in both locations extend down to ordinary high water or normal pool elevation of the Columbia River. Soil retention on the west slide is possible by extension of any existing retaining wall. The retaining wall is approximately 75 vertical feet above and within 100 horizontal feet of normal pool elevation. No response is necessary at or below high water. The east slide is being stabilized by rock placement. Rocks are being placed above ordinary high water or normal pool elevation but just above the edge of the Columbia River. Both responses require action within 100 feet of normal pool elevation.

Staff: Due to the location of the slide repair it is not feasible to maintain the 100 ft buffer from the Columbia River. The design of the disaster response was coordinated with ODFW and the Corps of Engineer and remained above the Ordinary High Waterline to avoid adverse impacts. *These criteria have been met.*

3.09

1. Wetlands, Streams, Ponds, Lakes, Riparian Areas

a. Emergency/disaster response actions occurring within a buffer zone of wetlands, streams, pond, lakes or riparian areas shall be reviewed by the Oregon Department of Fish and Wildlife. These areas are also referred to in this section as aquatic areas. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these aquatic areas or their buffer zones. State biologists shall respond within 15 days of the date the application is mailed.

b. When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:

1) All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing contours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes, or riparian areas.

2) Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.

c. Impacts to wetlands, streams, ponds, lakes, and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.

d. If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the emergency/disaster response actions had minor effects on the

aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service natural resource advisor (as available) in consultation with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Planning Director shall incorporate them into the Site Review decision and the aquatic area protection process may conclude.

e. Unless addressed through d. above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan.

Rehabilitation Plans shall satisfy the standards of MCC .7060(F)(1) and (2). Rehabilitation Plans shall also satisfy the following:

- 1) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.
- 2) Planting plans shall be included that specify native plant species to be used, specimen quantities, and plant locations.
- 3) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

Applicant: Natural resource agencies were contacted and notified about the need for an emergency response concurrently with the USFS, Multnomah County, and the Columbia River Gorge Commission. Contacts included Susan Barnes and Todd Alsbury. An ODFW representative walked the site with responders prior to the response. Input from ODFW and Army Corps of Engineers, resulted in the response taking the shape that it did. Stabilizing the toe of the slide slopes from below normal pool elevation may have been the preferred response to both slides but would have resulted in greater impact to the aquatic resource. Extending the existing retaining wall at the west slide and constructing a rock base above OHW or normal pool elevation along the Columbia River to keep all response activity out of the river, provided an alternative response that meets the requirement that impacts to resources be avoided by avoiding activity below OHW. Planting the toe of the slope along the River side of the west slide area will help mitigate for damage done by the slide action itself. Application of rock fill to rebuild a slope face with pervious material at a more stable angle of repose will help protect the resource from potential impacts that could be related to future slide events. The applicant responded to all comments and input offered by ODFW prior to selecting the best response to need for slide stabilization.

Staff: Both slides and repairs occurred within the 100 ft stream buffer zone for the Columbia River. The applicant met on-site with ODFW to determine the best course of action on the repair. The design of the disaster response was modified to minimize any additional impacts to the buffer zone. All work was maintained within the boundaries of the existing railroad right-of-way and/or slide area and was the minimum feasible alteration to the area. The planting of willows and revegetation of earth materials on the west slide repair rehabilitates to the maximum extent possible. No vegetation rehabilitation is feasible for the east slide repair as it was determined from an engineering standpoint to add vegetation pockets would require the

repair to extend into the Columbia River channel. ODFW, DSL and Corps determined that it was the most appropriate response for the repair to remain above the OHW. The rehabilitation was addressed as part of the repair design and no rehabilitation plan is needed. *These criteria have been met.*

3.10

2. Wildlife Habitat

a. Emergency/disaster response actions occurring within 1,000 feet of a sensitive wildlife area or site, shall be reviewed by the Oregon Department of Fish and Wildlife. State wildlife biologists will help determine if emergency/disaster response actions have affected or have a potential to affect a sensitive wildlife area or site.

b. Site plans for emergency/disaster response sites shall be submitted by the Planning Director to the Oregon Department of Fish and Wildlife for review as required by MCC 38.7065 (C) (1) and (2). The department shall respond within 15 days of the date the application is mailed.

c. The wildlife protection process may terminate if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines:

- 1) The sensitive wildlife area or site was not active, or**
- 2) The emergency/disaster response did not compromise the integrity of the wildlife area or site or occurred at a time when wildlife species are not sensitive to disturbance.**

d. If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the emergency/disaster response activities had minor effects on the wildlife area or site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a U.S. Forest Service natural resource advisor (as available) in consultation with the state wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Planning Director shall incorporate them into the Site Review decision and the wildlife protection process may conclude.

e. If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the emergency/disaster response activities had adverse effects on a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management Plan. Wildlife Management Plans shall satisfy the standards of MCC 38.7065(D). Upon completion of the Wildlife Management Plan, the Planning Director shall:

- 1) Submit a copy of the Wildlife Management Plan to the Oregon Department of Fish and Wildlife for review. The department will have 15 days from the date that a**

management plan is mailed to submit written comments to the Planning Director;

2) Record any written comments submitted by the Oregon Department of Fish and Wildlife in the Site Review decision. Based on these comments, the Planning Director shall make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the Oregon Department of Fish and Wildlife, the Director shall justify how an opposing conclusion was reached.

3) Require the project applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

Applicant: County staff states that Bald Eagle Special Habitat and an Osprey Net Site are listed nearby on inventory maps. The applicant walked the site with ODFW representative prior to the response. ODFW contacts regarding this response were Susan Barnes and Todd Alsbury. The primary concern was avoidance of impacts on aquatic areas. No special measures necessary to mitigate for possible impacts on raptors or other bird species were identified. One of the most common adverse impacts to special avian habitats and nest sites is introduction of noise or other uncommon disturbance during nesting season. One of the most common mitigations for activity near nest sites is avoidance of disturbance during nesting season. The selected response occurred outside nesting season and is designed to be a low or no maintenance solution that will not require additional disturbance for continued maintenance or construction activity.

Staff: Staff concurs. *These criteria have been met.*

3. Deer and Elk Winter Range

Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall satisfy the standards of MCC 38.7065 (E).

Staff: No fencing was erected as part of the emergency response. *This criterion has been met.*

3.11

4. Rare Plants

a. Emergency/disaster response actions occurring within 1,000 feet of a sensitive plant, shall be reviewed by the Oregon Natural Heritage Program. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.

b. Site plans for emergency/disaster response sites shall be submitted to the Oregon Natural Heritage Program by the Planning Director. State natural heritage staff will, within 15 days from the date the application is mailed, identify the location of the affected plants and delineate a 200 foot buffer zone on the applicant's site plan.

c. The rare plant protection process may conclude if the Planning Director, in consultation with the Oregon Natural

Heritage Program, determines that emergency/disaster response activities occurred outside of a rare plant buffer zone.

d. If the Planning Director, in consultation with the Oregon Natural Heritage Program, determines that the emergency/disaster response activities had minor effects on rare plants or the rare plant buffer zone, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state natural heritage staff, or a Forest Service natural resources advisor (as available) in consultation with the state natural heritage staff, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Planning Director shall incorporate them into the Site Review decision and the rare plant protection process may conclude.

e. If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse affects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan, that meets the standards of MCC 38.7070 (D).

f. The Planning Director shall submit a copy of all protection and rehabilitation plans to the Oregon Natural Heritage Program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the Planning Director.

g. The Planning Director shall record any written comments submitted by the Oregon Natural Heritage Program in the Site Review decision. Based on these comments, the Director shall make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Oregon Natural Heritage Program, the Director shall justify how an opposing conclusion was reached.

h. The Planning Director shall require the project applicant to revise the protection and rehabilitation plan as necessary to ensure that the proposed use would not adversely affect a rare plant site.

Staff: Staff mailed the Oregon Natural Heritage Program the application materials. No response was received indicating that a sensitive plant species was within the area of the emergency response. *These criteria have been met.*

3.12 (4) Recreational Resources

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.

(b) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

Staff: The emergency response is between the UPRR tracks and the Columbia River. No recreational resources exist in the area. *These criteria have been met.*

4.00 ***Conclusion***

Based on the findings and other information provided above, the applicant has carried the burden necessary for the approval of the Post-Emergency/Disaster Response Site Review in the GSO zoning district. This approval is subject to the conditions of approval established in this report.

5.00 ***Exhibits***

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	3	NSA Application Form	3/10/06
A.2	10	Narrative	3/10/06
A.3	1	Air Photo with Property Ownership Designated and Location of Slides	3/10/06
A.4	1	Geological Profile East Slide	3/10/06
A.5	1	Retaining Wall Extension Diagram MP 39.7	3/10/06
A.6	1	Cross Section at “A”	3/10/06
A.7	2	Photos of Work	3/10/06
A.8	6	As-Built Photos	4/19/06
‘B’		Staff Exhibits	Date of Document
B.1	1	A & T Property Record for Tax Lot 300, 2N7E Sec. 30	3/10/06
B.2	1	A & T Property Record for Tax Lot 200, 2N7E Sec. 29	3/10/06
‘C’		Administration & Procedures	Date
C.1	1	Complete Letter – Day 1	3/10/06
C.2	14	Opportunity to Comment	4/11/06
C.3	20	Administrative Decision	4/26/06
‘D’	#	Comments	Date
D.1	1	Comments from Confederated Tribes and Bands	2/17/06
D.2	2	US Forest Service Comments	3/24/06
D.3	2	SHPO Comments	3/29/06 & 4/24/06
D.4	4	Friends of the Columbia Gorge	4/25/06