



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

NOTICE OF DECISION

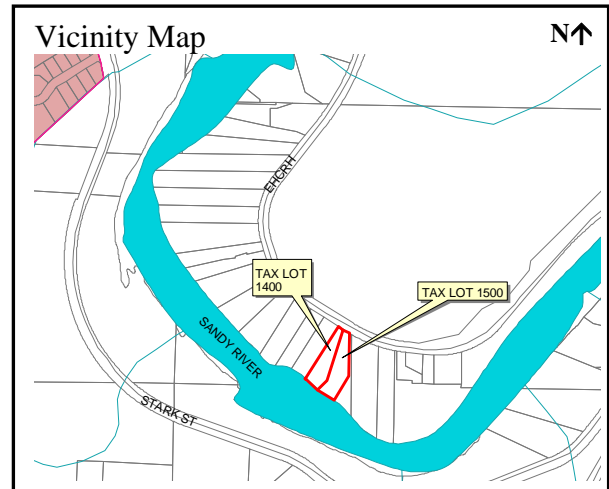
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-06-129

Permits: National Scenic Area Site Review,
Property Line Adjustment, Non-Hearing
Major Variance & Minor Variance

Location: 28528 (TL 1400) & 28536 (TL 1500)
East Historic Columbia River Highway
(T1S, R4E, Sec 6BC)
Account #'s R994060760 & R994060830

Applicant Leslie Ann Hauer
Owners: Gary Dempsey (28528 East HCRH)
Pamela Feves (28536 East HCRH)



Summary: The applicant has requested: **1).** a replacement dwelling at 28528 East HCRH, **2)** Retroactive approval of a Property Line Adjustment completed without land use approval in 1986 between 28528 and 28536 East HCRH, **3)** A non-hearing Major Variance associated with the property line adjustment to reduce the front lot line length below the 50-foot minimum requirement for both properties, and **4).** A Minor Variance allowing the new dwelling's roof eave encroachment into both side yard setbacks at 28528 East HCRH.

Decision: **The NSA replacement dwelling request, Property Line Adjustment and Major Variance are Approved with conditions. The request for the Minor Variance is not approved.**

Unless appealed, this decision is effective **August 13th, 2007, at 4:30 PM.**

Issued by:

By: _____

Adam Barber, Senior Planner

For: Karen Schilling - Planning Director

Date: July 30th, 2007

Instrument Number for Recording Purposes: D8661708

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 Directors 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 Adam Barber, Staff Planner at 503-988-3043 x 22599.

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 office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Columbia River Gorge Commission (CRGC) until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is August 13th, 2007, at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 38.0000 - 38.0210, General Provisions; MCC 38.0510 - 38.0850, Administration and Procedures; MCC 38.3000 - 38.3095, Residential Districts; MCC 38.7000 - 38.7090, Site Review; MCC 38.7600 - 7605, Variances; MCC 38.7970, Property Line Adjustment.

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. **Prior to plan signoff, the applicant is required to alter the proposed replacement dwelling design to eliminate encroachment into both side yard setbacks. This is to occur through either a reduction in the width of the roof eaves or a slight reduction in the footprint of the dwelling. Significant plan changes altering the look of the exterior of the dwelling are not authorized by this permit.**
2. **Pursuant to MCC 38.0690, this land use permit expires two years from the date the decision is final if;** (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under **MCC 38.0700**. Such a request must be made prior to the expiration date of this 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 brackets.

1. **Prior to building plan signoff for the replacement dwelling, the owner must demonstrate that the proposed property line adjustment has been approved by the County Survey Office and recorded with the County Recorder (MCC 38.3025(A)(1)). The applicant is to complete the**

procedures outlined in the enclosed “Applicant’s Instructions for Finishing a Property Line Adjustment (Exhibit S4)”. They are also to provide their surveyor the enclosed “Surveyor’s Instructions for Finishing a Property Line Adjustment (Exhibit S5)” which provides instructions for preparing the required materials.

2. The property owner of 38528 East Historic Columbia River Highway shall record pages 1-4 of this decision and the landscaping plan in Exhibit A22 with the Multnomah County Recorder within 30 days of the date this decision becomes final. A copy of the recorded document shall be submitted to the Land Use Planning Office prior to the building permit sign-off (MCC 38.0670).
3. Prior to plan signoff, the applicant is required to alter the proposed replacement dwelling design to eliminate encroachment into both side yard setbacks. This is to occur through either a reduction in the width of the roof eaves or a slight reduction in the footprint of the dwelling. Significant plan changes altering the look of the exterior of the dwelling are not authorized by this permit (MCC 38.3060(C)).
4. Unless otherwise specified, compliance with the approval conditions listed herein shall occur within two (2) years of the date this decision becomes final (MCC 38.7035(B)(26)).
5. The applicant shall only use dark earth toned colors for the exterior of the new home (MCC 38.7035 (B)(1)) & (MCC 38.7035(B)(12)). The property owner may not alter the color or building materials proposed without land use authorization (MCC 38.7035(B)(9)).
6. All exterior building materials shall be low reflectivity with all exterior glass having exterior visible light reflectivity rating less than 11% (MCC 38.7035 (B)(1)) & MCC 38.7035(B)(10)).
7. All exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas (MCC 38.7035 (B)(1)) & MCC 38.7035(B)(11)).
8. The new dwelling must be located at least 100-feet (measured horizontally) from the ordinary high water-mark of the Sandy River (MCC 38.7060(E)(1)). This condition also applies to the attached covered porch/patio on the southern side of the home facing the Sandy River. The porch/patio roof eaves shall not extend into this 100-foot wide riparian buffer zone.
9. Site grading exceeding 100 cubic yards is not authorized by this permit (MCC 38.7035(B)(25)).
10. Mischa Connie, Oregon Fish and Wildlife Habitat Biologist (503-621-3488 x 28), shall be contacted immediately if any unidentified wildlife (i.e. State/Federal listed species) take up residence nearby such as a raptor, etc. If there is any question of species identification, a qualified biologist should conduct a site visit. Vegetation clearing shall occur from August through March to avoid disturbance of nesting birds – Exhibit X6, (MCC 38.7065(C)(4)).
11. This permit does not authorize the removal of any trees (MCC 38.7035(B)(8)).
12. The property owner of 28528 East Historic Columbia River Highway shall complete installation of the landscaping plan, presented as Exhibit A22, between September 1st and May 15th as recommended by the National Scenic Area Scenic Resources Implementation Handbook for west side sites (MCC 38.7035(A)(5) & (MCC 38.7035 (B)(17)(c)&(d)).

- 13. The applicant shall only plant the Genus species Western Red Cedar (*Thuja plicata*) to satisfy the landscape requirements. Each tree shall be at least eight-feet tall at the time of planting, measured from the point the trunk exits the ground to the top of the tree (MCC 38.7035(B)(17)(e)).**
- 14. The property owner(s) at 28528 East Historic Columbia River Highway, and his successor(s) in interest are responsible for the proper maintenance and survival of the required planted vegetation, and replacement of such vegetation that does not survive (MCC 38.7035 (A)(4) & (MCC 38.7035(B)(17)(d)).**
- 15. For the first three years after planting the landscaping required in Exhibit A22, the owner shall prepare an annual report that documents milestones, successes, problems, and contingency actions. This report shall be submitted to case file T2-06-129, contained in the land use planning office. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts (MCC 38.7060 (F)(4)).**
- 16. If, during construction, cultural or historic resources are uncovered the applicant/owner shall immediately cease development activities and inform the Multnomah County Planning Director, Columbia River Gorge Commission, and U.S. Forest Service of their discovery (MCC 38.7045(L) & MCC 38.7045(M)). Mr. Clifford Casseseka, Cultural Specialist of the Cultural Resource Program for the Confederated Tribes and Bands of the Yakama Nation, must also be contacted immediately in the event of such discovery (509) 865-5121 x 4720.**

Note

Once this decision becomes final, the applicant may proceed with the necessary steps to finalize the property line adjustment, as required by Condition #1. Once the property line adjustment is recorded, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, call the Staff Planner, Adam Barber, at (503)-988-3043 x 22599 for an appointment to review with you the Conditions of Approval and to provide the building permit plan signoff. Multnomah County must review and sign off building permit applications before they are submitted to the City of Gresham. Please bring four plan sets and one copy of the recorded land use decision cover page and conditions of approval to the building permit plan signoff. A \$53 building permit signoff fee and \$77 erosion control inspection fee will be due at plan signoff.

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

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

DECISION OF THE PLANNING DIRECTOR

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

Scope of Review

This review is limited to the applicable standards of the Columbia River Gorge National Scenic Area contained within Multnomah County Code Chapter 38.

FINDINGS OF FACT

1.0 SUMMARY OF PROPOSAL

Staff: The applicant has requested approval of the following four NSA reviews:

- 1). **National Scenic Area Site Review Permit** – To replace the existing dwelling at 28528 East HCRH.
- 2). **Property Line Adjustment Permit** – To retroactively approve a Property Line Adjustment conducted without County land use approval in 1986 between 28528 and 28536 East HCRH.
- 3). **Major Variance Approval** - Associated with the property line adjustment allowing reduction of the front lot line length below the 50-foot requirement of **MCC 38.3060(C)** for both properties.
- 4). **Minor Variance Approval** – To authorize encroachment of the replacement dwelling’s roof eaves into both side yard setbacks at 28528 East HCRH.

The applicant is requesting a National Scenic Area approval to construct a one story replacement dwelling at 28528 East Historic Columbia River Highway (i.e. the Highway). The 2,759 square foot proposed dwelling will have a 764 square foot attached garage and 225 square foot covered porch/patio at the rear of the dwelling facing the Sandy River. A plan showing the proposed development location is presented as Exhibit A22. Structural elevations and a floor plan of the new dwelling are presented as Exhibit A23.

In 1986, the subject property at 28528 East Historic Columbia River Highway was involved in a property line adjustment which was not reviewed or approved by Multnomah County. The property line adjustment reconfigured the common boundary between 28528 and 28536 East HCRH to the east. The applicant is now requesting retroactive approval of this property line adjustment. The plan in Exhibit A12 illustrates the “original” and “current” property line locations. The “original” location represents the pre-1986 adjustment, and the “current” location illustrates the property configurations the applicant seeks to have approved and that has been recognized by the landowners for over 20 years.

The property line adjustment in 1986 reconfigured both properties in a way that does not meet the current 50-foot minimum front lot line width requirements of the Gorge General Residential-5 zoning district. As a result, the applicant is also requesting a non-hearing Major Variance to allow substandard front lot line widths for both lots.

The applicant has proposed encroachment of new dwelling's roof eaves partially within both of the 10-foot side yard setbacks at 28528 East Historic Columbia River Highway. The amount of encroachment into both side yards is less than 25% of the full requirement and therefore the applicant has requested a Minor Variance approval.

No physical development is proposed at 28536 East Historic Columbia River Highway. This property is only involved in the Property Line Adjustment and Major Variance requests.

2.0 VICINITY AND PROPERTY DESCRIPTION

Staff: The subject properties are located between the East Historic Columbia River Highway and the Sandy River, roughly 0.4 miles southwest (downriver) of the Stark Street Bridge crossing the Sandy River. 28528 East HCRH contains a dwelling constructed in 1941 and a detached garage built in 1981. The property at 28536 East HCRH contains a dwelling constructed in 1970.

The property involving the replacement dwelling at 28528 East HCRH is currently 0.98 acres which represents the post 1986 property line adjustment configuration. Property at 28536 East HCRH is a bit larger at 1.38 acres. Both properties contain a mix of tall mature coniferous and deciduous trees and are landscaped with native and decorative shrubbery. Zoning of both properties is Gorge General Residential-5.

3.0 REVIEW USE ALLOWANCES

Staff: According to Review Uses listed in **MCC 38.3025(A)(1)**, the following uses may be allowed on lands designated Gorge General Residential (GGR) with an approved National Scenic Area permit: *“One single-family dwelling per legally created parcel.”* Although the property involved in the replacement dwelling request was improperly re-configured in 1986, approval of and proper execution of the requested property line adjustment will result in a legal parcel. Staff has conditioned this decision such that the property line adjustment must be approved by the County Survey Office and recorded with the County Recorder before Staff can sign off building plans for the new home. This condition has been drafted as a requirement of **MCC 38.3025(A)(1)**.

A Property Line Adjustment is listed as an Expedited Review Use in **MCC 38.1010(A)(11)**. This request is being reviewed as part of this review use application rather than a separate expedited application because it relates to the other three Type II permits being requested. The applicant has agreed this approach is preferable. Staff believes a consolidated review is appropriate considering a Property Line Adjustment is listed as a Type II permit within **MCC 38.0530**.

According to **MCC 38.7605**, A Major Variance request can be processed as a Type II review use when all property owners within 100-feet of the subject property provide written consent (**MCC 38.7605(B)(1)&(2)**). The necessary authorization has been provided to allow the processing of the Major Variance as a Type II review without the need for public hearing (Exhibit A3).

The request to locate the roof eave 8-feet from the northwest (side yard) and 8-feet, 3.5-inches from the southeast (side yard) setbacks requires less than 25% departure from the 10-foot minimum side yard setback. This request can be processed as a Minor Variance review use pursuant to **MCC 38.7605(B)**. **In conclusion, all four permit requests can be processed by this Type II review.**

4.0 COMPLIANCE

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.

Staff: Both properties were improperly formed May 7th, 1986 through the recording of an unpermitted property line adjustment (Book 1904, Pages 1378 – 1382). The applicant is attempting to bring both properties into compliance with the requested retroactive Property Line Adjustment and Major Variance request in accordance with the provisions of MCC

38.0560(A)(1). Approval and proper execution of the property line adjustment will legalize the configuration of both properties.

Staff is not aware of any other compliance issues associated with either property. The property at 28528 East HCRH contains a 1941 dwelling and detached garage constructed in 1981. The property at 28536 East HCRH contains a dwelling constructed in 1970. Staff finds all necessary permits have been received for the structural development on both properties although permit records have been switched for both properties meaning permits for 28528 are filed under the address 28536 East HCRH and visa versa within the County records. The applicant indicated that because he owned both properties in the past, he may have filed permit requests under the address of whichever home he was living in at the time rather than for the development site. As conditioned, the subject properties both qualify for the applicable reviews.

5.0 PROOF OF OWNERSHIP

Type II applications may only be initiated by written consent of the owner of record (MCC 38.0550).

Staff: Property owners Gary Dempsey and Pamela Feves have provided the written authorization required to process this request (Exhibit A1).

6.0 COMMENTS RECEIVED

Upon receipt of a complete application, notice of the application and an invitation to comment is mailed to the Gorge Commission, Oregon Department of Fish and Wildlife, 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

(MCC 38.0530(B)). The Planning Director accepts comments for 14 days after the notice of application is mailed (MCC 38.0530(B)).

Staff: An opportunity to comment packet was mailed in accordance with these requirements on June 4th, 2007. Written comments were received from the following individuals:

- **Stephen P. Poyser, Review and Compliance Specialist, State Historic Preservation Office (Exhibit X1)**

Mr. Poyser determined that the 1941 dwelling slated for replacement is not eligible for the National Register of Historic Places. This feedback is sufficient to consider all historic survey requirements satisfied within the cultural resource protection section of the NSA code (MCC 38.7045(B)).

- **Dennis Griffin, PhD., RPA, State Archaeologist, State Historic Preservation Office (Exhibit X2)**

(&)

- **Johnson Meninick, Cultural Resources Program Manager, Confederated Tribes and Bands of the Yakama Nation (Exhibit X3)**

Mr. Griffin indicated the project lies within an area generally perceived to have a high probability for possessing archaeological sites and/or buried human remains. Mr. Griffin recommended that all work cease immediately until a professional archaeologist can assess the discovery if any cultural material is discovered during construction activities. Mr. Meninick indicated that he would be concerned in the event the placement of the new dwelling was proposed a different location on the property than illustrated on the plans sent out with the comment packet. The applicant has proposed the new dwelling in the same location as the existing dwelling and has not altered the location proposed. Mr. Meninick has asked that Mr. Clifford Casseseka be contacted within his office in the event of such archaeological discovery. Staff has conditioned this approval such that Mr. Griffins and Mr. Meninick's requests must be followed.

- **Richard Till, Land Use Law Clerk, Friends of the Columbia River Gorge (Exhibit X4)**

Mr. Till outlined the applicable approval criteria, specifically indicating the decision must clearly outline the scope of work proposed and the existing site conditions. Staff has provided these details within the report findings and within the referenced exhibits.

- **Bob Leipper, landowner (PO Box 94 Troutdale, OR 97060) - (Exhibit X5)**

Mr. Leipper indicated that the application is not for a replacement dwelling and that it should be reviewed as new construction required to meet all current codes. Staff agrees with Mr. Leipper that a request to replace an existing dwelling must be evaluated against the same criteria used to review a new dwelling on a vacant parcel in this particular zoning district. Evaluation of the current standards is presented within this decision. Planning staff commonly refers to this type of project as a replacement dwelling request to help the reader understand the parcel is already developed.

Mr. Leipper indicated that the application fails to define the size and height of existing or proposed screening. Staff has worked with the applicant to obtain the necessary information which will be discussed within the appropriate findings and is illustrated on the development plans. Mr. Leipper also stated that defining this project as a “lot line adjustment and variance” is deceptive since it qualifies as a NSA site review. Mr. Leipper is correct that all of these permits qualify as different types of National Scenic Area reviews. Staff has made an effort to clearly outline the scope of requests and how these requests align with the permit allowances of the National Scenic Area code. The applicable permits include a National Scenic Area Site review for a new (i.e. replacement) dwelling, a Property Line Adjustment, A Major Variance and a Minor Variance. Staff will isolate and evaluate the four different permits separately within this decision to simplify the decision as much as possible.

- **Mischa Connie, Habitat Biologist, Oregon Department of Fish and Wildlife (Exhibit X6).**

Ms. Connine provided comment that although the project does not pose significant impacts to fish or wildlife resources, the Sandy River has been identified as potential habitat for bald eagles and osprey. ODFW recommends two project parameters be set. The first is that ODFW should be contacted immediately if any unknown wildlife (i.e. State/Federal listed species take up residence nearby such as a raptor, etc.) and that a qualified biologist should conduct a site visit if there is any question of species identification. Secondly, ODFW recommends that vegetation clearing should only occur from August to March to avoid disturbance of nesting birds. These recommendations have been incorporated into a condition of this approval, replacing the term “shall” for “should” with respect to vegetation clearance timing.

- **Margaret L. Dryden, Heritage Program Manager, for the Columbia River Gorge NSA (Exhibit X7).**

Ms. Dryden has determined that a cultural reconnaissance survey was not required for this project.

PERMIT # 1 OF 4 (PROPERTY LINE ADJUSTMENT)

7.0 MCC 38.7970 - PROPERTY LINE ADJUSTMENT (LOT LINE ADJUSTMENT)

(A) In the General Management Area: (1) Lot line adjustments for parcels in all land use designations except Open Space, Commercial (GGC), Public Recreation(GGPR, GS-PR), or Commercial Recreation (GG-CR) shall comply with the following standards:

Applicant: “The site is in the General Management Area and zoned GGR-5, therefore is subject to the standards of this portion of the MCC.”

Staff: The property is zoned Gorge General Residential-5. Compliance with the following standards is required.

7.1 MCC 38.7970(A)(1)(a) - The lot line adjustment shall not result in the creation of any new parcel(s).

Applicant: "No new parcel will be created; rather, approval is requested for two existing lots re-configured in 1986. No new parcel could be created in the future, owing to the minimum lot area requirement of five acres.

The lots previously identified as Tax Lots 76 and 83, now Tax Lots 1400 and 1500, respectively, existed prior to acquisition by Mr. and Mrs. Dempsey in 1969. (Property transfer recorded: Book 682, page 1532-35)

The lot line adjustment to the current configuration was recorded on May 7, 1986, in Book 1904, pages 1378-1382, with a survey dated May 6, 1986. The change affected the alignment of the common lot line and the property frontage, giving each lot a more equal share of the available 74 feet (approximately).

Staff: No new parcel will be created. The common boundary between two properties will be slightly reconfigured.

7.2 MCC 38.7970(A)(1)(b) - The lot line adjustment shall not result in the potential to create a new parcel(s) or residential development in excess of the minimum density allowed by the land use designation(s) for the affected parcels.

Applicant: "As noted in the response to (a), the total area of both lots is 2.36 acres. A new five acre lot is not possible under any potential re-configuration of Tax Lots 1400 and 1500."

Staff: Because neither property will be reconfigured to twice the minimum lot size, the Property Line Adjustment will not result in the potential to create an additional parcel. This standard is met.

7.3 MCC 38.7970(A)(1)(c) - The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum parcel size before the lot line adjustment to become less than the minimum parcel size after the lot line adjustment, except to allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

Applicant: "Both existing tax lots are less than the minimum parcel size. The re-configured lot line does not change that situation."

Staff: Neither properties pre-configuration size is larger than the minimum 5-acre lot size. This standard does not apply.

7.4 MCC 38.7970(A)(1)(d) - The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to be reduced in size, except to accomplish one of the following purposes:

1. Resolve boundary disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided

- a. The parcel to be enlarged would not become eligible for a subsequent land division and
- b. The amount of land transferred would be the minimum necessary to resolve the issue.

2. Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

Applicant: "No public or non-profit entity is involved; this provision [(d)(2)] does not apply...This provision [(d)(1)] does not apply, to the extent that both existing tax lots already are smaller than the present lot area minimum. However, the proposed lot line adjustment will maintain the reasonable access created by the re-location of the division point between the two lots along the street frontage. Both lots now have similar frontages of 35 and 39.13 feet, allowing both a suitable and unconstrained driveway access."

Staff: Both parcels are below the 5-acre minimum lot size and one will be reduced slightly through the adjustment. The proposed acreage for Parcel A (western property) will be reduced from 0.98-acres to 0.8-acres after the adjustment. The reduction in Parcel A will be performed to achieve two primary goals. The first is to move the common boundary physically encroaching into the eastern side of the existing dwelling on Parcel A to a location roughly between this dwelling and the dwelling on Parcel B (Exhibit A12).

The current 12.87-foot wide front lot line width of Parcel B is substandard considering the current 50-foot minimum frontage requirement of **MCC 38.3060(C)**. The proposed adjustment will widen the front lot line width of Parcel B to 39.13 feet helping to provide more reasonable access to the site. The 50-foot width requirement can not be met for Parcel B with out reducing the front lot line of Parcel A below the minimum requirement because both lots together contain less than 100 feet of frontage. In conclusion, Staff finds the proposed lot line adjustment will correct physical encroachment on Parcel A and provide more reasonable site access to Parcel B. These two situations qualify the proposed adjustment under the allowances of **MCC 38.7970(A)(1)(d)(1)**.

- 7.5 MCC 38.7970(A)(1)(f) - The lot line adjustment shall not allow previously approved parcels or developments to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection provisions, including, but not limited to, requirements for buffer zones and landscaping.**

Applicant: "The 1986 lot line adjustment was not approved and no conditions of approval for previous permits have not been satisfied, to the best of the applicant's knowledge."

Staff: This lot line adjustment does not violate any previous conditions of approval. The adjustment will increase the width of Parcel A by roughly 20-feet near the center providing better future development options on that parcel. The adjustment will also provide more reasonable road frontage to Parcel B. This adjustment will not compromise land use resource protection provisions of this site such as the 100-foot wide riparian area buffer because the adjustment will not have the result of requiring future development to be located within this buffer zone. The adjustment will help legalize a common property line used for years to define the residential landscaping boundary for both properties. Staff finds the adjustment meets this standard.

- 7.6 MCC 38.7970(A)(1)(g) - The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection provisions, including, but not limited to requirements for buffer zones and landscaping.**

Applicant: "The application for new residence in the National Scenic Area, which is accompanied by this application for lot line adjustment, demonstrates that all requirements for use of the property can be satisfied."

Staff: The resulting adjustment will have no impact on the ability to develop either parcel with respect to the 100-foot setback required from the Highway and from the river for new development. The adjustment will simply alter the widths of the lots rather than the depths which could have the effect of reducing the buildable area outside of a buffer zone. The resulting configuration of both lots leaves adequate area to achieve any necessary landscaping requirements for mitigation and screening of future development. In fact, the proposed adjustment helps even out the width of both lots near the center and near the road which will likely make future re-development easier for both landowners. The widths of both parcels after the adjustment are adequate to allow development of a single family dwelling outside buffer zones considering the depth of both lots exceeds 400 feet and the buffer width totals 200 feet on both lots. This standard has been met.

- 7.7 The required setbacks from property lines in the base zoning code must be met for this proposal. As outlined in MCC 38.3060(C), the minimum yard dimensions and maximum structure heights are as follows (MCC 38.3060(A)):**

Front (30-ft), Side (10-ft), Street Side (30-ft), Rear (30-ft)

Staff: A wood shed was recently located on Parcel B three feet from the proposed property boundary which would not have met the current 10-foot side yard setback. Staff confirmed on 6/27/07 that the structure has been removed from the property. All existing structures on both properties will be located outside of the side yard setbacks measured on either side of the proposed property line location. This standard has been met.

- 7.8 Any lot in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles (MCC 38.3090).**

Staff: Both lots abut the Historic Columbia River Highway. Altering the access point locations to the Highway is not proposed at this time for either property.

PERMIT #2 OF 4 (MAJOR VARIANCE – FRONT LOT LINE WIDTH)

- 8.0 MCC 38.7605(A) - VARIANCE CLASSIFICATION, A Major Variance is one that is in excess of 25 percent of an applicable dimensional requirement. A Major Variance must be found to comply with MCC 38.7600 (A).**

(1) A Major Variance must be approved at a public hearing except when all owners of record of property within 100 feet of the subject property grant their consent to the variance according to the procedures of MCC 38.7605 (B) (1) and (2).

Applicant: “The application requests variance from the 50 foot front lot line standard of MCC 38.3060(C) to allow established frontages of 35 feet for Tax Lot 1400 and 39.13 feet for Tax Lot 1500. The variation for Tax Lot 1400 exceeds 25%, and therefore must be considered as a major variance....The variance for frontage for Tax Lot 1500 is 21.7% of the standard and may be considered as a minor variance. However, the request for both variances is proceeding together as one depends upon the other, and both may be considered through the procedure and criteria applicable to the major variance. In any case, the reasons supporting modification of one frontage support modifying the adjacent frontage.”

Staff: Reconfigured properties in the Gorge General Residential-5 zone must meet a minimum 50-foot front lot line requirement (**MCC 38.2860**). The front lot line parallels the Highway for both properties. The applicant is requesting the ability to establish a 35-foot front lot line width for Parcel A which equals a 30% reduction of the minimum required width. The applicant is also requesting approval to reduce the front lot line width of Parcel B to 39.13-feet which requires a 21% reduction. Because one of the requests requires relief in excess of 25% of the requirement, the applicant has chosen to have both considered under the Major Variance criteria. Staff supports this approach because the two reduction requests are directly related.

The applicant has obtained the necessary written consent from all property owners within 100-feet of both subject properties (Exhibit A3). This Major Variance request can be considered within this decision outside of a public hearing.

8.1 MCC 38.7600- VARIANCE APPROVAL CRITERIA, (A) The Approval Authority may permit and authorize a variance from the dimensional requirements of 38.2060 (C), 38.2260 (C), 38.2460 (E), 38.2660 (C), 38.2860 (C), 38.3060 (C), and 38.3260 (C) only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met.

Applicant: “The 1986 lot line adjustment changed the alignment of the common lot line and lot frontage for both lots. The minimum frontage requirement for the “R-10” Zone would have been 50 feet, identical to the present standard (MCC 38.3060.C). A total of 100 feet is not available: Tax Lots 1400 and 1500 were created with 61.26 feet and 12.87 feet of frontage, respectively. The lot line adjustment changed the frontage for each lot to 35.0 feet for Tax Lot 1400 and 39.13 feet for Tax Lot 1500. Although the frontage standard was not met with the adjustment, it was not met prior to the adjustment for Tax Lot 1500. The result of the change gave both lots had approximately equal frontage and a better arrangement with sufficient distance for the driveways serving each property. The location of a shop building (constructed about 1980) on Tax Lot 1400 precludes any other configuration at this point in time.

The present standard for “minimum front lot line length” is also 50 feet (MCC 38.3060.C). This standard cannot be satisfied, for the reasons described. A variance is requested to this requirement for both lots, discussed in a following section of this narrative.

Consideration of a variance to reduce the lot frontage for Tax Lots 1400 and 1500 is authorized under provisions of MCC 38.7600(A). The variance requested exceeds 25% of the standard, and therefore is classified as a “Major Variance” (MCC 38.7605(A)).”

Staff: Staff finds there are practical difficulties in applying the current 50-foot wide front lot line requirement to both lots because together they total more than 100-feet of frontage. This standard can

not be fully met by both lots. The common boundary to be adjusted currently provides only a 12.87-foot wide front lot line to the Highway for Parcel B which is quite substandard. The reconfigured lots will each have 35.00 and 39.13 wide frontages in an attempt to provide reasonable frontage for both lots rather than maximize frontage at the expense of the other as is the case with the current configuration.

8.2 MCC 38.7600(A)(1) - A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.

Applicant: "Circumstances relating to this property that are unusual and do not apply generally include the lack of approval for the 1986 lot line adjustment and arrangement of buildings and other features on the sites."

Staff: This situation is unique in that it is not common for properties in this area to have front lot line widths in the 12 foot range. Front lot line widths along this Highway corridor typically range from 50-100 feet wide. Staff finds the abnormal configuration of Parcel B warrants the request for a Major Variance to be considered.

8.3 MCC 38.7600(A)(2) - The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.

Applicant: "The 50 foot front lot line standard would restrict the use of these lots to a greater degree than other properties in the vicinity because all adjacent properties, except the flag lot immediately east of Tax Lot 1500, have far more than 50 feet of frontage. Tax Lot 1400 formerly had a frontage of 61.26 feet and Tax Lot 1500 had a frontage of 12.87 feet. The lot line adjustment provided a more suitable width for the driveways for both lots, however the total frontage of 74.13 feet did not permit 50 feet for both lots.

In addition, the owner of Tax Lot 1500 is not the owner who agreed with the lot line adjustment in 1986 and is not now willing to cooperate with the owner of Tax Lot 1400 (note that only one property owner signed the application). At this point, with the ownership of both properties and the arrangement of uses established, there is no reasonable or feasible way to turn back the clock and rearrange the lot lines to comply with code standards. In any case, one of the lots could not have complied with the 50 foot standard, as 100 feet of frontage was not—and is not—available.

Furthermore, compliance with the code standard would accomplish very little. No further development of either lot is possible. The driveways for both lots have been in place for over 20 years for Tax Lot 1500 and over 60 years for Tax Lot 1400. "New" lots are not being proposed; rather, the most practical and reasonable configuration for existing properties is requested."

Staff: It should be noted that the applicant states only one property owner has signed the major variance request form. The applicant has since provided all necessary signatures.

The vast majority of other properties in the area could be re-configured while still meeting the 50-foot front lot line requirement. This is because most properties already greatly exceed the minimum front width requirement and therefore can afford slight modifications without compromising the minimum width requirement. Both Parcel A and B, on the other hand,

currently have front lot line widths below the minimum and can not be adjusted in any way to meet the zoning requirement for both lots. Staff finds the minimum lot line width restricts these two properties to a greater degree than other properties in the area. This standard is met.

8.4 MCC 38.7600(A)(3) - The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.

Applicant: ““Materially detrimental” requires a fairly significant impact to the public or adjacent properties. If there were anything remotely detrimental about the present arrangement, someone would have identified the problem over the last 20 years. In fact, no such impacts at any level of “detriment” have been noted.

Staff: Authorizing the variance will not be detrimental to the public or surrounding properties. This is particularly obvious when considering the “post” property line adjustment proposed has been established for over 20 years with no issues of concern brought to Staff’s attention during the public comment period. Staff finds the request will not be detrimental or injurious in any way. This standard is met.

8.5 MCC 38.7600(A)(4) - The granting of the variance will not adversely affect the realization of the Management Plan nor will it establish a use which is not listed in the underlying zone.

Applicant: “No change is proposed to the present situation and therefore no impact, materially detrimental or otherwise, is anticipated to the public welfare or adjacent properties. The Management Plan has been adopted since the properties were established in their present shape and form. The area is zoned for five acre lots, even though no lot in “Montrose Park” is even close to this standard, with most lots in the one to two acre size range. The Management Plan recognized that long established patterns of development and uses could be continued.

A new residence may be constructed on an established lot in the GGR-5 Zone, even if that lot is less than five acres in area. The present proposal is even less impactful than most, in that it will replace a deteriorated dwelling with a new dwelling built to current building codes and minimization of visibility standards of the National Scenic Area. Granting a variance to the front lot line standard will have no impact on the realization of the Management Plan. In fact, approval of the variance will move in the direction of more, rather than less, compliance with requirements intended to promote the scenic values of the National Scenic Area.”

Staff: The requested variance will not establish a use and will not facilitate the establishment of a use in the future. Both properties are already developed with single family dwellings. The variance will simply help better balance the available access of both properties in an attempt to have both properties come into closer compliance with the current land use regulations. The Management Plan establishes zoning for parcels, which in this case has been determined to be residential. The purpose of the residential zoning district is to protect and enhance the character of residential areas which still protecting scenic, cultural, natural and recreational resources. The proposed variance will not have any detrimental impact on these types of resources and will not compromise the safety, look or feel of the residential corridor along the Sandy River. Staff believes the proposed variance will help reconfigure both properties in a way that better matches the rectangular parcel development pattern in the area by making the front lot line widths more even and better assuring save access to both lots in the event of a future emergency. Staff finds this standard is met.

PERMIT #3 OF 4 (NSA SITE REVIEW – REPLACEMENT DWELLING)

9.0 DIMENSIONAL REQUIREMENTS

The required setbacks from property lines in the base zoning code must be met for this proposal. As outlined in MCC 38.3060(C), the minimum yard dimensions and maximum structure heights are as follows (MCC 38.3060(A)):

- **Front (30-ft), Side (10-ft), Street Side (30-ft), Rear (30-ft)**
- **Maximum Structure Height – 35 feet**

Applicant: “The lot was probably created in the 1940’s as part of an unrecorded “Montrose Park” plat. The lot and the lot to the east (previously identified as Tax Lots 76 and 83, now Tax Lots 1400 and 1500, respectively) were acquired in approximately the present form and size in 1969. In 1986, a lot line adjustment realigned the common lot line and the ownership was separated. County records do not show that the lot line adjustment was approved.

The lots are pre-existing and non-conforming for lot area and dimensional standards. The lot line adjustment changed the alignment of the common lot line and lot frontage for both lots. In order to resolve the questioned lot line adjustment, this application includes a request for retroactive approval of the lot line adjustment. Applicable code requirements are discussed in a separate narrative...The proposed residence will be located 217 feet from the HCRH (front) and 109.9 feet from ordinary high water line; the rear property line is approximately 164 feet from the residence and in the Sandy River. The eaves of the new building will be eight feet from the northwest and between 8’ 3-1/2” and 22’ 9” from the southeast property line. A variance is requested to this standard, discussed in a separate narrative. The proposed residence will be 21 feet-6 inches in height. “Standards of this section can be satisfied as proposed. “

Staff: The following National Scenic Area site review for the replacement dwelling below assumes the proposed Property Line Adjustment (with associated Major Variance) has been approved and properly executed (Exhibit A12). The new dwelling will be approximately 21.5 feet tall and will be located approximately 160 feet from the rear property line and over 200 feet from the front property line. The applicant has requested a Minor Variance to allow location of the roof eave 8 feet from the western property line and 8 feet, 3.5-inches from the eastern property line. The request for minor variance for this encroachment was not approved (see Finding 15.2). This approval is conditioned so that encroachment in to the two side yards is not authorized and modified plans must be submitted prior to plan signoff. As conditioned, this standard is met.

10.0 ACCESS

Any lot in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles (MCC 38.3090).

Staff: Both lots abut the Historic Columbia River Highway. Changes to the location of the existing access points are not proposed to either property. This standard is met.

11.0 APPROVAL CRITERIA – GENERAL MANAGEMENT AREA

11.1 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: "Please refer to the site plan and building elevations. The new residence will require minimal grading, as the site is virtually flat where the house will be placed and is already partially occupied by the existing residence. The new residence must be located above the 100-year flood plain (elevation: 47 feet), which is approximately the mid-point of the bank; the new residence will be at the top of the bank, at an elevation of 60 feet (finish grade). Grading will be limited to that which is necessary to length the existing driveway and foundation, and satisfactory finish grades around the residence. A grading plan is not included as only 45 cubic yard of earth-moving is anticipated."

Staff: Staff concurs with the applicant. No new roads are proposed. The new dwelling will be located in roughly the same spot as the existing dwelling on a flat plateau. No other building location on the property would require less grading. This standard is met.

11.2 MCC 38.7035(A)(2) - New buildings shall be compatible with the general scale (height, dimensions and visible mass) of similar buildings that exist nearby. For purposes of applying this standard, the term nearby generally means buildings within ¼ mile of the parcel on which development is proposed.

Applicant: "The proposed residence will have a main floor area of 2,684 square feet, plus a 764 square foot garage and 225 square foot covered porch/patio on the river-side of the building, forming an extended eave to shade rear windows. "Nearby" is defined in the MCC as properties within one-quarter mile of the site, or about 1,300 feet from the site. For this property, "nearby" is taken to include three lots on the south and twelve to the north of the subject site, within the unrecorded "Montrose Park" plat. The average for 21 homes is an area of 2,379.7 square feet, however this figure represents floor area only and does not necessarily include garage or deck/patio area.

Table C: Height and Size Comparison of Nearby Homes

<i>Address on HCRH</i>	<i>Tax Lot/ID</i>	<i>House Area</i>	<i>Stories</i>
28724	800 #R341508	1,232 sq. ft	One
28724	900 #R341488	1,438 sq. ft.	One
28640	1000 #R341495	1,680 sq. ft.	One
28632	100 # R341481	3,214 sq. ft.	Two
28626	200 #R341452	1,760 sq. ft.	Two
<i>E.H.C.R.Hwy.</i>	1100 #R341413	1,968 sq. ft.	One
28606	300/#R341482	1,900 sq. ft.	One
28536	1500/#R341506	3,088 sq. ft.	Two
28534	1300 #R341454	1,679 sq. ft.	One
28528*	1400/#R341499	1,656 sq. ft.	One
28504	1200/#R341479	1,800 sq. ft.	One
28446	1100/#R341460	4,527 sq. ft.	Two
28432	1000/#R341469	1,704 sq. ft.	Two
28426	900/#R341468	2,400 sq. ft.	Two
28420	800/#R341467	2,967 sq. ft.	Two
28416	700/#R341466	2,592 sq. ft.	Two
28410	600/#R341498	2,369 sq. ft.	Two
28408	500/#R341465	3,482 sq. ft.	Two
28400	400/#R341464	2,100 sq. ft.	One
28352	300/#R341463	2,544 sq. ft.	One

28338	200/#R341462	3,667 sq. ft.	Two
28332	100/#R341461	1,863 sq. ft.	One
Average (excluding existing house)	21 residences	2,379.7 sq. ft.	

**Existing residence on Tax Lot 1400 will be replaced when this application is approved.*

The proposed structure is similar in area and height to other residences in the vicinity and therefore the proposed building will be generally similar to and compatible with adjacent development. The floor area is somewhat larger than the average (2,684 square feet compared to 2,379.7 square feet), however it is 59% the size of the largest home. Eleven of the 21 homes in the vicinity exceed 2,000 square feet in area (average area: 2,995.5 square feet). Smaller homes generally are older than newer homes. “

Staff: Staff’s analysis resulted in different numbers than presented by the applicant. This is likely due to a difference in the way the size of the proposed and surrounding homes was measured. For this analysis, Staff considers any attached and/or covered portions of a structure as part of the total square footage of a dwelling, as well as the footprint of a second story.

The most recent floor plans submitted by the applicant show a 2,759 square foot, one story dwelling with a 730 square foot attached garage and 225 square foot attached square foot covered porch/patio. The covered and enclosed square footage associated with the development totals 3,714 square feet. Out of the 22 properties within ¼ mile of the subject property, 21 contained dwellings many of which are two story dwellings taller than the proposed dwelling. The average size of the 21 dwellings in the area, including attached and covered structures, is 2125.8 square feet. The largest dwelling in the area totals 3,846 square feet which is larger than the proposed dwelling. Although the proposed dwelling is larger than the average size of nearby dwellings, it contains less covered and enclosed square footage than the largest dwelling in the area and will be shorter than at least seven other dwellings in the area. Staff finds the new dwelling will be compatible with the general scale of similar buildings that exist nearby. Copies of property assessment records used for this finding are presented in Exhibit S2. This standard is met.

11.3 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 point of access is proposed. A single driveway already is utilized by this property and no change is proposed to this point of access.”

Staff: No new vehicular access points are proposed to the Highway. This standard does not apply.

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

Applicant: “This requirement can be stipulated as a condition of approval, in the event that any vegetation is required with this permit.”

Staff: Landscaping maintenance and survival is a required condition of approval for the land owner of 28528 East Historic Columbia River Highway.

11.5 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: "The proposed residence will essentially replace the existing residence. The new house will fit on the site with no disturbance of existing vegetation on the slope, which will not be affected at all by construction activities, or the remainder of the property. No trees or other vegetation will be removed for this project as there is already an open area on the site."

Staff: A site plan has been submitted by the applicant illustrating the location, size and species of all existing and proposed landscaping in Exhibit A22. This plan will be used to determine compatibility with the Rural Residential landscape setting requirements. This determination is addressed within findings 11.25-11.28 of this decision.

11.6 MCC 38.7035(B) - All Review Uses and Conditional Uses visible from Key Viewing Areas:

38.7035(B)(1) Each development shall be visually subordinate to its setting as seen from Key Viewing Areas.

Applicant: "The property has frontage on and is visible from both the Sandy River and HCRH, therefore provisions of this section apply. However, the location for the house is barely visible from the Sandy River, owing to existing trees on the slope and the elevation difference from the home-site to the river, and not at all visible from the HCRH."

The house will utilize colors for siding and roofing materials that will minimize its appearance, i.e. darker tones that blend with the existing vegetation and shadows that were selected from the required palette (see Table B: Proposed Materials List). Samples of specific colors and materials are provided in Exhibit 8. Please also refer to the description of the residence and materials at the beginning of this document ("Site and Proposal Description").

Sandy River views: At present, the existing residence site is barely visible from the Sandy River, owing to the trees on the bank and elevation change as well as distance from the river's edge. The new residence location will be an additional 18 feet from the river and 24 to 40 feet from the top of the bank, reducing the visibility of the house location from the river. No existing trees or other vegetation between the home-site and river will be disturbed, owing to concern for the stability and erosion potential of the steep slope.

Historic Columbia River Highway views: The existing residence is not visible from the HCRH and the new residence will also be screened from the road, owing to distance from the highway, dense vegetation, and the mass of the existing garage."

Staff: The applicant has located the dwelling in an area heavily screened from the Highway and partially screened from the river. Views of the dwelling from the river will be further obscured by additional plantings of four, eight foot tall Red Cedars. The use of dark earth toned colors, building materials with low reflectivity, shielded external lights and a low profile structure have been proposed in an attempt to make the dwelling visually subordinate.

The new dwelling will be located south of (behind) the existing detached garage to help obscure views of the dwelling from the Highway. Eighteen coniferous fir and cedar trees help screen the development from the Highway as well as six maple trees and a range of under story brushy cover. The majority of trees on the property are much taller than the proposed home estimated in the field by Staff to range from 60-100 feet tall. Photos taken towards the proposed development location from the Highway in Exhibit A7 demonstrate the extent of the screening which will obscure the

development area. The development plan showing the size, location and species of all existing and proposed trees is presented as Exhibit A22.

The new dwelling will be moved back 18-feet further from the river from the existing home to take better advantage of the steep break in slope down to the river which will help obscure views of the lower portion of the structure (Exhibit A22 & A8). The upper property plateau is located over 30-feet higher than the Sandy River making the break in slope a significant topographic feature that can be utilized to help obscure the lower portions of the one story structure from the eastern side of the Sandy River. Three fir trees and 19 maples are located both along the steep slope and at the top of the slope between the river and existing dwelling which will help obscure views of the new home. Although 12 additional maples are located at the Sandy River's edge, they are located over 30 feet in elevation below the proposed home and therefore will not provide the same amount of screening as the other trees. Because the majority of vegetation between the new home and river is deciduous, the applicant has proposed planting 4, eight foot tall Red Cedars at the top of the slope between the new home and river to increase the amount of screening from this Key Viewing Area.

The exterior of the home will be painted with Sherwin Williams Duration "Griddle Gray -8411" and "Daguerrotype-8403" colors which are similar in color to dark brownish grey cells B16 and C 16 respectively within the Building in the Scenic Area Scenic Resources Implementation Handbook (pages 18-19). Both colors are dark earth toned recommended for visible sites.

For the exterior of the home, the applicant is proposing a mix of textured stucco, James hardie "select cedarmill" horizontal lap siding and "cedarmill" vertical siding, both of which are roughly textured with a widely spaced faux wood grain. Areas under dormers will be sided with cedar shakes stained with Behr DP-531 dark brown stain resembling dark earth toned color C14 of the Handbook. The applicant is proposing a "Bavarian Black" faux slate roof by Crowe Building Products. This 100% recycled material is part of an "Authentic Roof" line designed to mimic natural materials, be light weight, require low maintenance and provide some level of fire protection. The sample provided by the applicant contains the rough wavy and flakey edge texture common to slate and is black in color similar to cell A1 of the Handbook.

Six exterior lights are proposed on the back of the home facing the river and four facing the Highway. These lights by Kichler (#9670AZ) are covered to direct light downward and minimize light pollution. Approximately five, 13-watt flush mounted lights will be distributed around the home under the soffit roof overhangs. Flush mounted lighting is acceptable because the roof itself acts as the light shielding. Rogue River "Swede Basin" stone accents will cover the chimney, lower four foot of the dwelling and a 6.5 foot wide wall section on the south side of the home. This grayish-tan stone matches the color and texture of the surrounding cliffs and exposed gravel bars along the Sandy River. The two garage doors on the east side will be paneled to create texture and avoid presenting a flat, large smooth surface to the Highway.

The amount of window glass on the north side of the home facing the Highway is minimal with only two narrow 2-foot tall windows on the main level and 10 small 1.5 x 1.5-foot windows near the roofline to provide additional natural light inside the home. The amount of windows along the south elevation includes 10 tall, narrow door shaped windows, four of which will be located 10 feet under the covered porch overhang reducing possibility of reflection towards the river. Two standard sized window wells (with three window sections each) will be located at either end of the dwelling facing the river. The east and west elevations present roughly as much window glass as does the north elevation facing the Highway (Exhibit A23). This approval is conditioned such that

building materials, including windows, should have exterior visible light reflectivity ratings less than 11%, as recommended by the Handbook for sites located in the foreground of Key Viewing Areas.

The applicant has adequately spaced windows apart on all elevations to avoid the creation of a continuous glass surface facing any Key Viewing Area. The amount of proposed glass in proportion to the wall exposure ranges from the “Windows with Fewer Windows” to the “Houses with More Windows: Well Screened” columns on page 27 of the Handbook. The elevation facing the river contains the most glass area. The applicant has estimated the amount of glass facing the river does not exceed 15% of the rear façade, including patio doors. Considering the topographic obstruction created by the steep river bank that will help obscure the lower portions of the home from the eastern side of the river and the amount of existing and proposed screening between the home and river, Staff finds the amount of glass proposed is reasonable and consistent with the Handbook recommendations for this type of site. The applicant has also adhered to the Handbook recommendation on Page 26 that no individual window should exceed 50 square feet. In fact, the majority of windows proposed range in size from 10-14 square feet with a few in the 30 square foot range.

In conclusion, Staff finds that the one story design utilizing dark natural building materials, shielded lighting and the existing vegetation for screening is adequate to ensure the development will be visually subordinate as viewed from all Key Viewing areas assuming the supplemental four cedars are planted to provide additional screening between the home and river. As conditioned, this standard has been met.

11.7 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.

Applicant: “The new residence is not expected to be visible from the HCRH, for the reasons described in the previous section. No new vegetation or other screening is proposed. The residence will be barely visible from the Sandy River, as the existing trees and other vegetation between the home site and the river will not be disturbed.”

Staff: The dwelling has the potential to present partially unobstructed views of the structure to the Sandy River which would likely contrast with the surrounding landscape if dark, natural building materials were not used, exterior lighting shielded and additional coniferous screening planted between the home and river.

Contrary to the applicant’s response, the land owner ultimately decided to propose four, eight foot tall Red Cedars between the new home and the river. Planting in this area was recommended by Staff when considering that the majority of screening between the home and river is deciduous and therefore will not be as effective during winter months. Staff’s application of the conditions that only the proposed building materials be used, existing vegetation be maintained and that the proposed landscaping be installed and maintained is reasonable considering the distance of only 100 feet to the Sandy River and a few hundred feet to the Highway. These types of conditions are common and are proportionate to the potential visual impact a dwelling could have on this site.

11.8 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 applicant is aware of only one new project in the immediate vicinity of his property, as nearby lots already are occupied by residences. Potential visual effects of the proposed new residence on the site include the following:

1. The new residence will be located between 24 and 40 feet from the top of the bank, over 100 feet from the Sandy River. The new residence will be somewhat visible, but will be screened by existing trees, distance, and elevation change. The new residence will also utilize darker colors, so will blend into the setting to a greater degree than the existing structure.

2. The new residence will not be visible from the HCRH, due to the vegetation between the existing garage and the highway, and the mass of the garage. The choice of building elements, textures, and colors will be designed to minimize the visibility of the structure from the Key Viewing Areas, in compliance with requirements of this section."

Staff: In addition to the applicant's reasoning, this approval will not have any measurable cumulative effect on the area because the existing dwelling will be removed resulting in no increase to the number of homes within this residential corridor. The applicant has signed a replacement dwelling agreement assuring the existing dwelling will be removed from the property prior to occupancy of the new dwelling (Exhibit A14). This standard is met.

- 11.9 MCC 38.7035(B)(4) - In addition to the site plan requirements in MCC 38.0045(A) applications for all buildings visible from key viewing areas shall include 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).**

Applicant: "Please refer to the description of the proposed residence in this narrative (especially the "Site and Proposal Description," pages 2-3), Exhibit 4: Building Plans, and Exhibit 8: Proposed Materials and Samples for this information."

Staff: The necessary application materials have been submitted.

- 11.10 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: "As previously discussed, the site of the new residence will be virtually invisible from the HCRH and barely visible from the Sandy River, certainly less visible than the almost-white painted existing residence. No buffer area or protected resource will be affected by the location of the new residence."

Staff: No new roads are proposed. The applicant proposes resurfacing the existing gravel driveway with blacktop along the first 180 linear feet and a mix of concrete and stone pavers the final 35-feet to the dwelling (Exhibit A22). The new dwelling will be located behind the existing detached garage to minimize presentation to the Highway. The proposed location also utilizes the

extensive screening north of the garage to help screen the dwelling. This location also utilizes existing screening between the home and river and the steep break in slope leading down to the river to help obscure views of the lower portion of the structure from the river. Moving the structure further away from the river would bring it closer to the highway and vice versa. The proposed location is outside the 100-foot riparian area buffer and 100-foot scenic corridor buffer. Staff finds the proposed location best meets this standard. This standard is met.

11.11 MCC 38.7035(B)(7) - New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.

Applicant: "Please refer to the previous responses. The site of the new residence complies with the aims of the NSA requirements to retain the special views and qualities of the area while providing the ability of a property owner to construct a dwelling."

Staff: The southern wall of the proposed home will be set back roughly 30-feet from the steep 33-foot tall river bank to help obscure views from the river. The proposed dwelling foundation will be located roughly 10 feet from the closest existing drain field line limiting the ability to move the dwelling much further from the river. The proposed location utilizes existing tree cover to the north and south to help obscure views of the development. This standard is met.

11.12 MCC 38.7035(B)(8) - Existing tree cover screening proposed development from key viewing areas shall be retained as specified in MCC 38.7035(C).

Applicant: "No existing trees are proposed to be removed on the site."

Staff: No tree removal is proposed by the applicant nor authorized by this decision.

11.13 MCC 38.7035(B)(9)(3) - Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from Key Viewing Areas.

Applicant: "Existing contours will be disturbed only for construction of the residence. Following construction, the slope around the residence will be returned to previous conditions, to the extent possible, and managed to prevent erosion. Along the embankment above the Sandy River and from the HCRH, there will be no apparent change in the view of the site, except that the new residence will be less visible than the existing residence."

Staff: No new driveways are proposed. No exposed cut banks will result from the construction on this flat portion of the property. It is not anticipated that temporary fill will be visible from the Highway due to the thick vegetative screening or from the river and due to the 33 foot tall drop off to the river obscuring views up onto the flat portion of the site from the river. No permanent fills are proposed. This standard is met.

11.14 MCC 38.7035(B)(10) - 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. The Scenic Resources Implementation Hand-book includes a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this code, including those that meet recommended thresholds in the "visibility and Reflectivity Matrices" in the Implementation Handbook. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual sub-ordination.

Recommended square footage limitations for such surfaces are provided for guidance in the Implementation Handbook.

Applicant: "Please refer to the materials list provided in response to 38.7035(B)(4) and the materials samples provided as Exhibit 8. The applicant is willing to consider alternatives but believes the materials chosen satisfy this criterion."

Staff: It has been determined in finding 11.6 that all building materials qualify as either non or low-reflective materials. Detailed descriptions of these materials are presented in that finding. This approval is conditioned such that all exterior building materials shall be low reflectivity with all exterior glass having exterior visible light reflectivity rating less than 11%. As conditioned, this standard is met.

11.15 MCC 38.7035(B)(11) - 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: "A minimum of exterior lighting is proposed for the building, as noted on the building elevations. Such lighting will be down lighting, on the patio, at the front entry, and garage doors. Fixtures will minimize scattering light beyond the points where necessary for safety. The type of light proposed is a "Kichler 1-light Architectural Bronze Wall Mounted." Under-eave lights will be six-inch round 13-watt fluorescents with dark reflectors. Product sheets are included with the exhibits."

Staff: It has been determined in finding 11.6 that all exterior lighting will be shielded. A detailed description of the proposed lighting is provided in that finding. This approval is conditioned that only downward directed and hooded or shielded lighting is approved. As conditioned, this standard has been met.

11.16 MCC 38.7035(B)(12) - Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.

Applicant: "Colors for the structures were chosen from the recommended palette. Colors and materials are listed in Table B and samples are provided in Exhibit 8."

Staff: It has been determined in finding 11.6 that all exterior colors proposed will be dark-earth toned as recommended by the Handbook. This approval is conditioned such that only dark earth toned colors can be used. This standard has been met.

11.17 MCC 38.7035(B)(15) - 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: "As viewed from the Sandy River, the top of the bank is not the "skyline". In fact, the top of the bank merges with background vegetation on the site and is notable only because the residence is perched at the edge of the bank. The existing residence and the new residence will not be visible from the highway."

Staff: The dwelling will be located within the Sandy River canyon and therefore will have cliffs to the north and south of the home that will prevent the home from extending above the skyline as viewed from the Highway and River. This standard is met.

11.18 MCC 38.7035(B)(17) - The following standards shall apply to new landscaping used to screen development from key viewing areas:

(a) New landscaping (including new earth berms) shall be required only when there is no other means to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

Applicant: "No new landscaping is proposed, except for ground cover immediately north of the residence over the old driveway and septic system; this section does not apply."

Staff: After submitting the response to this standard, the applicant has decided to propose supplemental landscaping between the home and river to help provide additional screening in this area in the form of four, 8-foot tall Red Cedars (Exhibit A22). This is a last step measure to provide greater assurance that the dwelling will be visually subordinate as viewed from the river during winter months. Primary measures have been proposed included locating the dwelling behind the existing detached garage as viewed from the Highway, locating the dwelling as far from the river bank edge as possible to provide partial topographic screening, locating the dwelling amongst existing mature vegetation, eliminating the need for tree removal, the use of dark earth toned colors and a one story structure. Staff finds the new landscaping proposed between the home and river is required to ensure the structure will be visually subordinate. Considering the amount of screening on the rest of the site, Staff finds additional screening on the west, north and east sides of the home is not necessary.

11.19 MCC 38.7035(B)(17)(b) - If new landscaping is required, it shall be used to supplement other techniques for achieving visual subordination.

Staff: The other techniques used to achieve visual subordination are discussed in detail within the previous finding. The proposed landscaping is supplementary measure proposed by the applicant. This standard is met.

11.20 MCC 38.7035(B)(17)(c) - Vegetation planted for screening purposes shall be of sufficient size to make the development visually subordinate within five years or less of commencement of construction.

Staff: The recommended planting size for Western Red Cedars is 5-10 foot tall within the building in the Scenic Area Scenic Resources Implementation Handbook. The eight foot tall proposed Red Cedars are of sufficient size to provide supplemental screening of the one story dwelling located partially behind a tall slope break, and partially behind screening from roughly 40 existing trees as viewed from the river. This standard is met.

- 11.21 MCC 38.7035(B)(17)(d) - Landscaping shall be installed as soon as practicable, and prior to project completion. Applicant. The property owner(s), and their successor(s) in interest are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.**

Staff: This approval is conditioned such that the owner of 28528 East Historic Columbia River Highway shall install the landscape plan in Exhibit A22 between September 1st and May 15th as recommended by the National Scenic Area Scenic Resources Implementation Handbook for west side sites. As conditioned, this standard is met.

- 11.22 MCC 38.7035(B)(17)(e) - The Scenic Resources Implementation Handbook includes recommended species for each landscape setting consistent with MCC 38.7035(C) and the minimum recommended sizes for tree plantings (based on average growth rates expected for recommended species).**

Staff: Western Red Cedar (Genus species *Thuja plicata*) is a recommended large native tree on the referenced plant list. These trees are a drought tolerant and appropriate for riparian areas with some shade on the west side of the Columbia River Gorge. The subject property matches this description. The applicant has also indicated that acidity levels of the soil dictate the types of plantings that will thrive and that in his experience, Red Cedar will do well. The applicant will be required to plant this recommended Genus species of Red Cedar as a condition of this approval. As conditioned, this standard is met.

- 11.23 MCC 38.7035(B)(24) - New buildings shall not be permitted on lands visible from Key Viewing Areas with slopes in excess of 30 percent.**

Applicant: "The steeply sloped area of the site will not be utilized for the new residence, which will be located on the relatively flat upper terrace. No new activity is proposed is proposed for the steeply sloped bank above the river. The property owner is quite aware of the high potential for erosion of the sandy soil on the bank and has no plans for disturbing existing vegetation on the slope."

Staff: Staff concurs with the applicant. This standard is met.

- 11.24 MCC 38.7035(B)(25) - All proposed structural development involving more than 100 cubic yards of grading on sites visible from Key Viewing Areas 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 (information in MCC 38.7035(B)(25)(a) & (b)):**

Applicant: "The proposed new residence will require displacement of approximately 45 cubic yards of material to create a suitable location for the new foundation. Therefore, a grading plan is not required."

Staff: The applicant has confirmed less than 100 cubic yards of grading will occur. This estimate seems reasonable considering the flat site. This approval does not authorize more than 100 cubic yards of grading. This standard is met.

- 11.25 MCC 38.7035(C) - All Review Uses and Conditional Uses within the following landscape settings, regardless of visibility from KVAs: Rural Residential - 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: "No existing trees will be removed. This is possible because a large open area is available between the existing residence and the garage for the location of the new residence."

Staff: The applicant has indicated no trees will be removed. This standard is met.

- 11.26 MCC 38.7035(C)(3)(b) - 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.**

Applicant: "No existing trees will be removed. This is possible because a large open area is available between the existing residence and the garage for the location of the new residence."

Staff: As stated in the previous finding, all tree cover will be retained. This standard is met.

- 11.27 MCC 38.7035(C)(3)(b)(2) - At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.**

Staff: All four proposed Western Red Cedar are listed as native trees, recommended for screening in the Building in the Scenic Area Scenic Resources Implementation Handbook.

- 11.28 MCC 38.7035(C)(3)(b)(3) - At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.**

Staff: All four trees will be coniferous. This standard is met.

- 11.29 MCC 38.7035(D) - All Review Uses and Conditional Uses within scenic travel corridors: 38.7035(D)(1) For the purposes of implementing this section, the foreground of a Scenic Travel Corridor shall include those lands within one-quarter mile of the edge of pavement of the Historic Columbia River Highway and I-84.**

Applicant: "This site is entirely within one-quarter mile of the HCRH"

Staff: Staff concurs.

- 11.30 MCC 38.7035(D)(2) - All new buildings and alterations to existing buildings, except in a GGRC, shall be set back at least 100 feet from the edge of pavement of the Scenic Travel corridor roadway.**

Applicant: "The proposed residence will be located 217 from the HCRH, more than satisfying this standard."

Staff: The new dwelling will be further than 100 feet from the edge of pavement of the Historic Columbia River Highway. This standard is met.

12.0 CULTURAL RESOURCE CRITERIA (MCC 38.7055)

A reconnaissance level cultural investigation shall be performed as required by MCC 38.7045 (A). As stated in MCC 38.7045 (B), the cultural resource review criteria shall be considered satisfied if no cultural resources are known to exist in the project area, a historic survey demonstrates that the proposed use would not have an effect on historic buildings and no substantiated comment is received during the comment period provided in MCC 38.0530(B).

Applicant: A cultural resource study has not been performed for this site. The location for the residence is on a terrace that has been utilized for a residence, septic system, landscaping around the residence, and other related activities for over 60 years. However, if artifacts are encountered in the course of construction of the residence or any site work, appropriate officials will be contacted.

Staff: Margaret Dryden, Heritage Resources Program Manager for the Columbia River Gorge National Scenic Area has determined a cultural reconnaissance survey was not required (Exhibit X7). Ms. Dryden's field research indicated that the dwelling to be replaced may be historic and recommended consultation with the State Historic Preservation Office. Staff contacted Stephen P. Poyser, Review and Compliance Specialist with the State Historic Preservation Office, who reviewed the project and determined that the 1941 dwelling to be replaced is not eligible for the National Register of Historic Places. The only comments submitted related to cultural concerns were submitted by the following two individuals: Dennis Griffin, PhD., RPA, State Archaeologist, State Historic Preservation Office (Exhibit X2) & Johnson Meninick, Cultural Resources Program Manager, Confederated Tribes and Bands of the Yakama Nation (Exhibit X3). These concerns are addressed within Finding 6.0. As conditioned, Staff finds the GMA Cultural resource review criteria of **MCC 38.7045** have been satisfied.

12.1 GMA Stream, Lake and Riparian Area Review Criteria (MCC 38.7060).

12.2 A stream, lake and riparian area review is required for a proposals within stream, pond and lake buffer zones as determined by MCC 38.7060. Uses not listed in MCC 38.7060(A) and (B) may be allowed in riparian areas when approved pursuant to MCC 38.7060(D) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085.

Applicant: The site is located within the buffer area for the Sandy River, however the residence will be located over 100 feet from the Sandy River, which will satisfy the buffer standard of 100 feet (38.7060.E.1.a). The proposed residence will be located 18 feet further from the river than the existing residence. No new activities are proposed for the buffer area, which is almost entirely a steep embankment. New activities could cause erosion or bank instability, a situation the property owner wishes to avoid.

Staff: The Sandy River is used by anadromous fish and therefore requires new structures to be located at least 100-feet from the ordinary high water-mark. The applicant has revised the original submittal to meet this requirement for both the dwelling and the attached and covered porch/patio. This approval is conditioned so that no structural development can be located within 100 feet of the ordinary high water-mark. This 100-foot distance is measured horizontally from the ordinary high water-mark. As conditioned, staff finds this standard is met.

13.0 WILDLIFE CRITERIA (MCC 38.7065)

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

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

They will:

(a) Identify/verify the precise location of the wildlife area or site,
(b) Ascertain whether the wildlife area or site is active or abandoned, and
(c) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(2) The following factors may be considered when site plans are reviewed:

(a) Biology of the affected wildlife species.

(b) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron.

(c) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(d) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(e) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

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

(a) The sensitive wildlife area or site is not active, or

(b) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(4) If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Planning Director will incorporate them into the site review order and the wildlife protection process may conclude.

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

Applicant: No sensitive wildlife area or habitat has been identified on relevant maps or documents, other than the Sandy River, which is home to protected fish. The location of the new residence will be within 1,000 feet of the Sandy River. As noted in the previous discussion, the area of the site closest to the river will not be disturbed. The new residence will occur on the terrace, further from the Sandy River than the existing residence. No new impacts to protected fish

or other wildlife along the river and within the river are anticipated by this proposal, which should be sufficient to satisfy the standard in 38.7065.B and C.

Staff: The project is located within 1,000 feet of a sensitive wildlife area, that being the Sandy River. Mischa Connie, Habitat Biologist with the Oregon Department of Fish and Wildlife, provided comment that although the project does not pose significant impacts to fish or wildlife resources, the Sandy River has been identified as potential habitat for bald eagles and osprey. Ms. Connie has recommended that she be contacted immediately if any unknown wildlife (i.e. State/Federal listed species) take up residence nearby such as a raptor, etc. and that a qualified biologist should conduct a site visit if there is any question of species identification. Secondly, ODFW recommends that vegetation clearing only occur from August to March to avoid disturbance of nesting birds. These recommendations have been incorporated into a condition of this approval. Staff finds the necessary wildlife review steps were followed and that as conditioned, the proposed use would not impact the sensitive wildlife site.

14.0 RARE PLANT CRITERIA

A rare plant site review shall be required for any project within 1,000 feet of endemic plants and sensitive plant species (MCC 38.7070).

Applicant: “No rare plants have been identified on this site or in the vicinity. Therefore, no additional information, such as a protection and rehabilitation plan, has been provided.”

Staff: No known endemic or sensitive plants are mapped within 1,000 feet of the subject property. Staff finds the Rare Plant review criteria are satisfied.

PERMIT #4 OF 4 (MINOR VARIANCE)

15.0 SUMMARY OF MINOR VARIANCE REQUEST

Applicant: Applicable criteria and standards are found in the Multnomah County Code (“MCC”) Chapter 38 Columbia River Gorge National Scenic Area. The following sections of the MCC that apply to this project are shown in italics, while responses are provided in plain text.

Chapter 38 Columbia River Gorge National Scenic Area Residential Districts – GGR and GSR 38.3060(C) Minimum Yard Dimensions: Front 30 feet, Side 10 feet, Street Side 30 feet, Rear 30 feet; Maximum Structure Height – 35 feet

The placement of the proposed residence has moved a bit, owing to refinements in measurements, etc. As the site plan now shows, the residence will be located 217 feet from the HCRH (front) and 109.9 feet from ordinary high water line; the rear property line is approximately 164 feet distance and in the Sandy River. The eaves of the new building will be eight feet from the northwest and between 8’ 3-1/2” at its closest point to 22’ 9” along the southeast property line. Standards of this section cannot be satisfied as proposed and cannot be met due to site constraints. Therefore, a minor variance to the site yard setback standard is requested.

“Proposed Side Yard Setbacks

<i>Side yard</i>	<i>From the building</i>	<i>From the eave</i>
------------------	--------------------------	----------------------

<i>setback</i>	<i>wall</i>	<i>overhang</i>
<i>East side</i>	<i>11'5-3/4"</i>	<i>8'3-1/2" feet</i>
<i>West side</i>	<i>10'6" feet</i>	<i>8' feet</i>

The minimum standard specified in Multnomah County Code ("MCC") 38.300(C) for the side yard setback in the Gorge General Residential ("GGR-5") Zone is 10 feet, measured to the eave rather than from the building wall.

The building location has moved around somewhat from the original site plan, as the plan has been refined and due to a concern about the extension of the covered patio/deck on the river side of the house where the setback/buffer is 100 feet from the Ordinary High Water Line. Options are limited due to constraints with existing development and even though the lot is long and narrow. There will be approximately 217 feet between the new house and highway, however the septic system and drain-field, recently replaced, must be located no less than 10 feet from the new house. The septic system is located between the house site and existing garage. Therefore, house cannot be moved further from the Sandy River without requiring changes to the drain-field location and, potentially, impacting existing trees on the site.

This application for variance is part of an application for National Scenic Area permit to construct a new residence on Tax Lot 1400, to replace the existing house. The NSA permit is in conjunction with application for lot line adjustment. The 20-year old lot line adjustment does not affect the current problem for which a variance is requested, as space was added to Tax Lot 1400 by that change.¹

Staff: The applicant has adequately described the Minor Variance request at 28528 East HCRH. The minimum required side yard setback is 10-feet in this zone district. The applicant has requested the roof eaves to be located 8-feet from the western side lot line and 8-feet, 3.5-inches from the eastern side lot line. The maximum proposed encroachment of 2-feet equates to a 20% reduction of the 10-foot minimum setback requirement.

15.1 38.7605 VARIANCE CLASSIFICATION

(B) A Minor Variance is one that is within 25 percent of an applicable dimensional requirement. The Approval Authority is authorized to grant a Minor Variance in accordance with the following conditions:

- (1) Application shall be accompanied by the written consent of the owner or owners of each lot adjoining and across any street from the subject property;**
- (2) The form to be presented to each owner must include the zoning requirement, the amount of relief requested by the applicant and a declaration by the owner that the granting of the variance shall not harm the value and livability of his property.**

¹ Please refer to the legal description in the deed dated January, 1977 (Book 1154, page 1211), whereby Mr. and Mrs. Dempsey acquired the property. The original distance along the Sandy River for Tax Lots 1400 and 1500 was 90 feet and 120 feet, respectively. The LLA in 1986 shifted the point between lots northward along the Sandy River so that Tax Lot 1400 was left with 75 feet, however the straight line was given an "elbow" to add width alongside the existing residence. The width of Tax Lot 1400 was also reduced along the highway-side so that Tax Lot 1500 had additional frontage.

Applicant: "The application requests variance from the 10 foot side yard setback standard of MCC 38.3060(C) for the new residence proposed for Tax Lot 1400. The variation does not exceed 25%, and therefore must be considered as a minor variance. A letter was presented to neighboring property owners, as required by this section, and consent given. Copies of the letter and neighbor's signatures are attached, satisfying the requirement of this section."

Staff: The request qualifies as a Minor Variance request. The necessary written authorization has been provided from each land owner adjoining the property and across the street (Exhibit A4).

15.2 38.7600- VARIANCE APPROVAL CRITERIA

(A) The Approval Authority may permit and authorize a variance from the dimensional requirements of 38.2060 (C), 38.2260 (C), 38.2460 (E), 38.2660 (C), 38.2860 (C), 38.3060 (C), and 38.3260 (C) only when there are practical difficulties in the application of the Chapter. A Minor Variance shall met criteria (3) and (4).

Applicant: "Consideration of a variance to reduce the side yard setback for the residence proposed for Tax Lot 1400 is authorized under provisions of MCC 38.7600(A). The variance requested does not exceed 25% of the standard—17% and 20%, as explained—and therefore is classified as a "Minor Variance" (MCC 38.7605(B))."

Staff: The development locations on this property are effectively limited to the proposed building site near the center third of the property. The northern third of the property closest to the Highway is primarily dedicated to an existing driveway, detached garage and existing septic system and is too narrow for the proposed replacement dwelling. The southern third of the property closes to the river either consists of areas prone to flooding or steep river banks not appropriate for development. Although the new dwelling will be located near the widest portion of the property, the applicant has failed to demonstrate that there are *practical difficulties* in the application of the 10-foot minimum side yard setbacks of the zoning district at 28528 East HCRH (MCC 38.3060(C)).

The lot width in the proposed development area ranges from 106-feet wide at the south end of the covered porch/patio to 89-feet wide at the northern wall facing the Highway. After the 10-foot side yard setbacks are applied to both side yards, the available building envelope is reduced to approximately 69 feet on the north side of the home and 76 feet on the south side of the home. Considering the applicant's proposed dwelling has an approximate depth of 66-feet, Staff has estimated an available building area outside of the setbacks exceeds 4,700 square feet. This is an adequate area to site a dwelling without the need for a variance. The developable portion of the subject property is also wider than many of the lots in the area including Tax Lots 600 and 700 to the west in Section 6BC, and Tax Lot 900 to the east in Section 6BD. The subject property's configuration does not justify the need for a variance in this case.

The applicant can meet the minimum side yard setback requirements by reducing the width of the eave overhangs or by slightly reducing the overall footprint of the structure. In conclusion, **The evidence does not warrant authorization of the Minor Variance request for encroachment of the roof eaves because there does not appear to be a practical difficulty in the application of the standard. This standard is not met. The Minor Variance request is not approved.**

15.3 (3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.

Applicant: "Materially detrimental" requires a fairly significant impact to the public or adjacent properties. The reduction of the side yard setbacks might have some impact on the adjacent properties, but hardly anything rising to the level of a "materially detrimental" impact in an area that has been developed for residential uses for many years. No impact, materially detrimental or otherwise, is anticipated to the public welfare or adjacent properties by the proposed reduction of less than 25% in the side yard setbacks."

Staff: The proposed slight reduction into both side yard setbacks would not be materially detrimental to any adjoining property owner, the public, or any property in the vicinity. Adequate distance would be provided between the proposed structure and structures on adjoining properties to ensure adequate light passage, air circulation and privacy. The proposed eave encroachment would also occur in the air rather than near ground level where one could argue access to the lower portion of the subject property would be compromised in some way by the eave encroachment. This standard is met.

15.4 (4) The granting of the variance will not adversely affect the realization of the Management Plan nor will it establish a use which is not listed in the underlying zone.

Applicant: "The Management Plan has been adopted since the site and nearby properties were established in their present shape and form in "Montrose Park", an unrecorded subdivision and by the lot line adjustment in 1986. The area is zoned for five acre lots, even though no lot in the vicinity is even close to this standard, with most lots in the one to two acre size range. The Management Plan recognized that long established patterns of development and uses could be continued. The existing residence on Tax Lot 1400 was built approximately 60 years ago and is proposed to be replaced by a new residence.

A new residence may be constructed on an established lot in the GGR-5 Zone, even if that lot is less than five acres in area. The present proposal is even less impactful than most, in that it will replace a deteriorated dwelling with a new dwelling built to current building codes and will incorporate the minimization of visibility standards of the National Scenic Area.

Granting a variance to the side yard setback standard will have no impact on the realization of the Management Plan. In fact, approval of the variance will move in the direction of more, rather than less, compliance with requirements intended to promote the scenic values of the National Scenic Area: the new residence will be further from the river and will utilize materials and techniques to minimize visibility from Key Viewing Areas."

Staff: It has been determined by the Management Plan that this property should be zoned residential which is consistent with the proposed replacement dwelling request. Page II-61 of the Management Plan, lists a General Management Area goal for residential land is to "protect and enhance the character of existing residential areas." Replacing the existing white dwelling with a dark earth toned dwelling further from the river will accomplish this goal. The request to have the eaves encroach into the side yard setbacks would not compromise this objective. This standard is met.

CONCLUSIONS

Based on the findings and other information provided above, the applicant has carried the burden necessary for this National Scenic Area Site Review. The applicant's request to adjust the property line (with associated Major Variance) and to construct a replacement dwelling at 28528 East HCRH is also Approved. **The evidence submitted does not warrant authorization of the Minor Variance request for encroachment of the roof eaves because there does not appear to be a practical difficulty in the application of the standard. The Minor Variance request is not approved.**

EXHIBITS

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

Exhibits submitted by the Applicant:

EXHIBIT	PAGES	CONTENT
Exhibit A1	2	Application forms signed by Gary Dempsey and Pamela Feves
Exhibit A2	32	Narrative responses to the approval criteria
Exhibit A3	2	Required property owner signatures for non-hearing Major Variance
Exhibit A4	1	Required property owner signatures for Minor Variance
Exhibit A5	30	Deed records
Exhibit A6	1	Vicinity map
Exhibit A7	6	Camera location map and photos
Exhibit A8	2	Aerial photo and site line cross section
Exhibit A9	1	Zoning map of area
Exhibit A10	1	Assessment and Taxation Map of area
Exhibit A11	1	Copy of 1986 property survey
Exhibit A12	1	Proposed Property Line Adjustment tentative plan
Exhibit A13	4	FEMA Elevation Certificate with topography and floodplain map
Exhibit A14	1	Replacement dwelling agreement for 28528 East HCRH
Exhibit A15	2	Storm water certificate for new dwelling at 28528 East HCRH with associated letter
Exhibit A16	1	Certification of water service form
Exhibit A17		Certification of on-site sewage disposal form with Bureau of Development
		Services receipt and DEQ Certification of Satisfactory Completion for Subsurface or Alternate Sewage System
Exhibit A18	3	Fire district access review form
Exhibit A19	4	Fire district review fire flow requirements form
Exhibit A20	2	Site utility location description with Assessment and Taxation map
Exhibit A21	5	Copy of Pre-Filing meeting notes PF-06-176 (October 18 th , 2006)
Exhibit A22	1	Proposed development plan/landscaping plan
Exhibit A23	3	Proposed structural elevations and floor plan
Exhibit A24	1	Written request for 7 day processing toll beginning July 10 th , 2007
Exhibit A25	1	Acknowledgement that the applicant intends to provide information necessary to complete the application (received January 30 th , 2007)

Exhibits submitted by Staff:

EXHIBIT	PAGES	CONTENT
Exhibit S1	10	Permit records & structural assessment records for both properties with email from applicant related to structural improvements
Exhibit S2	22	Assessment and Taxation records of nearby dwellings used for comparable size analysis
Exhibit S3	1	2004 aerial photo showing approximate location of edge of Sandy River
Exhibit S4	1	Applicant's Instructions for Finishing A Property Line Adjustment
Exhibit S5	1	Surveyor's Instructions for Finishing a Property Line Adjustment

Miscellaneous Exhibits:

EXHIBIT	PAGES	CONTENT
Exhibit X1	1	Comments submitted 3/6/07 by Stephen Poyser, State Historic Preservation Office
Exhibit X2	1	Comments submitted 2/1/07 by Dennis Griffin, Oregon Parks and Recreation Department
Exhibit X3	1	Comments submitted June 22 nd , 2007 by Johnson Meninick, Confederated Tribes and Bands of the Yakama Nation
Exhibit X4	8	Comments submitted June 18 th , 2007 by Richard Till, Friends of the Columbia Gorge
Exhibit X5	1	Comments submitted June 18 th , 2007 by Bob Leipper, landowner
Exhibit X6	2	Comments submitted July 11 th , 2007 by Mischa Connie, Oregon Department of Fish and Wildlife
Exhibit X7	1	Comments submitted July 12 th , 2007 by Margaret Dryden, US Forest Service

Oversized Exhibits:

EXHIBIT	PAGES	CONTENT
Exhibit O1	1	Development plan showing existing and proposed development & existing and proposed landscaping
Exhibit O2	3	Structural elevations and floor plans of new dwelling
Exhibit O3	NA	Proposed building materials – samples and literature