

**MULTNOMAH COUNTY****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

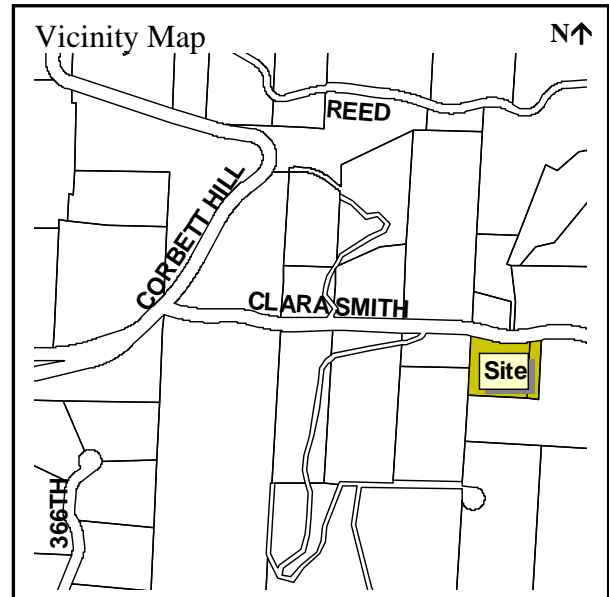
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-08-015**Permit:** NSA Site Review

Location: 37230 NE Clara Smith Road
 TL 600 & 700, Sec 26DC, T 1N, R 4E,
 W.M.
 Tax Account #R94426-0150 &
 R94426-0700

Applicant: Eric Windust

Owner: Eric Windust, Brianne King Windust &
 John Windust

Zoning: Gorge General Residential – 5 (GGR-5)

Summary: Property owners are requesting a NSA Site Review to replace their existing single family dwelling with a new 6,430 sq. ft., stick-built dwelling with attached garage. In addition, they propose to construct a new 1,500 sq. ft detached accessory building and Transportation Variance for a second driveway entering from Clara Smith Road. The subject property is zoned Gorge General Residential – 5 (GGR-5).

Decision: Approved with Conditions.

Unless appealed, this decision is effective Friday, October 24, 2008, at 4:30 PM.

Issued by:

By: _____
 Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, October 10, 2008

Instrument Number for Recording Purposes: 2006-156294

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-3043, ext. 22597.

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

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, October 24, 2008 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): *General Provisions* - MCC 38.0015 Definitions, MCC 38.0030 Existing Uses and Discontinued Uses, MCC 38.0045 Review and Conditional Use Applications - Submittal Requirements.

Gorge General Residential – 5 (GGR-5) - MCC 38.3025 Review Uses, MCC 38.3060 Dimensional Requirements, MCC 38.3085 Off-Street Parking and Loading, MCC 38.3090 Access.

GMA Site Review Criteria – MCC 38.7035 GMA Scenic Review Criteria, MCC 38.7045 GMA Cultural Resource Review Criteria, MCC 38.7055 GMA Wetland Review Criteria, MCC 38.7065 GMA Wildlife Review Criteria, MCC 38.7070 GMA Rare Plant Review Criteria, MCC 38.7080 GMA Recreation Resource Review Criteria.

Street Standards: MCC 29.500 et al, Multnomah County Road Rules (MCRR) 4.200, MCRR 4.300, MCRR 16.00 et al.

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

Scope of Approval

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

Conditions of Approval

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

1. **Within 30 days of this decision becoming final and prior to building permit sign-off, the property owner shall record the Notice of Decision through the Conditions of Approval with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and filed with Multnomah County Land Use Planning. Recording shall be at the applicant's expense [MCC 38.0670].**
2. Prior to Land Use Planning sign-off of the building permit, the applicant shall complete the Lot Consolidation of Tax Lot 600 & 700, 1N4E consistent with permit approval, T1-08-010.
3. At the time the rough framing of the dwelling is complete, a licensed surveyor shall measure the height of the structure from the lowest finished grade adjoining any exterior wall of the building and the highest point of the roof for each side of the dwelling. If the finish grade has not been established at the time the rough framing of the dwelling is complete, the property owner or his representative shall establish a survey point which represents the finished grade. The required survey shall utilize this point as the lowest grade. A copy of the survey shall be submitted to Land Use Planning within 15 days of completion of the rough framing. If the house exceeds the maximum height of 35 ft on any elevation, the project shall be stopped until such time as the building design is brought into compliance with the code. No portion of the building may exceed the maximum height requirement including chimneys, vents or other mechanical equipment components. [MCC 38.3060(C)]
4. At the time the rough framing of the accessory structure is complete, a licensed surveyor shall measure the height of the structure from the lowest finished grade adjoining any exterior wall of the building and the highest point of the roof for each side of the accessory structure. If the finish grade has not been established at the time the rough framing of the structure is complete, the property owner or his representative shall establish a survey point which represents the finished grade. The required survey shall utilize this point as the lowest grade. A copy of the survey shall be submitted to Land Use Planning within 15 days of completion of the rough framing. If the accessory structure exceeds the maximum height of 24 ft on any elevation, the project shall be stopped until such time as the building design is brought into compliance with the code. No portion of the building may exceed the maximum height requirement including chimneys, vents or other mechanical equipment components. [MCC 38.3060(C)]
5. If at the time of the required building height survey in Condition No. 1 & 2, the finished grade has not yet been completed, the property owner shall have a second building height survey completed for either of the buildings at time of occupancy of the building to verify that neither structure exceeds the maximum height requirement of the zone. A copy of the survey shall be submitted to Land Use Planning within 15 days of its completion. If either structure exceeds its respective height limitation, the property owner shall bring the building into compliance by modifying the building or finished grade around the structure. [MCC 38.3060(C) for dwelling & MCC 38.3025(A)(3)(b) for accessory structure]
6. **Prior to any excavation or grading on the site, the property owner shall submit to the County Land Use Planning office an affidavit signed by each excavation or grading equipment operator demonstrating that person understands the requirement to immediately stop work if any archeological artifacts and/or human remains are found on-site during the project. That affidavit shall also include a statement that the equipment operator also**

understands the requirement to notify the County Planning Director and the Gorge Commission within 24 hours of any such discovery. All ground disturbing activity on-site shall be carried out in a cautious and conscience manner so as not to disturb or damage any archeological sites and human remains that may be on site.

- a. The following procedures shall be implemented if any Cultural Resources and/or Archaeological Resources are discovered on the property during this project, including finding any evidence of historic campsites, old burial grounds, food/medicine plants [MCC 38.7045 (L)].**
 - i. Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.**
 - ii. Notification – The project applicant shall notify the County Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours. This includes the Yakama Nation, contact Cultural Specialist for the Cultural Resources Program at: (509) 865-5121 extension 4720; FAX number (509) 865-4664. Procedures required in MCC 38.7045 (L) shall be followed.**
 - iii. Survey and Evaluation – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (see ORS 273.705 and ORS 358.905 to 358.955). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC 38.7045 (C) (2) and MCC 38.7045 (E).**
 - iv. Mitigation Plan – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J). Construction activities may recommence when the conditions in the mitigation plan have been executed.**
- b. The following procedures shall be in effect if human remains are discovered during excavation or construction [human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts [MCC 38.7045 (M)]:**
 - i. Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.**
 - ii. Notification – Local law enforcement officials, the Multnomah County Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.**
 - iii. Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.**
 - iv. Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.**

- c. **Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760.**
- i. **If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report standards of MCC 38.7045 (I).**
 - ii. **The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the standards of MCC 38.7045 (J) are met and the mitigation plan is executed.**
7. The property owner(s) shall be responsible for the proper maintenance and survival of all existing vegetation on the property, except the trees designated for removal as part of this proposal and any nuisance species such as evergreen blackberry or knot weed. The existing tree cover on the property shall be retained. If an existing tree or other vegetative cover dies or becomes diseased, the property owner shall replace the lost tree/vegetation within the next growing season with an appropriate evergreen tree for the location. The limbs on the trees may not be trimmed upwards to increase visibility of the property. [MCC 38.7035(A)(4) & MCC 38.7035(C)(3)(a)]
8. By May 1, 2009 the property owner shall plant all proposed trees within the front yard setback as shown on Exhibits A.21 and Exhibit B.5. [MCC 38.7035(B)(1)]
9. Any and all exterior lighting on the northern, western or eastern elevations for the dwelling and accessory structure shall be hooded and shine downwards. If the property owner wants to use the type of light fixture submitted in Exhibit A.7 on these elevations, the fixture shall be fitted with a dark sky sleeve to shield the light and directed downwards. [MCC 38.7035(B)(11)]
10. Prior to land use approval of the building permit, the applicants shall modify the elevations of both structures to include detailed notes for the color of the siding, stone accents, trim, garage door, front door, windows, etc. The colors chosen shall fall within the color range of A.14 through A.16 and/or B.14 through B.16 of the Scenic Resources Implementation Handbook's Recommended Colors. The composition roof shall be consistent with the color choice submitted as part of Exhibit A.7. The window frames must be a dark earth-tone color. The use of white or light tan window frames is not permitted. [MCC 38.7035(B)(1)]
11. All windows on the northern, eastern and western elevations of the dwelling and accessory structure shall have a reflectivity rating of 13% or less. [MCC 38.7035(B)(10)]
12. No portion of the accessory building, dwelling or property shall be used for the operation of a business or the storage of equipment utilized for the business activity without first obtaining approval for a Conditional Use Permit for a home occupation or cottage industry. [MCC 38.3015]
13. **All natural vegetation shall be retained within the 50 ft stream buffer zone, except for nuisance species. Any area of ground disturbance within the buffer zone shall be restored with native vegetation.** [MCC 38.7060(D)(3)(b)]
14. The work to construct the infiltration trench for the dwelling within the 50 ft wide buffer zone shall occur during the dry season (May 1st to October 1st of each year) when the intermittent stream does not have active flow. [MCC 38.7060(D)(3)(a)]
15. Prior to land use approval of the building permit, the applicant shall modify the site plan to show an additional silt fence immediately downslope of the disturbance area for the dwelling's infiltration trench. [MCC 38.7060(3)(f)]

16. Prior to land use approval of the building permit, the applicant shall relocated the infiltration trench for the accessory structure outside of the 50 ft stream buffer zone. [MCC 38.7060(D)(5)]
17. The planting of the infiltration trench for the dwelling and any other disturbed area within the 50 ft wide buffer shall be planted and restored within 90 days of the work's completion and by October 1st of the year in which construction occurs. [MCC 38.7060(D)(7)(h)]
18. Dedicate the necessary slope/drainage easement centered on the existing outlet/inlet of the drainage culvert located along the site's NE Clara Smith Road frontage to Multnomah County for road purposes. [MCRR 6.100]
19. Acquire a driveway permit for the site's two accesses onto NE Clara Smith Road and provide a 20 ft long paved approach. [MCRR 18.250]
20. Obtain the necessary permit(s) from Multnomah County for all work, fences & structures in the public right-of-way.

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

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

Findings of Fact

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

Project Description:

Applicant: The application is to replace an existing single family dwelling with an attached garage with a new single family dwelling with an attached garage in the GGR-5 zone district. The proposed dwelling is a two-story structure with a daylight basement. The structure is a finished 3148 square feet of living area, 910 square feet of garage area and 1230 square feet of unfinished basement area. At its highest point the dwelling reaches 34’ 10” in height. Across the north side of the dwelling is a covered porch that is 51 feet long and app. 6’ 6” wide. Across the south side of the dwelling is a covered area that runs 51 feet long and app. 6’ 6” wide. The attached garage sits underneath the house in the northwest corner. The project includes a proposed accessory structure that is 1500 square feet. The dimensions of the structure will be 30’ by 50’ by 27’2” tall. Both the dwelling and the accessory building have existing driveways accessing them and all utilities have been run to the property.

Staff: The proposed single family dwelling with attached garage is two stories in height with a daylight basement and garage facing the Columbia River. The basement/garage is 2,169 sq. ft. The first floor with front covered decks is 2,327 sq. ft. The second floor with rear covered deck is 1,934.5 sq. ft. Total proposed square footage for the dwelling is 6,430 sq. ft. in size. The materials to be used on the exterior of the dwelling are a mixture of stained timbers, cedar vertical siding, composition roofing and stone accents. The home will be placed in the same location as the existing dwelling. The driveway on the eastern edge of the property will be abandoned and replanted with vegetation. The existing middle driveway adjacent to the stream on the property will be used to access the dwelling.

The proposed single-story accessory building is 1,500 sq. ft. in size and 24 ft in height. The structure will have lap siding, stone accents, composition roofing & wood garage doors. The driveway on the west side of the property lined with boulders will be used to access the structure. A transportation variance has been requested for the second proposed driveway entrance.

Site and Vicinity Characteristics:

Applicant: The subject property is located south of Clara Smith Road east of Corbett Hill Road about a third of a mile. Access to properties east of Corbett Hill Road in this vicinity is gained via Clara Smith Road and Reed Road with a few access easements, private roads as well. Both of these roads run from Corbett Hill Road to the east for about a half-mile. The area east of Corbett Hill Road and along Clara Smith Road and Reed Road is in the Gorge General Residential – 5 (GGR-5) zone district.

Most of the properties in this area east of Corbett Hill Rd are developed with residential uses. The majority of these properties continue to be heavily forested except for the clearing around the homesteads. In this residential zone district area there are a few properties that are not developed with a residence. Generally these properties are covered with dense forest canopy. The residential properties along Clara Smith Road and Reed Road range in size from about a half acre to about 15 acres. At the east end of these two roads the land use and the zoning and uses change from residential to forestry with a couple of church camps to the southeast as well.

The terrain in the vicinity generally slopes downward towards the Columbia River as is shown on 2006 aerial photo with 10-foot contour line overlays include as Exhibit 1.1. The steepness of the slopes alternate between relatively steep slopes of 50 to 60 percent to areas in between that are relatively flat with slopes of a few percent to about 15 percent. The landform appears like a natural terraced formation. Most of the dwellings in the vicinity are located in the shallower sloped land areas. Both

Reed Road and Clara Smith Road are located at the south side of a shallow slope area towards its eastern end. The subject property is located in this area. Like most of the other properties in the vicinity, the subject property includes a relatively shallow sloped area near the road. To the south of this relatively flat area, the slope increases to about 20 to 25 percent, generally increasing to steeper slope further to the south.

The applicant proposes to re-use the existing driveways off of Clara Smith Rd. The dwelling site is positioned where the relatively flat part of the subject property begins to get steeper. The daylight plan will be cut into this part of the property. The slope of the land at the flatter section of the property is less than 2 percent and gradually increases to about 15 percent where the dwelling will be located. This is in the southeasterly corner of the property. The proposed accessory building is located on the west side of the property toward the center of the property. The slope of the land where the building will be located is less than 5 percent. The proposed septic location is an area that is flat.

The property is heavily forested with predominately conifers and mixed in deciduous trees. There are two clearings on the property. One where the existing house sits and the other where the proposed accessory building will be located.

1.00 ***Administration and Procedures***

1.01 **Type II Case Procedures**

MCC 38.0530(B): ...Upon receipt of a complete application, notice of application and an invitation to comment are mailed to the Gorge Commission; the U.S. Forest Service; the Indian tribal governments; the State Historic Preservation Office; the Cultural Advisory Committee; and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision...

Staff: The application was submitted March 20, 2008 and was deemed complete on June 11, 2008. An "Opportunity to Comment" notice was mailed on June 19, 2008 to all properties within 750 feet of the subject property and to various Gorge Agencies and Indian Tribes in compliance with MCC 38.0530. Comments were received from adjacent neighbors, the Friends of the Columbia Gorge, Columbia River Gorge Commission, SHPO and US Forest Service (Exhibit D.1 through D.6). The Friends and the Columbia River Gorge comments are related to the visual subordination and the dwelling being generally consistent in size with other dwellings in the area. The US Forest Service & SHPO comments were directed towards the Cultural Resource Review criteria listed under MCC 38.7045. The neighbors are concerned with the size and height of the accessory structure, use of the property for an illegal business, and containment of water generated by newly created impervious surfaces.

1.02 **Proof of Ownership**

MCC 38.0550 Initiation of Action

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

Staff: The proposed project is located on Tax Lot 600 & 700, Section 26DC, Township: 1 North, Range: 4 East. County Assessment & Taxation records show that the land is owned by Eric Windust, Brianne King Windust & John Windust. Eric Windust has been designated the applicant in this case. All property owners have authorized the application (Exhibit A.1 & A.22) *This criterion has been met.*

1.03 **MCC 38.0560 Code Compliance And Applications.**

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

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

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

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

Applicant: On the west side of our property, we demolished an existing un-permitted barn, and opened up an existing pasture by clearing over-grown blackberries, nettles, garlic mustard and shrubs. Three existing dead and rotten alders were removed with trunk diameters of approximately 6 inches. Three existing live alders were removed along the west property line per a neighbor's request that were potentially hazardous to their dwelling. The existing driveway, which accessed the west side of the property, was improved by adding a load of 3-inch base rock. Decorative boulders were placed to frame the driveway. Grass was planted for ground cover to help maintain the area. Attached is a separate site plan recognizing these improvements to the property.

Staff: In 2007, Land Use Planning received a complaint regarding unauthorized grading. A code compliance inspection found that ground disturbance adjacent to Clara Smith Road had occurred along with clearing on the area where the accessory structure will occur. If this application is approved, this unpermitted access driveway and clearing for the accessory structure will be corrected through the conditions of approval.

2.00 ***General Provisions***

2.01 **§ 38.0015 DEFINITIONS**

As used in MCC Chapter 38, unless otherwise noted, the following words and their derivations shall have the following meanings:

Parcel:

(a) Any unit of land legally created by a short division, partition, or subdivision, that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, or sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the U.S. Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because it:

1. Is a unit of land created solely to establish a separate tax account;
2. Lies in different counties;
3. Lies in different sections or government lots;
4. Lies in different zoning designations; or
5. Is dissected by a public or private road.

Staff: Tax Lot 700, 1N4E26DC consists of a single 1.37 acre parcel. It was created on January 26, 1945 by the recordation of a deed in Book 902, Page 318. The County did not adopt zoning for this property until 1958. The parcel remains in its legal configuration. Pursuant to MCC 38.0015, Tax Lot 700 is a “Parcel”.

Tax Lot 600, 1N4E26DC consists of a 0.29 acre property which at present is not in a legal configuration. At the time this property was created on August 29, 1967, it was zoned F-2. At the time, the F-2 zone required a minimum lot size of 2 acres. Since the property is less than 2 acres, it does not qualify as a “Parcel” pursuant to MCC 38.0015.

The Windusts have indicated the proposed consolidation of Tax Lot 700, 1N4E26DC & Tax Lot 600, 1N4E26DC will create a single lawful parcel. They have applied for and received approval of their Lot Consolidation application, T1-08-010. Upon completion of the process, the two tax lots will be one legal parcel. A condition of approval has been included as part of this decision to ensure that the dwelling is on a lawful parcel. *As conditioned, this criterion has been met.*

2.02 § 38.0030 EXISTING USES AND DISCONTINUED USES

(A) Right to Continue Existing Uses and Structures: Any existing use or structure may continue so long as it is used in the same manner and for the same purpose, except as otherwise provided.

(B) Replacement of Existing Structures Not Damaged or Destroyed by Disaster: Except as provided in (C) below, an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

- (1) The replacement structure shall be used in the same manner and for the same purpose as the original structure.
- (2) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.

(3) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources provisions; the treaty rights provisions; and the land use designations provisions involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

(4) The use of the original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

Staff: The driveway leading from the middle of the property, and adjacent to the small stream crossing the property, is an existing structure and may continue so long as it is used in the same manner and for the same purpose. The portion of the driveway to be widened for a turnaround is outside of the 50 ft wide stream buffer and is subject to the scenic cultural, recreation and natural resource provisions.

2.03 **§ 38.0045 REVIEW AND CONDITIONAL USE APPLICATIONS - SUBMITTAL REQUIREMENTS**

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

(1) A list of Key Viewing Areas from which the proposed use would be visible.

Applicant: Columbia River (seasonal), Washington State Route 14 (winter only).

Staff: The property is topographically visible from Bridal Veil, Columbia River, I-84, Larch Mountain (SMA), Larch Sherrard (SMA), and Washington State Route 14.

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

(a) North arrow;

(b) Map scale;

(c) Boundaries, dimensions, and size of the subject parcel;

(d) Significant terrain features or landforms;

(e) Groupings and species of trees and other vegetation on the parcel;

(f) Location and species of vegetation that would be removed or planted;

(g) Bodies of water and watercourses;

(h) Location and width of existing and proposed roads, driveways, and trails;

(i) Location and size of existing and proposed structures;

(j) Location of existing and proposed services, including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting; and

(k) Location and depth of all proposed grading and ditching.

(1) Proposed uses in streams, ponds, lakes, and their buffer zones shall include the exact boundary of the ordinary high water-mark or normal

pool elevation and the prescribed buffer zone; and a description of actions that would alter or destroy the stream, pond, lake, or riparian area.

(m) Proposed uses in wetlands or wetlands buffer zones shall include the exact boundary of the wetland and the wetlands buffer zone; and a description of actions that would alter or destroy the wetland.

(n) Proposed uses on parcels contiguous to established recreation sites shall provide a buffer between the proposed use and recreation site sufficient to insure that the proposed use will not detract from the use or enjoyment of the recreation site.

(o) New uses located in, or providing recreation river access to, the Columbia River or its fish bearing tributaries shall include the following supplemental information:

1. The site plan shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.
2. The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:
 - a. Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.
 - b. List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.
 - c. List tribal ceremonial fishing seasons in the project vicinity.
 - d. Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.
- (3) Elevation drawings shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale.

Staff: The applicant has provided the above information in the submitted exhibits (Exhibit A.1 through A.26).

2.05

(4) In the General Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes between 10 and 30 percent shall include a grading plan. In the Special Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes greater than 10 percent (except trails) shall include a grading plan. Grading plans shall include the following:

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

1. Natural and finished grades
2. Location of all areas to be graded, with cut banks and fill

slopes delineated.

3. Estimated dimensions of graded areas.

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

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

Staff: The above information has been provided on the applicant's revised site plan (Exhibit A.21). *This criterion has been met.*

2.06

(B) Supplemental information will be required for:

- (1) Forest practices in the Special Management Area,**
- (2) Production and development of mineral resources in the General Management Area,**
- (3) Proposed uses visible from Key Viewing Areas, and**
- (4) Proposed uses located near cultural resources, wetlands, streams, ponds, lakes, riparian areas, sensitive wildlife habitat, and sensitive plant sites.**

Staff: The proposed development is visible from various Key Viewing Areas. Development will occur within 50 ft of the stream. The applicant has provided the supplemental information for the project.

3.00

Gorge General Residential – 5 (GGR-5) Criteria

3.01

§ 38.3025 REVIEW USES

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

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

- (a) If the subject parcel is located adjacent to lands designated GGA or GGF, the use shall comply with the buffer requirements of MCC 38.0060; and**

(b) If the subject parcel is located is adjacent to lands designated GGF, the placement of a dwelling shall also comply with the fire protection standards of MCC 38.7305.

(3) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(a) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(b) The height of any individual accessory building shall not exceed 24 feet.

Staff: The development will replace an existing single family dwelling with a new 6,430 sq. ft single family dwelling and attached garage. All existing structures will be demolished. The property is located within a large area of GGR zoned properties and is not adjacent to lands zoned either GGA or GGF.

No other accessory structures will exist after demolition of the dwelling and its attached carport. The proposed detached accessory building is 1,500 sq. ft and 24 ft in height. The building is to be used for storage for residential purposes. No business use of the building has been requested, nor is the storage of business equipment is allowed without further land use approval.

3.02 § 38.3060 DIMENSIONAL REQUIREMENTS

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

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

Staff: The proposed dwelling is setback 115 ft from the front property line, 12 ft from the east property line, approximately 70 ft from the rear property line and approximately 235 ft from the west property line. The applicant has indicated that the dwelling will be 34 ft, 10 inches. With the dwelling being so close to the maximum structure height, a condition of approval has been included requiring that at the time the rough framing of the house is complete, a licensed surveyor shall measure the height of the structure to ensure that it does not exceed the 35 ft height limitation.

The accessory structure is setback from Clara Smith Road at least 66 ft, 10 ft from the west property line, 134 ft from the rear property line, and 245 ft from the east property line. The accessory structure has been revised to a maximum of 24 ft tall (Exhibit A.19).

The property fronts onto Clara Smith Road, a local street. The public right-of-way width for Clara Smith Rd is currently 60 ft in width. The Transportation Department has indicated that no additional right-of-way is needed. No increase in the minimum yard requirements is

necessary. *These criteria have been met.*

3.03 **§ 38.3085 OFF-STREET PARKING AND LOADING**

Off-street parking and loading shall be provided as required by MCC 38.4100 through 38.4215.

Staff: The proposed dwelling has the required two parking spaces in the attached garage and area outside of the dwelling to park vehicles (Exhibit A.21). *This criterion has been met.*

3.04 **§ 38.3090 ACCESS**

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

Staff: The proposed development is requesting a Transportation Variance to permit two driveways on the subject property and to reduce the distance between the two access points on to Clara Smith Road. Please see additional findings for the variance application in Section 5.00 below. *This criterion has been met via the variance approval.*

4.00 **GMA Scenic Review Criteria**

4.01 **§ 38.7035 GMA SCENIC REVIEW CRITERIA**

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

(A) All Review Uses and Conditional Uses:

(1) New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

Applicant: Proposed dwelling – The proposed new dwelling shall be sited in the same vicinity as the existing dwelling. No new driveways will be required. The existing topography of the area will be retained and the necessary grading will be minimal. This criterion has been met.

Accessory structure – No new driveway will be required. The topography of the area is relatively flat as shown in the attached site plan. Placement of the accessory structure has been chosen to minimize grading. (see attached site plan) This criterion has been met.

Staff: The grading for the driveway leading to the accessory building has already been completed without the necessary permits. The driveway was constructed and large 2-3 ft boulders have been placed to support a short bank adjacent to Clara Smith Road. The area for the accessory building has been cleared of blackberries and other vegetation during this grading work. The accessory building is where a former accessory building was located. The cleared area for the accessory structure is 120 ft wide by 120 ft deep. The terrain was not significantly changed during this work (Exhibit A.21).

The proposed dwelling will be located in the same location as the existing dwelling. The design of the dwelling uses a daylight basement to reduce the amount of ground disturbance needed to construct the dwelling. A short extension of the driveway will be completed along with a new turnaround at the end of the drive. The existing driveway to the east of the dwelling will be closed and replanted with vegetation (Exhibit A.21). *This criterion has been met.*

4.02 **(2) New buildings shall be compatible with the general scale (height, dimensions**

and visible mass) of similar buildings that exist nearby (e.g. dwellings to dwellings). Expansion of existing development shall comply with this guideline to the maximum extent practicable. For purposes of applying this standard, the term nearby generally means buildings within ¼ mile of the parcel on which development is proposed.

Applicant: Proposed dwelling – The proposed new dwelling is 3148 sq/ft. The elevation drawing shows the proposed dwelling to be two stories with a daylight basement. The height of the structure will be 34' 10" in height, which fits under parameters established by Multnomah County and the GMA scenic review. The following data table lists the area of the proposed and existing development in the nearby area obtained from the County Assessment Records (Exhibit 1.2). This criterion has been met.

Accessory structure – The proposed accessory structure is 1500 sq/ft. The following data table list the area of the proposed and existing development in the nearby area obtained from the County Assessment Records (Exhibit 1.2). This criterion has been met.

Staff: The proposed dwelling has a daylight basement with garage, a main floor and a second floor. Planning staff calculates the total square footage of the dwelling, attached garage and attached covered decks as 6,430 sq. ft. in size (Exhibit A.18). Staff finds the square footage of the basement/garage as 2,169 sq. ft. The first floor with front covered decks is 2,327 sq. ft. The second floor with rear covered deck is 1,934.5 sq. ft.

Staff then looked at development within a ¼ mile of the subject site. The following table indicates that there are a number of large dwellings in the area and that at least three of them are larger than the proposed dwelling:

Address	Total Square Footage
Proposed Dwelling	6,430 sq. ft.
37201 NE Benfield	3,209 sq. ft.
37123 NE Reed Rd	5,663 sq. ft.
1740 NE Meyer Ln	6,706 sq. ft.
37400 NE Clara Smith Rd	4,772 sq. ft.
37404 NE Clara Smith Rd	7,126 sq. ft.
37424 NE Clara Smith Rd	4,227 sq. ft.
37137 NE Clara Smith Rd	5,144 sq. ft.
37625 NE Clara Smith Rd	3,800 sq. ft.
37777 NE Clara Smith Rd	4,200 sq. ft.
NE Benfield Rd	3,360 sq. ft.
37003 NE Reed Rd	4,079 sq. ft.
1700 NE Meyers Ln	6,484 sq. ft.

Based on the evidence presented in the record, the proposed dwelling is consistent with the general scale of development within the area.

Staff has reviewed Assessment & Taxation data for accessory buildings within the area. The following table shows the properties within ¼ mile with accessory building larger than the

proposed 1,500 sq. ft accessory building:

Address	Accessory Bldg Sq. Footage
37003 NE Reed Rd	2400 sq. ft.
37123 NE Reed Rd	2360 sq. ft.
37404 NE Clara Smith Rd	1600 sq. ft.
37201 NE Benfield Rd	2852 sq. ft.
1430 NE Meyers Ln	2304 sq. ft.

Based on the evidence in the record, the proposed accessory dwelling is consistent with the general scale of accessory buildings within the area. *This criterion has been met.*

- 4.03 **(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: A private driveway off of Clara Smith Road, which is not listed as a Scenic Travel Corridor, accesses the site. This criterion has been met.

Staff: MCC 38.0015 lists portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 are designated as Scenic Travel Corridors. Clara Smith Road is not a designated Scenic Travel Corridor. No consolidation of driveways is required. *This criterion is not applicable.*

- 4.04 **(4) Property owners shall be responsible for the proper maintenance and survival of any required vegetation.**

Applicant: Proposed dwelling – The location of the proposed dwelling minimizing any destruction to the vegetation. A minimal number of trees or shrubs will need to be removed. The attached site plan lists, which trees will need to be removed during construction. All other vegetation will be retained.

Accessory structure – No trees will need to be removed and other vegetation will be retained.

Staff: A condition of approval has been included requiring that all existing and proposed vegetation shall be maintained and replaced if it becomes diseased or dies.

- 4.05 **(5) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.**

Applicant: Proposed dwelling – The proposed dwelling shall be of earth tone colors and non-reflective materials. Natural exposed material will blend well with the surrounding property (See Exhibit 1.3). The backdrop of the property is primarily a combination of browns and greens. The height of the building will not exceed the maximum of 35 ft and will fall well under the horizon or the tree top canopy. (See Exhibit 1.4 and the attached site plan for compatibility with the landscape setting as required.)

Accessory structure – The backdrop of the property is a combination of browns and greens. The bank behind both structures helps camouflage the new construction into its own surroundings. (See Exhibit 1.4) The structure will use wood type siding and be painted or stained to match the proposed dwelling. Non-reflective materials will be used (see Exhibit 1.3 and the attached site plan for compatibility with the landscape setting as required.)

Staff: The landscape setting for the subject property is Rural Residential. Staff has found the proposed development is compatible with the landscape setting. See findings 4.23 to 4.25 for more information. *This criterion has been met.*

4.06 **(B) All Review Uses and Conditional Uses topographically visible from Key Viewing Areas:**

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

Applicant: Proposed dwelling – The site is heavily wooded with a seasonal view to the northwest. Only small amounts of the proposed dwelling would be potentially visible through gaps in the dense vegetation cover provided by a mix of coniferous and deciduous trees. These trees provide an excellent screening for the proposed dwelling site. (Exhibit 1.4) The two Key Viewing Areas as described by the NSA that would potentially visible portion of the river being the far side of the river. The distance to SR 14 is substantially more. The dwelling will be painted an earth tone color and built with low reflective materials. I have included a dark asphaltic shingle sample and paint chip (Exhibit 1.3). Given the distance and the dense vegetation screening and the materials to be used on the dwelling, I feel this criterion has been met.

Accessory structure – The proposed site for the accessory structure is also heavily wooded. The site plan shows a screen of fir trees that line the front of the property. (See also Exhibit 1.4). This provides an excellent screen for any potential viewing areas. The structure will be painted an earth tone color and built with low reflective materials. I have included a dark asphaltic shingle sample and paint chip (Exhibit 1.3). Given the dense vegetation screening and the materials to be used on the dwelling, I feel this criterion has been met.

Staff: Topographic review of the property from Key Viewing Areas has determined that the property may be visible from Bridal Veil, Columbia River, I-84, Larch Mountain (SMA), Larch Sherrard (SMA), and Washington State Route 14. The applicant has indicated that the property is visible during the Fall and Winter from the Columbia River and State Route 14. These are the two closest KVAs with the largest potential for viewing the property. The topography in front of the property and to the east and west screens the dwelling from the closest portions of I-84. The applicant has provided a site map showing the locations and species of trees providing screening of the proposed dwelling and accessory building sites (Exhibit A.21). The applicant has also submitted photographs taken from the proposed dwelling location showing the vegetation (Exhibit A.8). The proposed dwelling and accessory structure site are screened by a band of trees along the front property line.

The accessory building will be 24 ft tall, the maximum allowed by the code for accessory building. It will be sided with lap siding, stone accents and have wooden garage and man-doors. The colors of the lap siding will be a dark earth tone which matches C.15 on the Recommended Colors chart in the Scenic Resources Implementation Handbook. The stone accents are too light and need to be changed to a dark earth tone color. See the discussion below regarding the colors. The roof will be composition shingle and match the color of the dwelling (Exhibit A.7). The location for the building is currently screened by a single row of seven mature fir trees in the public road right-of-way. These trees are not within the applicant's property and he is unable to guarantee their maintenance long term. The applicant is proposing to plant five additional 6 ft tall cedar trees within the front setback approximately 60 ft north of the accessory building. A second row or plantings of trees should be included to increase the density of the plant in screening the building. The accessory building may still be visible from KVAs via the driveway leading to the building. The addition of at least four evergreen trees along the driveway as shown on Exhibit B.5 would add vegetative screening

limiting the buildings view via the driveway and add density to the vegetative screening.

For the new dwelling, the third driveway near the east property line will be abandoned and seven trees planted to close the area for vehicle travel. These trees will also help screen the proposed dwelling from the Key Viewing Areas (KVAs) to the north and northwest. Many of the trees proposed to screen the dwelling from the two KVAs are located in the public right-of-way. The applicant does not have physical control over these trees. If the County needed to remove these trees for road purposes, the dwelling may become visible from the KVAs. Additional trees north of the driveway but south of the drainfield would help to screen and break-up the dwelling's front elevation, the addition of smaller evergreen trees near the front property line would add to the depth of the vegetation under the property owner's control in case the trees in the public right-of-way are removed. A condition of approval has been included requiring the addition of evergreen trees at various locations pursuant to Exhibit B.5.

The distance to the river is more than a half mile from the subject property, with the dwelling potentially visible from portions of the river from the far side of the river and the river to the northwest (Exhibit B.2). The distance to SR 14 is substantially greater. The applicant has proposed vertical cedar siding and stone accents for the siding; dark gray composition shingles for the roof; and natural wood garage doors. Two stain colors are proposed for the wood siding and garage doors. These colors seem to match C.12 and C.14 of the Recommended Colors Chart. C.12 is too light. The roofing color seems to match A.2 on the same chart and is acceptable. The stone accent color appears to match E.12 and is too light. The color C.14 would be acceptable for trim, but the body needs to be a darker earthtone such as A.14 through A.16 or B.14 through B.16. The stone accent color also needs to fall within the A to B range to help the building achieve visual subordination. A condition of approval has been included requiring the applicant to provide different color choices for the body of the dwelling and stone accents prior to building plan sign-off.

The applicant has indicated on his Exhibit 1.3 (Exhibit A.7) that the windows will be non-reflective. Glass is naturally reflective unless it is sandblasted or roughened via a modification process. The use of low reflective glass which allows visibility from the dwelling to the outside is more likely in a residential setting. A condition of approval has been included requiring that the windows used on the house and accessory structure have a reflectivity rating of 13% or less. Many low-e windows will meet this requirement. In addition, the exterior window frames may not be white or another light color.

Given the distance to the KVAs, existing and proposed vegetative screening, the use of dark earth tones and windows with low reflectivity, the proposed dwelling will be able to achieve visual subordination through the use of conditions of approval. These conditions require the planting & maintenance of proposed and conditioned trees and the use of dark colors and low reflectivity, dark earth tone building materials. *As conditioned, this criterion has been met.*

- 4.07 **(2) The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its potential visual impacts as seen from Key Viewing Areas. Decisions shall include written findings addressing the factors influencing potential visual impact including but not limited to: the amount of area of the building site exposed to Key Viewing Areas, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Areas it is visible from, the number of Key Viewing Areas it is visible from, and the linear distance along the Key Viewing Areas from which the building site is visible (for linear Key Viewing Areas, such as roads). Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen**

from key viewing areas, including but not limited to siting (location of development on the subject property, building orientation, and other elements); retention of existing vegetation; design (color, reflectivity, size, shape, height, architectural and design details and other elements); and new landscaping.

Applicant: Proposed dwelling - The proposed dwelling site is predominately screened by topography and vegetation. The front of the property is lined with large coniferous trees, which provide excellent screening from key viewing areas. The distance to the river is more than a half-mile from the subject property and SR 14 is substantially more. As stated earlier, SR 14 is the only key viewing area that would be in question and with the plan that I chose, the subject property would be very difficult to detect. (See attached site plan and building plans.)

Accessory structure – The site is predominately screened by topography and vegetation. The front of the property is lined with large coniferous trees, which provide excellent screening from key viewing areas. The distance to the river is more than a half-mile from the subject property and SR 14 is substantially more. As stated earlier, SR 14 is the only key viewing area that would be in question and the subject property would be very difficult to detect.

Staff: Since the dwelling is partially screened by topography and vegetation, and is only visible at a distance of greater than a half mile from the Columbia River and a greater distance from SR-14, retention of the existing vegetation, the additional planting of cedars as described in the previous finding and the requirements for natural or dark earth tone colors and low reflectivity building materials are proportionate to potential visual impacts.

4.08

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

Applicant: Proposed dwelling – This development in implementing the best consideration to meet the visual subordination with the existing mixes of conifer and deciduous trees and with the use of non-reflective materials. The benefit of choosing a daylight basement plan is that it helps the proposed development blend into its natural surroundings. We also will be using dark natural colors on the exterior of the proposed buildings in order to further help disguise the dwelling.

Accessory structure – This development in implementing the best consideration to meet the visual subordination with the existing mixes of conifer and deciduous trees and with the use of non-reflective materials. We also will be using dark natural colors on the exterior of the proposed building.

Staff: Given the distance to KVAs, the existing tree cover, additional planting of trees required by conditions, the use of low reflectivity building materials and dark colored paint and roofing, there should be minor cumulative effect if any. Conditions of approval will require additional trees, the existing and planted trees to be maintained and the proposed building materials be used.

4.09

(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: The following information has been enclosed regarding building materials, colors, building descriptions, height and elevation plans. All final grades are also included. (See site plan and related enclosed information.)

Staff: This information has been submitted by the applicant in exhibits A.1 through A.27. *This criterion has been met.*

- 4.10 **(6) New development 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: Proposed dwelling – The proposed development will be utilizing the existing infrastructure. No new roads or driveways will be needed. A minimal number of trees will need to be cut and minimal dirt will need to be moved. The proposed site has a gradual slope to it and is screened by the surrounding vegetation. This is why a daylight plan was chosen. The site of the home is in the best location when discussing key viewing areas and the least amount of disruption to the property will be needed. The site has no wetlands or riparian corridor. The site is not listed with any sensitive wildlife or plants. The site has no known cultural resource (See attached plan.)

Accessory structure – No new roads or driveways will be needed the proposed structure is being placed in an area that will need the least amount of grading and positioned behind excellent screening from potential viewing areas (See attached plan).

Staff: The topography for the property rises from north to the southwest. The dwelling and accessory building are located on the lowest portion of the property. The dwelling and accessory structure are located outside of the 50 ft wide riparian area. *This criterion has been met.*

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

Applicant: Proposed dwelling – The proposed development will be utilizing the existing infrastructure. No new roads or driveways will be needed. The proposed dwelling site is predominately screened by topography and vegetation. The front of the property is lined with large coniferous trees, which provide excellent screening from key viewing areas in all seasons. The site of the home is in the best location when discussing key viewing areas and the least amount of disruption to the property will be needed. (See Exhibit 1.4 for vegetation screening.)

Accessory structure – The proposed site is predominately screened by topography and vegetation. The front of the property is lined with large coniferous trees, which provide excellent screening from key viewing areas. The site of the structure is in the best location when discussing key viewing areas and the least amount of disruption to the property will be needed. (See Exhibit 1.4 for vegetation screening.)

Staff: The topography on the site rises from the north to the southeast. No topographic features exist that would screen the proposed buildings. A number of existing trees are located on the property and are between the KVAs and the dwelling. In addition, numerous trees exist in the public right-of-way that will assist in the short term for screening dwelling and accessory building. Unfortunately, these trees are not under the applicant's control and can be removed by the County for road maintenance purposes in the future. Staff has created

an exhibit (Exhibit B.5) from the applicant's landscape plan showing where additional evergreen trees need to be planted to maintain visual subordination from KVAs. A condition of approval has been included requiring the planting additional trees. *As conditioned, this criterion has been met.*

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

Applicant: Proposed dwelling – The proposed development will be utilizing the existing infrastructure. A minimal number of trees will need to be cut and minimal dirt will need to be moved. The front of the property is lined with large coniferous trees, which provide excellent screening from key viewing areas. The site of the home is in the best location when discussing key viewing areas and the least amount of disruption to the property will be needed. (Refer to site plan and supporting exhibits for tree cover.)

Accessory structure - The proposed site is predominately screened by topography and vegetation. The front of the property is lined with large coniferous trees, which provide excellent screening from key viewing areas. The site of the structure is in the best location when discussing key viewing areas and the least amount of disruption to the property will be needed. All existing tree cover will be retained. (Refer to site plan and supporting exhibits for tree cover.)

Staff: Six alder trees were previously removed in the area of the proposed accessory building. Three of the trees were dead and three were endangering a neighboring property. For the dwelling, four fruit trees will be removed. All other trees are to remain on the site. *This criterion has been met.*

4.13 **(9) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from Key Viewing Areas.**

Applicant: The proposed new dwelling shall be sited in the same vicinity as the existing dwelling. No new driveways will be required. The existing topography of the area will be retained and the necessary grading will be minimal. The benefit of choosing a daylight basement plan is that it helps the proposed development blend into its natural surroundings. This development is implementing the best consideration to meet the visual subordination from Key Viewing Areas. All existing infrastructure will be retained including driveways, utilities, and landscaping. We also had to choose a design and a development that would allow room for an adequate septic tank and drain-field. With the intermittent creek and layout of the property, we chose and designed our dwelling and accessory structure to utilize the existing topography and minimize grading, fill slopes, cut banks, and still meet visual subordination from Key Viewing Areas.

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

4.14 **(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 Handbook 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 subordination. Recommended square footage limitations for such surfaces are provided for guidance in the**

Implementation Handbook

Applicant: We have chosen windows for the north side of our dwelling and accessory structure that will have a reflectivity rating of 13%.

Proposed dwelling – The proposed dwelling will be sided with wood, have asphaltic roofing shingles and will use low reflectivity windows. (Exhibit 1.3.) The front of the property is lined with large coniferous trees, which provide excellent screening from key viewing areas. (Exhibit 1.4.) The distance to the river is more than a half-mile from the subject property and SR 14 is substantially more. Topographic features make this property very difficult to detect from any key viewing area. As stated earlier, SR 14 is the only key viewing area that would be in question and the subject property would be very difficult to detect in all seasons.

Accessory structure – The structure will also be sided with wood, have asphaltic roofing shingles, and will use low reflectivity windows. (Exhibit 1.3.) The front of the property is lined with large coniferous trees, which provide excellent screening from key viewing areas. (Exhibit 1.4.) The distance to the river is more than a half-mile from the subject property. Topographic features make this property very difficult to detect from any key viewing area. As stated earlier, SR 14 is the only key viewing area that would be in question and the subject property would be very difficult to detect.

Staff: As discussed in section 4.06, the property is visible from the Columbia River and State Highway 14. The applicant has indicated that the glass in the windows will have a reflectivity rating of less than 13%. No metal roofing, garage doors or roofing is proposed. *This criterion has been met.*

- 4.15 **(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: The proposed lights for both the proposed dwelling and accessory structure will be down facing and I will install a tube “dark skies sleeve” to provide shielding. (See attached example of light fixtures to be used. Ex 1.3)

Staff: The applicant has submitted an example of the exterior light fixture design to be used on the dwelling and accessory building. As designed the light fixture does not meet the above criterion, but the installation of a dark sky sleeve to this style of fixture would convert it to direct the light downward and would be in compliance with the above criteria. A condition of approval has been included requiring that the applicant either install light fixtures which meet the above criteria or install dark sky sleeves. *As conditioned, this criterion has been met.*

- 4.16 **(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: Proposed dwelling – The proposed dwelling shall be of earth tone colors and non-reflective materials. Natural exposed material will blend well with the surrounding property. The backdrop of the property is primarily combination of browns and greens. I have included a dark asphaltic shingle sample and paint chip. (Ex 1.3, & 1.4.) Given the materials to be used on the dwelling, I feel this criterion has been met. (See the attached site plan for compatibility with the landscape setting as required.)

Accessory structure – The backdrop of the property is a combination of browns and greens.

The bank behind both structures helps camouflage the new construction into its own surroundings. The structure will use wood type siding and be painted or stained to match the proposed dwelling. Non-reflective materials will be used. I have included a dark asphaltic shingle sample and paint chip. Given the materials to be used on the dwelling, I feel this criterion has been met. (See the attached site plan for compatibility with the landscape setting as required.)

Staff: The color choice for the composition shingle is consistent with A.2 on the Recommended Colors chart and is a dark earthtone. The two colors for the wood siding for the dwelling appear to be consistent with C.13 and C.15 on the Recommended Colors chart. These colors are rather light. For the buildings to better achieve visual subordination from the KVAs the colors need to be in the range of A.14 through A.16 and/or B. 14 through B.16. The stone accent color chosen by the applicant is consistent with E.12. This color choice is not a dark earthtone and must be changed to meet this criterion. A condition of approval has been included requiring the applicant to choose a stone accent which color is a dark earthtone. *As conditioned, this criterion has been met.*

- 4.17 **(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: The proposed development does not exceed the skyline.

Staff: The topography continues to rise from the north to the southeast another 200 plus feet above the proposed dwelling and accessory building. The buildings will remain below the ridge line as seen from KVAs. *This criterion has been met.*

- 4.18 **(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.**
 - (b) If new landscaping is required, it shall be used to supplement other techniques for achieving visual subordination.**
 - (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.**
 - (d) Landscaping shall be installed as soon as practicable, and prior to project completion. 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.**
 - (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).**

Applicant: Proposed dwelling – The location of the proposed dwelling minimizing any destruction to the vegetation. A minimal number of trees or shrubs will need to be removed. The attached site plan lists, which trees will need to be removed during construction. All other vegetation will be retained and no new landscaping will be required to make the development visually subordinate from key viewing areas.

Accessory structure – All vegetation will be retained and no new landscaping will be required to make the development visually subordinate from key viewing areas.

No new landscaping will be required for screening purposes. (See site plan.)

Staff: A number of the trees that the applicant is depending on to screen the proposed development are located in the public right-of-way and are not under his control. These trees do provide existing screening that needs to be supplemented to ensure that the building remains visually subordinate to the KVAs if these trees are removed due to road maintenance purposes. The use of dark earth tones and the addition of 6 to 8 ft tall cedar trees to the property as shown on the Exhibit B.5 will allow for the buildings to maintain its visual subordination from the KVAs pursuant to MCC 38.7035(B)(17)(d). *As conditioned, this criterion has been met.*

- 4.19 **(18) Conditions regarding new landscaping or retention of existing vegetation for new developments on land designated GMA Forest shall meet both scenic guidelines and the fuel break requirements of MCC 38.7305(A).**

Staff: The subject property is zoned Gorge General Residential. *This criterion is not applicable.*

- 4.20 **(23) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to the setback may be authorized.**

Applicant: This is not a water dependent development. The development sets apx. 300 ft above the Columbia River and app. ¼ mile south of the river corridor according to the County's GIS system.

Staff: Staff concurs. *This criterion is not applicable.*

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

Applicant: The new building is being placed on the site where slopes do not exceed 30%.

Staff: The slopes in the area of development are approximately 16% (Exhibit B.7). *This criterion has been met.*

- 4.22 **(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:**

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

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

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

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

Applicant: See attached grading and erosion control plan.

Staff: The applicant has provided grading information and the changes to the topography necessary to establish the new dwelling and accessory structure (Exhibit A.21). In addition, a landscape plan showing the size and type of vegetation to be planted after disturbance has been included (Exhibit A.27). *This criterion has been met.*

4.23 (C) All Review Uses and Conditional Uses within the following landscape settings, regardless of visibility from KVAs:

(3) Rural Residential

(a) 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: Proposed dwelling – The proposed development will be utilizing the existing infrastructure. No new roads or driveways will be needed. The location of the proposed dwelling minimizes destruction to the vegetation and is in the best location when discussing key viewing areas. A minimal number of trees or shrubs will need to be removed. The attached site plan lists, which trees will need to be removed during construction. All other vegetation will be retained.

Accessory structure – The existing tree cover will be retained and destruction to the existing vegetation will be minimal (see site plan for trees to be removed.)

Staff: During previous ground disturbing activities, six alder trees were removed in the area of the proposed accessory building. Three of the trees were dead and three were removed due

to safety concerns from the neighbor. In addition, blackberries and other nuisance plants were removed from the area. For the construction of the new dwelling, a few fruit trees will be removed behind the structure. Predominately, the applicant will maintain almost all existing trees on the property. No forest management practices are proposed. *This criterion has been met.*

- 4.24 **(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.**
- 2. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.**
- 3. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.**

Applicant: The proposed development will meet all these criteria. See attached site plan and other supporting information.

Staff: The applicant's site plan shows that all of the trees between the KVAs and the dwelling and accessory structure will be maintained. For the proposed plantings, 24, six foot tall Western Red Cedar trees will be used and will provide year round screening (Exhibit B.5). The Recommended Plants for Screening guidelines from the Scenic Resources Implementation Handbook indicates that Western Red Cedar is a native tree to the area. *This criterion has been met.*

- 4.25 **(c) Compatible recreation uses include should be limited to small community park facilities, but occasional low-intensity resource-based recreation uses (such as small scenic overlooks) may be allowed.**

Applicant: N.A.

Staff: The applicant is requesting permission to construct a single family dwelling and accessory building. No recreational uses are proposed. *This criterion is not applicable.*

- 4.26 **(D) All Review Uses and Conditional Uses within scenic travel corridors:**

- (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.**

Staff: The property is over 1,700 ft south of I-84 and over 1,600 ft north of the Historic Columbia River Highway. The property is not within the scenic travel corridor.

- 4.27 **§ 38.7060 GMA STREAM, LAKE AND RIPARIAN AREA REVIEW CRITERIA**

(A) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant to the provisions of MCC 38.0045, MCC 38.7060 (C), and reviewed under the applicable provisions of MCC 38.7035 through 38.7085:

- (1) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:**
- (a) Increase the size of an existing structure by more than 100 percent,**
 - (b) Result in a loss of water quality, natural drainage, and fish and wildlife**

habitat, or

(c) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(2) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(3) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

Applicant: No development, improvements or grading will be within 50 ft of the ordinary high water mark of the intermittent stream. As shown on the revised site plan, the driveway turnaround area has been moved outside of this buffer zone, and the grading around the structure has been changed so existing vegetation and topography within this buffer zone will remain intact. I have contacted Kelli Grover, with Firwood Design Group to discuss other possible locations for the Roof Drain Infiltration Trench. They have come to the conclusion that this is the best possible place for this system in regards to containment of roof run-off and no other practicable alternatives exist in locating the trench. They are very comfortable with using best management practices that there will be no impact to this area.

Staff: The subject property has an intermittent creek that has a 50 ft wide buffer zone. Within the buffer, the driveways leading to the new dwelling and accessory structure exist and may be maintained in compliance with MCC 38.0030. The following improvements are subject to these regulations: proposed dwelling, accessory building, driveway turn-around, and two infiltration trenches. MCC 38.0015 Definitions defines a *Structure* as “*That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to buildings, walls, fences, roads, parking lots, signs and additions/alterations to structures. All buildings are structures.*” None of the proposed improvements are water dependent and they must demonstrate compliance with the buffer requirements. *The accessways are exempt from the intermittent stream’s buffer zone.*

4.28 (B) Uses not listed in MCC 38.7060 (A) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to MCC 38.7060 (D) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085.

(D) Applications for all other Review and Conditional Uses in wetlands (riparian zones) shall be processed pursuant to the provisions of MCC 38.0045 and shall demonstrate that:

(1) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by MCC 38.7055 (F) (1), substituting the term stream, pond, lake, or riparian area as appropriate.

Applicant: The proposed use is not water-dependent and has no practicable alternative due

to the house location, proximity to the proposed septic system avoiding vehicular loading, steep topography and limiting disturbance of native vegetation.

Staff: The revised site plan (Exhibit A.21) shows all new development outside of the 50 ft buffer for the intermittent stream except the two roof drain infiltration trenches for the two buildings. The applicant has submitted evidence that the infiltration trench for the dwelling has no practical alternative for its location. See additional findings immediately below in Section 4.28.

The infiltration trench for the accessory structure could be shifted to in front of the building and graveled parking area in front of the building. This would shift the trench out of the 50 ft buffer area. A condition of approval has been included requiring that the infiltration trench be moved for the accessory building as shown on Exhibit B.6. *As conditioned, this criterion has been met.*

4.29 **MCC 38.7055(F)(1) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:**

- (a) **The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands (riparian area);**
- (b) **The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and**
- (c) **Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan revision pursuant to MCC 38.0100 to demonstrate that practicable alternatives do not exist.**

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

Applicant: (1) The proposed use is not water dependent and has no practicable alternative due to the house location, proximity to the proposed septic system, avoiding vehicular loading, steep topography and limiting disturbance of native vegetation.

Staff: The following no practicable alternative findings are for the dwelling's infiltration trench only.

(1) The intermittent stream is located towards the center of the property and creates two building sites on either side of the buffer area. Staff contacted the Sanitarian to find out the minimum required distance between the stormwater infiltration trench and the drainfield. An infiltration trench must be located a minimum of 100 ft above the drainfield or 50 ft below the drainfield to prevent the over-saturation of the drainfield. To the south of the dwelling, the terrain rises and is not suitable for an infiltration trench. To the north of the dwelling, the terrain is acceptable, but the septic drainfield for the new dwelling and driveway turnaround utilize significant areas. The location of the drainfield is the only suitable area for the property that can meet the Sanitarian's regulations. Planning staff then considered the remaining areas within the front yard to see if they were adequate to support a twenty ft long infiltration trench (Exhibit B.5). The first area is adjacent to the 50 ft buffer and is too small

to handle the size of the infiltration trench needed for the dwelling. The second area available north of the dwelling is near the location of the old, non-permitted driveway to be abandoned. The second area is also limited and the infiltration trench would lead directly into the public right-of-way. The proposed location of the infiltration trench will add to the available groundwater feeding the intermittent stream and may improve its quality do to additional water feeding into via groundwater (Exhibit A.21).

(a) The applicant owns this property and is proposing to replace his existing dwelling with a new dwelling and accessory structure. The applicant does not have another parcel available for him to relocate his dwelling. The placement of the stormwater runoff infiltration trench within the 50 ft wide buffer zone will not adversely affect the water quality of the stream as it will be vegetated and surrounding vegetation should adequately remove any pollutants of sediment before the water reaches the creek.

(b) The proposed dwelling has a building footprint of approximately 2,553 sq. ft. This is a medium sized footprint for the area. The path that the stream channel takes splits the buildable area and limits the available area on this smaller parcel. The size of the proposed infiltration trench is only 20 ft in length and 2 ft wide. Once it is established, it will have no adverse impact on the intermittent stream provided it remains vegetated.

(c) Staff has not been able to identify any NSA restriction that could be removed to prevent the encroachment into the 50 ft buffer zone.

An alternative site on the property is not available to place the infiltration trench without first crossing the stream via a trench. This would have a greater impact to the stream than the encroachment of the infiltration trench. *No practical alternative exists for the location of the stormwater infiltration trench for the dwelling. Staff finds the standard is met.*

4.30 **(2) The proposed use is in the public interest as determined by MCC 38.7055 (F)(2), substituting the term stream, pond, lake, or riparian area as appropriate.**

Applicant: The proposed use is in the public interest as the natural process of ground water interflow is preserved by directing runoff flows into the ground via an infiltration trench. This also helps to preserve the high flow hydrograph by not adding direct discharge to the waterway and increasing peak flows that could accelerate the erosion process.

Staff: The proper disposal of stormwater is in public interest & required by County code. The engineer has determined proposal adequately disposes of stormwater (Exhibit A.26).

4.31 **(3) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.**

As a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(a) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources (Oregon Department of Fish and Wildlife, 2000) unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife.

Applicant: Construction within the buffer will occur during the summer period when fish and wildlife are least sensitive to disturbance. No work within the stream will occur.

Staff: A condition of approval has been included that intrusion into the 50 ft buffer zone to

construct the infiltration trench for the dwelling will not occur while the intermittent creek is actively flowing.

- 4.32 **(b) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.**

Applicant: All natural vegetation will be retained to the greatest extent practicable. The existing vegetation in the area proposed for the infiltration trench is lawn grass and a decorative lilac tree (see Exhibit “A”). The replacement vegetation will be native vegetation including western sword fern, nootka rose, and red-osier dogwood.

Staff: A condition of approval has been included requiring the use of native vegetation on all areas of ground disturbance within the 50 ft buffer.

- 4.33 **(c) Nonstructural controls and natural processes shall be used to the greatest extent practicable.**

Applicant: The proposed infiltration trench will mimic the natural process of infiltration into the ground to recharge the interflow zone.

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

- 4.34 **(d) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.**

Applicant: No crossings are proposed.

Staff: Staff agrees that no new crossings are proposed. The intermittent creek has been placed in a culvert approximately twenty five feet south of the northern property line by the County so that Clara Smith Road can cross the stream. This culvert serves all properties to the east of the subject site and will allow for access to the dwelling. *This criterion has been met.*

- 4.35 **(e) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel’s width and grade should be used.**

Applicant: No culvert placement is proposed.

Staff: The stream has already been placed within a culvert. The culvert will not be lengthened for the development.

- 4.36 **(f) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.**

Applicant: Erosion control measures will be taken to insure that dirt from the excavation is properly stored or hauled off-site. The area of disturbance will be re-seeded and planted after the installation of the infiltration trench with the native plantings.

Specific measures will be the placement of straw wattles around the perimeter of the excavation; the excavated dirt will either be hauled off-site the same day as it is removed or it will temporarily be stored on-site with erosion control fence installed around the stock pile.

Staff: Erosion control measures have been proposed for the project, but an additional silt fence should be installed downslope from the infiltration trench construction area to prevent

erosion or sedimentation within the riparian corridor. *This criterion can be met through a condition of approval.*

4.37 **(4) Groundwater and surface-water quality will not be degraded by the proposed use.**

Applicant: Only roof runoff will be directed to the infiltration trenches, therefore no degradation to the groundwater and /or surface water quality will occur.

Staff: The infiltration trench will be vegetated. Provided the vegetation is maintained water quality will not be degraded within the buffer zone. A condition of approval has been included requiring the maintenance of all proposed and required vegetation. *As conditioned, this criterion has been met.*

4.38 **(5) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.**

Applicant: Give the site constraints of the proposed house site, no practicable alternative is achievable that results in the benefit of maintaining the spring flows and enhancing the riparian corridor.

Staff: Only the 20 ft long by 2 ft wide infiltration trench for the dwelling will be located within the 50 ft wide stream buffer. Staff has previously found there is no practicable alternative to construction the trench in this location. A condition of approval has required the relocation of the infiltration trench for the accessory building so that it is located outside of the buffer area. All other development is currently located outside of the 50 ft wide buffer zone. *As conditioned, this criterion has been met.*

4.39 **(6) The use complies with all applicable federal, state, and county laws.**

Applicant: The proposed use complies with all applicable federal, state, and county laws.

Staff: Provided the development is in compliance with the submitted site plan (Exhibit A.21) and the conditions of approval the use will comply with the applicable laws.

4.40 **(7) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.**

Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement standards shall apply:

(a) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

Applicant: The are impacted by the proposed infiltration trench will be enhanced from its current state of lawn grass to a mixture of native riparian vegetation plantings as illustrated in the enhancement plan provided in Exhibit "A".

Staff: With the use of native vegetation in the infiltration trench, staff has not been able to determine any impacts that will be created by the proposed trench within the buffer.

- 4.41 **(b) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.**

Applicant: The proposed infiltration trench will replicate the natural infiltration process of rain water. The natural hydrologic condition of groundwater and interflow contributions to the natural spring will be maintained.

Staff: The use of the infiltration trench will ensure that the water created from the new impervious roof surface will be maintained on-site and metered to the stream in a non-flash flood manner. *This criterion has been met.*

- 4.42 **(c) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.**

Applicant: n/a

Staff: The infiltration trench will be located approximately 40 ft from the centerline of the stream channel. No riparian vegetation will be removed for its installation. The area where the infiltration trench will be installed is currently in lawn. The channel will not be altered as part of this development.

- 4.43 **(d) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.**

Applicant: n/a

Staff: The stream channel will not be involved in the development.

- 4.44 **(e) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.**

Applicant: The slope and contour of the riparian area will be replaced to the original configuration.

Staff: Once the infiltration trench is installed, the area disturbed will be replanted with native vegetation (Exhibit A.27). The buffer zone will be improved. Currently the area is in lawn. After its installation, it will be planted with native vegetation.

- 4.45 **(f) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.**

Applicant: n/a

Staff: No work will occur within the stream channel. Staff concurs that this criterion is not applicable.

- 4.46 **(g) Stream channels and banks, shore-lines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.**

Applicant: The area impacted will be planted with native plantings as indicated in Exhibit "B".

Staff: Staff agrees. Exhibit B has been relabeled by staff as Exhibit A.27.

- 4.47 **(h) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.**

Applicant: The enhancement plantings will be planted no later than 90 days after the buffer

zone is impacted.

Staff: Staff has included a condition of approval requiring the planting the infiltration trench and any other disturbed area within the 50 ft buffer within 90 days of the work's completion. *As conditions, this criterion has been met.*

- 4.48 **(i) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this standard.**

Applicant: The owner will monitor the replacement vegetation and take corrective measures to insure that at least 75 percent of the replacement vegetation survives.

Staff: A condition of approval has been included requiring maintenance of the vegetation. *As conditions, this criterion has been met.*

4.49 **(E) Stream, Pond, and Lake Buffer Zones**

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

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

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

(c) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community and shall comply with MCC 38.7055 (G) (3), substituting the term pond or lake as appropriate.

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

(3) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Planning Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Planning Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

Applicant: Under MCC 38.7060(E)(2) except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

We have set-up a best-practices strategy for construction of the Roof Drain Infiltration Trench.

1. Dig up native plant species and set-aside prior to any construction.
2. All natural vegetation shall be retained to the greatest extent practicable.

3. Temporary control measures will be applied to minimize erosion and sedimentation, including sediment barriers, tree protection, slope netting, and silk fencing.
4. No heavy equipment will be allowed for construction of the trench.
5. After construction, all original vegetation and native plant species will be replaced. Groundwater and surface-water quality will not be degraded by the proposed use.

Staff: The creek crossing the property is an intermittent stream with a 50 ft wide buffer as measured from each side of the stream's banks. The creek at this location is very small ranging in size from six inches to 2 ft in width. At present, an existing driveway travels adjacent to the creek. The only proposed development within the 50 ft buffer zone is the infiltration trench for the proposed dwelling. The infiltration trench will be planted with native species after its construction. *This criterion has been met.*

4.50 (F) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area and shall satisfy the following:

- (1) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.
- (2) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.
- (3) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:
 - (a) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.
 - (b) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.
 - (c) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.
- (4) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.
- (5) A statement indicating sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

Staff: The proposed development is very limited in scope and a landscape plan has been

developed to replant the infiltration trench with native species (Exhibit A.27). No additional measures are required. *This criterion has been met.*

4.51 **§ 38.7065 GMA WILDLIFE REVIEW CRITERIA**

Wildlife Habitat Site Review shall be required for any project within 1,000 feet of sensitive wildlife areas and sensitive wildlife sites (i.e., sites used by sensitive wildlife species).

Staff: There are no known sensitive wildlife areas or sites within 1,000 ft of the site. *This criterion has been met.*

4.52 **§ 38.7070 GMA RARE PLANT REVIEW CRITERIA**

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

Staff: There are no known sensitive plant species or endemic plants within 1,000 ft of the site. *This criterion has been met.*

4.53 **§ 38.7080 GMA RECREATION RESOURCE REVIEW CRITERIA**

The following uses are allowed, subject to compliance with MCC 38.7080 (E) and (F).

Staff: There are no recreational resources adjacent to or within the immediate area. *This criterion has been met.*

5.00 ***Transportation Variance***

5.01 **16.000 Variance from County Standards and Requirements**

16.100 Variance Requirements:

A. Multnomah County Code 29.507 provides for a variance by the County Engineer from County standards and requirements when written documentation substantiates that the requested variance is in keeping with the intent and purpose of County Code and adopted rules, and the requested variance will not adversely affect the intended function of the County road system or related facilities. A variance approval may include mitigation measures as conditions of approval.

B. All requests for a variance to these Road Rules that are part of a development that requires approval of that development as a “land use decision” or “limited Multnomah County Road Rules land use decision,” as defined in ORS 197.015, shall be submitted to the County Engineer at the time that application for the land use review is submitted to the applicable planning office having land use jurisdiction. The County Engineer’ decision on the variance to these Road Rules shall not become effective until the date that the associated land use decision becomes effective.

C. For properties within unincorporated areas of Multnomah County for which Multnomah County has not contracted for planning and zoning services, the Hearings Officer shall be the final County decision maker for all applications for variances to these Rules that are in conjunction with applications for development classified as a “Type III” or an appeal of a “Type II” land use permit application under MCC Chapter or the corresponding code parts in MCC Chapter 38, as applicable.

Applicant: The applicant has requested a variance for the property located at 37230 NE Clara Smith Rd. in order to meet a special circumstance or condition that does not apply to

other properties in then same area. A spring on the property has created a natural feature that does not allow access to the west side of the property. The topography of the land and set-back restrictions creates the need for two separate access points (driveways to the property). The applicant has been in contact with the transportation department regarding multiple access points to the property. Rather than one large un-defined access point that is currently being used (which is the only rational way to access both sides of the property), they would rather see two defined driveways. By simply creating a landscaped area in the middle of this one large access point, you would be defined two separate driveways and in turn protecting the safety and functionality of the transportation system.

Staff: Multnomah County Road Rules (MCRR) 4.200 and 4.300 restricts the number and location of access points. In this case, the applicant submitted a “Driveway Improvements” plan (Exhibit A.24) showing two existing, unpermitted access points on NE Clara Smith Road. The applicant is proposing to close the easterly access. The remaining driveway would be reconfigured into two access points to meet the driveway width standard, and be physically separated by vegetative landscaping and spaced approximately 35 feet apart as measured between driveway centerlines. The westerly driveway would provide access to a proposed accessory building; the newly configured easterly driveway would provide access to a replacement single family dwelling.

The applicant may exceed the one access per property limit and 50 foot access driveway spacing standard if they are able to obtain a variance pursuant to MCRR 16.000. The applicant has requested to obtain a variance. Compliance with the variance approval criteria is addressed in Findings 5.02 through 5.07 below.

5.02 **16.200 General Variance Criteria: In order to be granted a variance, the applicant must demonstrate that:**

A. Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions 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;

Staff: According to the applicant, the property contains a natural spring that discharges water onto the surface of the property. The applicant’s “Driveway Improvements” plan shows the origin of this natural feature and illustrates topographic patterns which guide its drainage down slope. This feature is protected under NSA zoning regulations, which require a 50 foot buffer zone prohibiting new development, including driveways, stream crossings, and other grading activities within 50 feet from the feature’s ordinary high water mark. The spring also affects where the applicant is able to site his septic tank and drainfield. Based on these factors, the ability to provide a new shared driveway to both the replacement single family dwelling and accessory structure from a single access point is limited without resulting in substantial grading or impact to the spring feature. *This criterion has been met.*

5.03 **B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;**

Staff: Both a single family dwelling and accessory structure are allowed in the underlying zoning district if the applicant can demonstrate compliance with applicable NSA Site Review regulations. Existing site conditions would likely limit the ability to site both structures in a manner consistent with these regulations without the two access driveways as proposed. *This criterion has been met.*

- 5.04 **C. The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;**

Staff: NE Clara Smith Road currently serves approximately 15 residences. Traffic volumes along NE Clara Smith are low. Development potential is currently limited due to existing zoning regulations and the size parcels which front the roadway. Further, with the exception of the two driveways proposed for the subject property, access spacing standards will be met. Therefore, any potential impact to public welfare as a result of the proposed use will not result from allowing a granting of the variance from the local access standard. *This criterion has been met.*

- 5.05 **D. The circumstances of any hardship are not of the applicant's making.**

Staff: The presence of the natural spring and drainage area on the subject property is not of the applicant's making. *This criterion has been met.*

- 5.06 **16.225 Access Variance Standards: Exceptions to access standards may be made by the County Engineer when spacing or other safety considerations make non-standard access acceptable. In addition to the variance requirements of Section 16.200 of these Rules, the applicant will be required to demonstrate that the proposed variance will not negatively impact the safety or capacity of the transportation system for a variance to be granted. The following are examples of variances that may be considered along with specific criteria that must be addressed before such a variance can be granted.**

A. Multiple Access Points: The County Engineer may allow multiple access points when all spacing standards can be met, or when the additional access(es) will not negatively impact the safety or functionality of the transportation system and a single access point cannot reasonably serve a site. Movement restrictions, such as right-in, right-out, may be placed on accesses to protect the safety and/or functionality of the transportation system.

Staff: As discussed above, the two access points proposed will not meet the 50 foot spacing standard. Access spacing standards will be met from all other surrounding driveways, however. Due to low traffic volumes, and limited development potential, allowing two access points to the subject property will not negatively impact the safety or functionality of NE Clara Smith Road. Movement restrictions will not be required. *This criterion has been met.*

- 5.07 **B. Access Spacing: If it is not feasible to access a site and meet the access spacing standards, access may be located so as to provide the best access spacing possible. The County Engineer may require additional measures to mitigate sub-standard access spacing, such as a median or other restrictions.**

Staff: It is likely not feasible to access both the replacement single family dwelling and accessory structure in the locations proposed by the applicant in a manner which meets the access spacing standard, while still meeting other applicable NSA Site Review regulations including those requiring minimized grading and a 50 foot buffer zone from the natural spring drainage area. The access points will be spaced approximately 35 feet apart as measured between driveway centerlines, so as to provide the best access spacing possible. *This criterion has been met.*

6.00 **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for a National Scenic Area Site Review and Transportation Variance in the Gorge General Residential zoning district. This approval is subject to the conditions of

approval established in this report.

7.00 ***Exhibits***

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	NSA Application Form	3/20/08
A.2	1	Project Description	3/20/08
A.3	1	Site and Vicinity Characteristics	3/20/08
A.4	12	Narrative	3/20/08
A.5	2	Exhibit 1.1 Aerial Photographs and Topo Map	3/20/08
A.6	31	Exhibit 1.2 Assessment Records and Comparable Properties	3/20/08
A.7	3	Exhibit 1.3 Exterior Materials	3/20/08
A.8	6	Exhibit 1.4 Landscape Setting and Site Characteristics	3/20/08
A.9	1	Site Plan	3/20/08
A.10	1	Existing Site Conditions	3/20/08
A.11	1	House Elevations	3/20/08
A.12	1	Accessory Building Elevations	3/20/08
A.13	3	Certification of On-Site Sewage Disposal	3/20/08
A.14	1	Certification of Water Service	3/20/08
A.15	3	Fire District Access Review	3/20/08
A.16	4	Fire District Review – Fire Flow Req.	3/20/08
A.17	3	Survey of Clara Smith	3/20/08
A.18	3	House Floor Plans	3/20/08
A.19	2	Garage Main Floor Plan & Modified Elevations for Accessory Structure	3/20/08
A.20	1	Amended Existing Site Conditions	5/2/08
A.21	1	Revised Proposed Site Plan with Landscape Plan	5/2/08
A.22	1	Letter of Authorization	5/2/08
A.23	6	Additional Narrative Statements	5/2/08
A.24	1	Amended Driveway Design	6/11/08
A.25	1	Transportation Variance Request	6/11/08
A.26	7	Narrative Addressing MCC 38.7060	6/11/08

A.27	1	Planting Plan for Infiltration Trench	6/11/08
A.28	2	Comments from Windust in Response to Neighbor's Comments	7/30/08
'B'	#	Staff Exhibits	Date
B.1	2	A&T Information for Properties in the Area	4/8/08
B.2	16	Cross-Sections for T2-08-015	4/18/08
B.3	3	EP Memo	4/22/08
B.4	2	A&T Property Information for 1N4E26DC - 00700	5/6/08
B.5	1	Additional Trees to Achieve Visual Subordinance	
B.6	1	Alternatives Considered for Dwelling's Infiltration Trench	
B.7	1	Contour Information for Property	
'C'		Administration & Procedures	Date
C.1	2	Incomplete Letter	4/18/08
C.2	1	180 Day Response Letter	4/22/08
C.3	1	Completeness Letter – Day 1 (June 11, 2008)	6/19/08
C.4	47	Opportunity to Comment	6/19/08
C.5	40	Administrative Decision	10/10/08
'D'	#	Comments	Date
D.1	8	Section 106 Documentation Form	3/31/08
D.2	10	Historic Survey of Windust Demolition and new Construction Project	4/2/08
D.3	2	Determination from SHPO that No Historic Properties Affected	5/21/08
D.4	1	Comments from Neighbors Rosenkranz & Masters	6/26/08
D.5	1	Comments from Columbia River Gorge Commission Staff	6/24/08
D.6	8	Comments from Friends of the Columbia Gorge	7/1/08