



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.

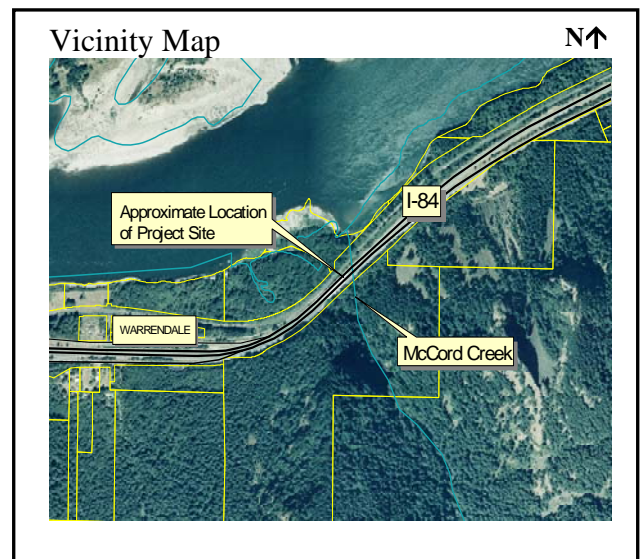
Case File: T2-09-059

Permit: National Scenic Area Site Review

Location: I-84 Eastbound, Milepost 37.8, McCord Creek Bridge
Section 31, Township 02 N, Range 07 E, W.M.

Applicant: Aaron Davis, Granite Northwest, Inc.

Owner: Oregon Department of Transportation (ODOT)



Summary: National Scenic Area Site Review for a Post Emergency/Disaster Response for emergency clean-up of an asphalt oil spill. Project involves the clean-up of approximately 3,000 gallons of asphalt oil from bridge surfaces, vegetation, soil and the creek bed.

Decision: Approved with conditions.

Unless appealed, this decision is effective February 2, 2010, at 4:30 PM.

Issued by:

By: _____
Joanna Valencia, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, January 19, 2010

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 Joanna Valencia, Staff Planner at 503-988-3043, ext. 29367.

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 February 2, 2010 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 38.0015 Definitions, 38.2600-38.2695 GSO Zone, 38.7090 Responses to an Emergency/Disaster Event, Chapter 38 Part 1 (General Provisions; Chapter 38 Part 2 (General Provisions), and Chapter 38 Part 3 (Administration and Procedures). Copies of the referenced Multnomah County Code (MCC) 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. Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event (MCC 38.7090(A)(2)).
2. If, during construction, cultural or historic resources are uncovered, the property owner(s) shall immediately cease development activities and inform the Multnomah County Land Use Planning Division, Columbia River Gorge Commission, and the U.S. Forest Service of any discovery. (MCC 38.7090(E)(2)).

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 (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description:

On July 8, 2009, a tanker truck carrying asphalt oil, owner and operated by Granite Northwest, Inc. collided with the roadside barrier on Interstate 84 eastbound, causing the tanker to flip on its side and rupturing the asphalt tank on the main truck, and spilling approximately 3,000 gallons of asphalt oil onto the McCord Creek bridge, surrounding soil, and McCord creek itself.

The following National Scenic Area Site Review is being done in response to an Emergency/Disaster Event consistent with the provision of Multnomah County Code (MCC) 38.7090.

2.00 Gorge Special Open Space Zoning District (GSO)

The subject property is located within the Gorge Special Open Space zoning district. This project is being reviewed as a response to an emergency event. Provisions for this review are covered under MCC 38.7090. These code provisions recognize that responses to an emergency and/or disaster event are allowed in all zoning districts within the Columbia River Gorge National Scenic Area. Findings below in Section 3.00 address the criterion for responses to emergency/disaster events.

3.00 National Scenic Area Site Permit

§ 38.7090 RESPONSES TO AN EMERGENCY/DISASTER EVENT

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

(A) General standards for all response activities.

(1) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

Staff: As addressed by the applicant, following the emergency and prior to any excavation or removal of vegetation, straw bales and silt fence were installed along the eastern edge of McCord Creek. Impacted soil and blackberry bushes on the western side of the creek did not pose an erosion risk due to the ground being flat in that area. *This criterion was met.*

(2) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life, property, public services or the environment, an extension of no more than two years may be granted by the Planning Director, or the U.S. Forest Service for federal agency actions.

Staff: Oil absorbing booms were placed downstream of the spill, in addition to netting and steel-mesh screen materials. These screening devices were installed to catch any loose pieces or asphalt that broke loose during the removal process from the streambed of McCord Creek. These devices have all been removed from the site (removed on or before 7/24/09). *This criterion is met.*

(3) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

Staff: No new exploration, development (extraction or excavation), and production of mineral resources occurred as part of this project. *This criterion is not applicable.*

(4) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake, or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

Staff: No spoils were deposited on-site. Wastes generated during the clean-up of asphalt oil were evaluated to determine their hazardous characteristics for proper disposal. A total of nine drop boxes of waste materials were removed from the site during or after site activities, and were properly disposed off at the Hillsboro Landfill as required per the special waste permit. *This criterion is not applicable.*

(B) Notification Requirements

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

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

Staff: Telephone notification was provide to Multnomah County by Mary Young of the Oregon Department of Transportation within 48 hours. *This criterion is met.*

(b) Notification shall be submitted by mail, fax, telephone, email or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.

(c) Notification shall be furnished to the Planning Director, or the U.S. Forest Service for federal agency actions.

Staff: The applicant, Aaron Davis of Granite Northwest, Inc. notified Multnomah County via an email notification within 7 days of the incident (Exhibit A.4). *These criteria are met.*

(d) At a minimum, the following information shall be required at the time of notification:

- 1. Nature of emergency/disaster event.**
 - 2. Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).**
 - 3. Location of emergency/disaster response activities.**
 - 4. Estimated start and duration of emergency/disaster response activities.**
 - 5. Contact person and phone number for the parties conducting emergency/disaster response actions.**
- (e) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.**

Staff: The notification contained the listed information (Exhibit A.4). *This criterion is met.*

(2) Upon notification of an emergency/disaster response action, the Planning Director or the Forest Service shall, as soon as possible:

(a) Review their natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites, and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;

(b) Notify the Oregon Department of Fish and Wildlife of all noticed emergency/disaster response actions, to provide that agency an opportunity to consult with responding agencies during the event, and;

(c) Notify the U.S. Forest Service (except when the U.S. Forest Service is the notifying agency), State Historic Preservation Office (SHPO), and the Tribal governments of all emergency/disaster response activities. The U.S. Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

Staff: The listed government agencies were contacted and notified. Coordination between the applicant and the agencies occurred and results are provided in the submitted report (Exhibit A.2 and A.6). *This criterion is met.*

(3) Upon notification of a response action, the U.S. Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide onsite advice to minimize impacts to resources from emergency/disaster response actions.

Staff: Art Martin from Oregon Department of Fish and Wildlife served as the on-site resource advisory. Following the spill, the Oregon State Historic Preservation Office (SHPO) required an archaeological examination of the area before clean up could begin. An archaeological survey was completed and documented in a letter report entitled "Archaeological Survey and Monitoring of an Asphalt Spill at the Interstate 84 Bridge (No. 03783) over McCord Creek, Multnomah County, Oregon" by Robert Musil with Heritage Research Associates, Inc (Exhibit A.8). This report was reviewed both by SHPO and Margaret Dryden, Heritage Program Manager for the United States Department of Agriculture Forest Service Columbia River Gorge National Scenic Area. Ms. Dryden commented that the reconnaissance survey and monitoring during clean-up of the spill discovered no early historic or prehistoric cultural resources, and that the report and the methodology used are consistent with Multnomah County Ordinance. Ms. Dryden's comments also concurred with the findings of the report and that the post emergency/disaster response project had no effect on historic or prehistoric properties. *This criterion is met.*

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

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

Staff: Written request was received from the applicant to extend the submittal deadline (Exhibit A.7), and

extension was granted until October 10, 2009. *This criterion is met.*

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

Staff: The submitted application addresses the activities conducted during the emergency/disaster response, and includes information regarding temporary and permanent development placed during the event. The event included the clean up of approximately 3,000 gallons of asphalt oil from bridge surfaces, vegetation, soil and creek bed. NRC Environmental Services (NRCES) was hired to respond to the emergency and a full summary report of the activities conducted to address the event are included as part of the application submittal (Exhibit A.6). *This criterion is met.*

(3) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).

Staff: The emergency/disaster response action involved ground disturbance with mechanized equipment and therefore this is not exempt from these requirements. *This criterion is not applicable.*

(4) Applications shall include the following information:

- (a) Applicant's name and address.**
- (b) Location of emergency/disaster response.**
- (c) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.**
- (d) A map of the project area drawn to scale, at a scale of 1"=200' or a scale providing greater detail. The map shall include:**
 - 1. North arrow and scale.**
 - 2. Boundaries, dimensions and size of subject parcel(s).**
 - 3. Topography at a contour interval sufficient to describe the terrain of the project site.**
 - 4. Bodies of water, watercourses, and significant landforms.**
 - 5. Existing roads and structures.**
 - 6. New structures placed and any vegetation removal, excavation or grading resulting from the response actions.**
- (e) An exception to the scale requirements of subsection (4)(d) may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1"=200' or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.**

Staff: The submitted application includes the listed items above. *This criterion is met.*

(D) Post-Emergency/Disaster Response Site Review

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

Staff: The submitted application is being processed as a post-emergency/disaster response Site Review pursuant to the procedural provisions of MCC 38.0530(B) and is being evaluated for compliance with the standards of MCC 38.7090(E) as addressed in the findings below. *This criterion is met.*

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

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

(1) Scenic Resources

(a) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. In the GMA, such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in the Corbett Rural Center zoning district. In the SMA, such actions shall meet the scenic standard to the greatest extent practicable.

Staff: The impacts of the emergency/disaster response actions were evaluated to ensure that scenic resources are not adversely affected. Response actions included clean-up of the area affected by the spill and restoration of the area. A summary of the response activities report was prepared by NRC Environmental Services and was submitted as part of the application (Exhibit A.6). This report includes an assessment of environmental impact. The applicant worked with and the actions were reviewed and monitored by the State of Oregon Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife, United States Environmental Protection Agency (EPA), and the Oregon Department of Transportation (ODOT). At completion of the activities, there is only minimal visible asphalt oil contamination limited to staining on some rocks in and around McCord Creek, and some small patches of oil on the McCord Creek Bridge deck. These remaining items do not adversely impact scenic resources and are visually subordinate from key viewing areas as the road and rocks will continue to be come weathered and contamination of the creek is controlled. *This criterion is met.*

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

Staff: Vegetation that was impacted from the spill was Himalayan Blackberry bushes, not native to the area. There were no road cuts, structural development, or areas of landform alteration that resulted due to the emergency response activities. Hydro-seeding of cut vegetation was completed, along with a fiber matrix spray to stabilize the soil from erosion. Native grasses were also planted to address erosion. *This criterion is met.*

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

Staff: Revegetation has been conducted for the site consisting of a native species. The applicant has submitted documentation showing the restoration efforts (Exhibits A.2 and A.6). This documentation includes photos 3 weeks after the conclusion of the clean-up efforts depicting the restored site and planted vegetation. *This criterion is met.*

(d) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and

visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.

Staff: Restoration activities included the painting of the bridge deck barrier in a non-reflective concrete gray color in consultation with the Oregon Department of Transportation (ODOT). This is consistent with the color of the structure incident and it remains visually subordinate from key viewing areas. *This criterion is met.*

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

Staff: There are no additions to existing structures resulting from this emergency response. *This criterion is not applicable.*

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

- 1. The spoil materials shall either be:**
 - a. Removed from the NSA or**
 - b. Deposited at a site within the NSA where such deposition is, or can be, allowed, or**
 - c. Contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.**
- 2. The County shall decide whether an applicant removes the spoil materials (MCC 38.7090(E)(1)(f) 1.a.), deposits the spoil materials (MCC 38.7090(E)(1)(f) 1.b.), or contours the spoils materials (MCC 38.7090(E)(1)(f)1.c.) The applicant does not make this decision.**
- 3. The County shall select the action in MCC 38.7090(E)(1)(f) 1. that, to the greatest extent practicable, best complies with the provisions in Chapter 38 that protect scenic, cultural, recreation, and natural resources.**
- 4. Disposal sites created according to MCC 38.070(E)(1)(f)1.b. shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.**

Staff: The project is in the Special Management not the General Management Area. *This criterion is not applicable.*

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

- 1. The spoil materials shall either be:**
 - a. Removed from the NSA, or**
 - b. Deposited at a site within the NSA where such deposition is, or can be, allowed within two years of the emergency.**
- 2. After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.**
- 3. All grading (i.e. contouring) shall be completed within 30 days after the spoils materials are removed.**

4. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.
5. All revegetation shall take place within one (1) year of the date an applicant completes the grading.
6. MCC 38.7090 (E) (1) (g) shall take effect on August 3, 2006, or approval of a disposal site, which ever comes first.

Staff: The spoil materials were removed from the site. Wastes generated during the clean-up of asphalt oil were evaluated to determine their hazardous characteristics for proper disposal. A total of nine drop boxes of waste materials were removed from the site during or after site activities, and were properly disposed off at the Hillsboro Landfill as required per the special waste permit. After the spoils were removed the site was rehabilitated to meet the scenic standards, planting native grass seed in exchange for the Himalayan Blackberry bushes located on the site prior to the incident. All grading was completed by July 24, 2009, which was less than 30 days after the original spill. *This criterion is met.*

(2) Cultural Resources and Treaty Rights

- (a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect Tribal treaty rights.
- (b) The U.S. Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Planning Director.
 1. Reconnaissance surveys shall be conducted by the U.S. Forest Service and comply with the standards of MCC 38.7045 (D) (1) and (D)(2)(c).
 2. Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.
- (c) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the Planning Director shall notify the Tribal governments when:
 1. A reconnaissance survey is required, or
 2. Cultural resources exist in the project area.

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

Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them. The Planning Director shall send a copy of all comments to the Gorge Commission.

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

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

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

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

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

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

1. The emergency/disaster response does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.

2. The emergency/disaster response action avoided cultural resources that exist in the project area.

3. Adequate mitigation measures to affected cultural resources have been developed and will be implemented.

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

- a. The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the *National Register Criteria for Evaluation* (36 CFR 60.4), or

- b. The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* [U.S. Department of the Interior 1990] and *The Secretary of the Interior's Standards for Historic Preservation Projects* [U.S. Department of the Interior 1983].

Staff: Following the spill, the Oregon State Historic Preservation Office (SHPO) required an archaeological examination of the area before clean up could begin. An archaeological survey was completed and documented in a letter report entitled "Archaeological Survey and Monitoring of an Asphalt Spill at the Interstate 84 Bridge (No. 03783) over McCord Creek, Multnomah County, Oregon" by Robert Musil with Heritage Research Associates, Inc (Exhibit A.8). This report was reviewed both by SHPO and

Margaret Dryden, Heritage Program Manager for the United States Department of Agriculture Forest Service Columbia River Gorge National Scenic Area. Ms. Dryden commented that the reconnaissance survey and monitoring during clean-up of the spill discovered no early historic or prehistoric cultural resources, and that the report and the methodology used are consistent with Multnomah County Ordinance. Ms. Dryden's comments also concurred with the findings of the report and that the post emergency/disaster response project had no effect on historic or prehistoric properties. The Confederated Tribes and Band of the Yakama Nation was informed of the emergency response and no comments from them were received. *This criterion is met.*

(3) Natural Resources

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

Staff: Due to the location of the spill, the impacted area included McCord Creek. The design of the disaster response was coordinated with Oregon Department of Fish and Wildlife and the impacted area was cleared of the asphalt and restored. Minimal staining on some of the rocks of McCord creek remains, but adverse impact to the resource due to this is not expected. *These criteria have been met.*

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

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

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

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

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

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

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

d. If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service

natural resource advisor (as available) in consultation with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Planning Director shall incorporate them into the Site Review decision and the aquatic area protection process may conclude.

e. Unless addressed through d. above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the standards of MCC .7060(F)(1) and (2). Rehabilitation Plans shall also satisfy the following:

1) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.

2) Planting plans shall be included that specify native plant species to be used, specimen quantities, and plant locations.

3) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

Staff: The McCord Creek bed and portions of the riparian area associated with the creek were impacted by the spill. Clean-up and restoration efforts were coordinate with ODFW, DEQ, and the EPA. The submitted report prepared by NRC Environmental Services details the mitigation and restoration efforts taken to minimize impacts to the creek and riparian area. The report also documents the clean-up efforts taken and the site as restored. Measures were taken to not impact native vegetation, fish and wildlife, and to ensure that alterations of the functions, contours, vegetation, fish and wildlife resources and hydrology were minimized. Vegetation and rocks were marked for removal based on the guidance of ODFW, DEQ and the EPA. Restoration work has been completed consistent with the submitted report, and includes the use of native vegetation. *This criterion is met.*

2. Wildlife Habitat

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

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

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

1) The sensitive wildlife area or site was not active, or

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

d. If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the emergency/disaster response activities had minor effects on the wildlife area or site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a U.S. Forest Service natural resource advisor (as available) in consultation with the state

wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Planning Director shall incorporate them into the Site Review decision and the wildlife protection process may conclude.

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

- 1) Submit a copy of the Wildlife Management Plan to the Oregon Department of Fish and Wildlife for review. The department will have 15 days from the date that a management plan is mailed to submit written comments to the Planning Director;
- 2) Record any written comments submitted by the Oregon Department of Fish and Wildlife in the Site Review decision. Based on these comments, the Planning Director shall make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the Oregon Department of Fish and Wildlife, the Director shall justify how an opposing conclusion was reached.
- 3) Require the project applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

Staff: The area is identified as sturgeon sensitive wildlife area. The applicant worked with ODFW and other government agencies to review the site, and it was determined that it wasn't in a sensitive wildlife area. Glen Littrell was the ODFW representative. All clean-up and restoration efforts were reviewed and done in consultation with ODFW. All work has been completed and activities involved for the project are documented in the report prepared by the NRC Environmental Services (Exhibit A.6). *This criterion is met.*

3. Deer and Elk Winter Range

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

Staff: The project isn't located within a deer and elk winter range and this project doesn't include any permanent fencing. *This criterion is not applicable.*

4. Rare Plants

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

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

- c. The rare plant protection process may conclude if the Planning Director, in consultation with the Oregon Natural Heritage Program, determines that emergency/disaster response activities occurred outside of a rare plant buffer zone.
- d. If the Planning Director, in consultation with the Oregon Natural Heritage Program, determines that the emergency/disaster response activities had minor effects on rare plants or the rare plant buffer zone, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state natural heritage staff, or a Forest Service natural resources advisor (as available) in consultation with the state natural heritage staff, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Planning Director shall incorporate them into the Site Review decision and the rare plant protection process may conclude.
- e. If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse affects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan, that meets the standards of MCC 38.7070 (D).
- f. The Planning Director shall submit a copy of all protection and rehabilitation plans to the Oregon Natural Heritage Program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the Planning Director.
- g. The Planning Director shall record any written comments submitted by the Oregon Natural Heritage Program in the Site Review decision. Based on these comments, the Director shall make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Oregon Natural Heritage Program, the Director shall justify how an opposing conclusion was reached.
- h. The Planning Director shall require the project applicant to revise the protection and rehabilitation plan as necessary to ensure that the proposed use would not adversely affect a rare plant site.

Staff: The project is not within 1,000 feet of a mapped rare plant. Staff mailed the Oregon Natural Heritage Program the application materials. No response was received indicating that a sensitive plant species was within the area of the emergency response. *These criteria have been met.*

(4) Recreational Resources

- (a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.
- (b) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

Staff: Restoring the Interstate 84 and McCord Creek area to its pre-damage condition continues to provide recreational access to the Columbia River Gorge National Scenic Area. *No recreational resources were adversely impacted.*

4.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the National Scenic Area Site Review for a Post Emergency/Disaster Response for emergency clean-up of an asphalt

oil spill in the Gorge Special Open Space (GSO) zone. Project involves the clean-up of approximately 3,000 gallons of asphalt oil from bridge surfaces, vegetation, soil and the creek bed. This approval is subject to the conditions of approval established in this report.

5.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Procedural Exhibits

‘C’ Comments Received

All exhibits are available for review in Case File T2-09-059 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	NSA Application Form	10/8/09
A.2	9	Applicant Narrative	10/8/09
A.3	2	Site Plans	10/8/09
A.4	5	Email correspondence- notification of spill	10/8/09
A.5	1	Vegetation/Plantings Invoice	10/8/09
A.6	76	Summary of Report of Activities prepared by NRC Environmental Services	10/8/09
A.7	1	Extension Request	10/8/09
A.8	9	Archaeological Survey	10/8/09
‘B’	#	Administration & Procedures	Date
B.1	1	Complete Letter (Day 1)	11/6/09
B.2	1	Preliminary Agency Comment Period	10/13/09
B.3	12	Opportunity to Comment	11/6/09
‘C’	#	Comments Received	Date
C.1	5	Comments from the Friends of the Columbia Gorge	11/23/09
C.2	1	Comment from Margaret Dryden, USDA Forest Service	10/29/09
C.3	1	Comment form Dennis Griffin, SHPO	12/8/09