



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

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## NOTICE OF DECISION

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

**Case File:** T2-2010-746

**Permit:** National Scenic Area Site Review and Hillside Development Permit

**Location:** Between John B. Yeon State Park trailhead and Moffett Creek Historic Bridge  
Township 2 North, Range 7 East, W.M Sections 29, 30 and 31

**Applicant:** Oregon Department of Transportation

**Owner:** Oregon Department of Transportation and Department of State Parks and Recreation

Vicinity Map

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See Exhibit A.2,  
Appendices A & B

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**Summary:** Build temporary access roads for geotechnical exploration related to the development of the Historic Columbia River Highway State Trail between John B. Yeon State Park and Moffett Creek in the Gorge Special Open Space Zone.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective November 19, 2010, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
George A. Plummer, Planner

For: Karen Schilling, Planning Director

Date: Friday, November 5, 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 George Plummer, Staff Planner at 503-988-3043, ext. 29152.

**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 November 19, 2010 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): Multnomah County Code (MCC): MCC 38.2600 et. al: Open Space (GSO), MCC: 38.7000 et. al: Site Review –Special Management Area (SMA), and MCC 38.5500 et. al: Hillside Development.

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 38.0700. 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 brackets.

1. The project shall be conducted in the area as proposed and as submitted for cultural review. [MCC 38.7050 (A)]
2. The project shall be conducted to retain the existing vegetation to greatest extent practicable. Tree removal shall be minimized as proposed in the submitted application materials. Any planting of vegetation related to the approved project shall be of native species. The applicant shall restore vegetation in disturbed areas as soon as practicable after the geotechnical exploration work is

completed. The revegetation with native ground cover of the disturbed areas shall occur within a maximum of a year after completion temporary road removal. Revegetation shall be accomplished through planting native grasses in all the disturbed areas and native understory shrubs in the areas that will not be part of the future trail. All revegetated areas shall be monitored by the applicant to ensure the success of the revegetation. If the revegetation is not successful, the applicant shall continue the revegetation effort until it is successful. Within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community. [MCC 38.7040(A)(9), MCC 38.7040(B)(2), MCC 38.7075(B), MCC 38.7075(P), and MCC 38.7075(Z)(2)]

3. The applicant shall restore all areas disturbed or impacted by the approved project including the impacted wetland, riparian area and other buffers as described in the applicant's submitted materials and the mitigation plan. The applicant shall implement and complete the mitigation as described in the submittal and the mitigation plan. [MCC 38.7075(G)(2)]
4. The temporary roads shall be removed prior to the beginning of the 2011 fall wet season. The restoration work shall be done as soon as practicable after completed after the completion the projects geotechnical exploration work and the removal of the temporary roads. . [MCC 38.7075(Z)(1)]
5. The applicant shall submit a progress report every three years that documents milestones, successes, problems, and contingency actions with the restoration of the wetland, riparian area and buffer area and implementation of the mitigation, until the restoration has been documented to be successful. In instances where restoration efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration guidelines. [MCC 38.7075(Y) and MCC 38.7075 (X)]
6. The applicant shall implement the submitted mitigation plan and any additional measures agreed upon during the November 2, 2010 meeting with USFS as discussed in Exhibit C.5. The applicant shall rehabilitate/restore habitat affected by the proposed project to a natural condition and replicated in composition, structure, and function. [MCC 38.7075(G)(1), (I), (J), (M), (N), (Q), (Z)(3)]
7. The applicant shall minimize soil disturbance to that necessary to conduct the project. The applicant shall implement erosion control measure as described in the applicant's submittal. The applicant shall implement Best Management Practices for erosion control as described in the *ODOT Standard Specifications for construction Manual*, (ODOT 2008) Section 00280 including but not limited to silt fencing down-slope of any disturbance area, mulching of disturbed areas, covering temporary stockpiles with anchored plastic, removal of excess spoils and revegetating disturbed area as soon as practical after the temporary roads are removed. The applicant shall submit a \$77 erosion control inspection fee. [MCC 38.7075(P) and MCC 38.5520(A)]
8. If there is sedimentation resulting from this project, the applicant shall be responsible to remove any sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. [MCC 38.5520(B)(1)]
9. The applicant shall immediately notify the Multnomah County Planning Director in the event of the discovery of cultural resources during construction or development. The applicant shall be responsible to implement out the requirement listed below should such a discovery occur. [MCC 38.7050 (H)]
  - (1) In the event of the discovery of cultural resources, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery pursuant to MCC 38.7050 (G)(3).

- (2) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:
  - (a) Stop all work in the vicinity of the discovery.
  - (b) The applicant shall immediately notify the U.S. Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.
  - (c) The U.S. Forest Service shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.
  - (d) A cultural resource professional shall evaluate the potential significance of the discovery pursuant to MCC 38.7050 (G) (3) and report the results to the U.S. Forest Service which shall have 30 days to comment on the report.
- (3) If the U.S. Forest Service determines that the cultural resource is not significant or does not respond within the 30 day response period, the cultural resource review process shall be complete and work may continue.
- (4) If the U.S. Forest Service determines that the cultural resource is significant, the cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to MCC 38.7050 (G) (4) and (5).

**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 applicable 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 at the end of a finding in *italic*.

### **1. PROJECT DESCRIPTION**

**Staff:** An application request for a NSA Site Review and Hillside Development Permit to build temporary access roads for geotechnical exploration related to the development of the Historic Columbia River Highway State Trail between John B. Yeon State Park and Moffett Creek in the Gorge Special Open Space Zone (Exhibit B.2) and in the Hillside Development Overlay.

The application proposal requests approval to construct temporary access roads to provide access for digging test pits and drill borings for geotechnical exploration at location as show in Exhibit A.2, Appendix B. The geotechnical exploration is needed to provide information necessary to complete the design for structures necessary to develop the infrastructure for the development of the Historic Columbia River Highway trail. The future trail will be used for hiking, viewing and bicycling. The trail proposal is not part of this application request and will require a separate NSA Site Review.

### **2. PROPERTY DESCRIPTION**

**Staff:** The proposed project area is located at several spots directly south of Interstate – 84 between John B. Yeon State Park and Moffett Creek. The area is predominately heavily forested. Several of the sites show indication that they have previously disturbed related to the construction of I-84.

### **3. OPEN SPACE (GSO) ZONE DISTRICT**

#### **Review Uses**

**MCC 38.2625(D) The following uses may be allowed on lands designated GSO, pursuant to MCC 38.0530(B), when consistent with an open space plan approved by the U.S. Forest Service and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:**

- (3) Low intensity recreation uses and developments including educational and interpretive facilities, consistent with MCC 38.7085.**

**Staff:** The proposed project is located in the GSO Zone District. The application proposal requests to construct temporary access roads to provide access for digging test pits and drill borings for geotechnical exploration to provide information necessary to complete the design for structures necessary to develop the infrastructure for the development of the Historic Columbia River Highway trail. While the development of the future trail is not proposed under this application request it will be designed to provide for low intensity recreation uses such as hiking, viewing and bicycling it will have a separate application review to address consistency with MCC 38.7085. NSA Site Review standards of MCC 38.7000 through 38.7085 are addressed in findings in Sections 4, 5, and 6.

#### 4. SMA SCENIC REVIEW CRITERIA

The following scenic review standards shall apply to all Review and Conditional Uses in the Special Management Area of the Columbia River Gorge National Scenic Area with the exception of rehabilitation or modification of historic structures eligible or on the National Register of Historic Places when such modification is in compliance with the national register of historic places guidelines:

##### 4.1. All Review Uses Visible from KVAs

**MCC 38.7040 (A) All Review Uses visible from KVAs.** This section shall apply to proposed development on sites topographically visible from KVAs.

**Finding:** The proposed project will be topographically visible from Interstate Highway – 84, Historic Columbia River Highway, Bacon Rock, State Route – 14 and potentially the Columbia River.

##### 4.1.1 **MCC 38.7040(A)(1): New developments and land uses shall be evaluated to ensure that the scenic standard is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from Key Viewing Areas.**

**Staff:** The Key Viewing Areas for this project include Interstate – 84 (I-84), Columbia River, Beacon Rock, Historic Columbia River Highway (HCRH), Washington State Route 14 and possibly others. The proposed temporary access roads have been evaluated to ensure that the scenic standard, “Not Visually Evident,” (definitions for “Not Visually Evident” is listed in the following finding 4.1.2.) is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from Key Viewing Areas. Given the proposed project is temporary in nature, there will be no cumulative effects.

The temporary access roads and geotechnical exploration will be hidden by the vegetation and slope or blend into the vegetation of the area due to the distance of the Key Viewing Areas except for I-84 and HCRH (Exhibit A.2, Appendices A and B). A traveler on I-84 may catch a glimpse of the access roads but due to the speed of the passing vehicles the accesses roads will be not visually evident. No new access road will be needed to provide access for geotechnical exploration near the existing HCRH nor will any of the temporary roads be visible from the HCRH. For the geotechnical work nearest the HCRH the access is gained using temporary roads approved and created for the Moffett Creek Bridge Replacement Project and the geotechnical ground disturbance will be screened by the existing vegetation and exist only temporarily. *This criterion is met.*

##### 4.1.2. **MCC 38.7040(A)(2): The required SMA scenic standards for all development and uses are summarized in the following table.**

REQUIRED SMA SCENIC STANDARDS		
LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Coniferous Woodland,	Forest (National Forest Lands), Open Space	NOT VISUALLY EVIDENT

**MCC 38.0015 Definitions -- Not visually evident (Special Management Area):** A visual quality standard that provides for development or uses that are not visually noticeable to the casual visitor. Developments or uses shall only repeat form, line, color, and texture that

are frequently found in the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be noticeable.

**Staff:** The proposed project is located in the Coniferous Woodland Landscape Setting thus the applicable scenic standard is “Not Visually Evident.” This decision’s scenic review criteria are evaluated using the “Not Visually Evident” scenic standard. *This criterion is met.*

**4.1.3. MCC 38.7040(A)(3): In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development.**

**Staff:** The temporary access roads and geotechnical exploration sites will be hidden by the vegetation and slope or blend into the vegetation of the area due to the distance of the Key Viewing Areas except for I-84 and HCRH. A traveler on I-84 may catch a glimpse of the access roads directly adjacent to the highway but due to the speed of passing vehicles the access roads will be not visually evident. No new access road will be needed near nor are any of the proposed access roads visible from the existing HCRH. For the geotechnical work nearest the HCRH the access is gained using temporary roads approved and created for the Moffett Creek Bridge Replacement Project and the geotechnical ground disturbance will be screened by the existing vegetation and exist only temporarily. *This criterion is met*

**4.1.4. MCC 38.7040(A)(4): Proposed developments or land use shall be sited to achieve the applicable scenic standards. Development shall be designed to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.**

**Staff:** The proposed temporary development will use the existing topography and will take advantage of the existing vegetation and landform screening. The soil disturbance is proposed to be kept to a minimum disturbance of the soil necessary to reach the areas for the borings and for the test pits and thus using the natural topography. The proposed temporary development will use the natural vegetation and landforms minimize the viability screening the project disturbance areas to the extent possible from KVAs. This results in the project being not visually evident from KVAs. The temporary access roads which will not become part of the future trail will be replanted and restored.

**4.1.5. MCC 38.7040(A)(5): The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its degree of visibility from key viewing areas.**

- (a) Decisions shall include written findings addressing the Primary factors influencing the degree of visibility, including but not limited to:
1. The amount of area of the building site exposed to key viewing areas,
  2. The degree of existing vegetation providing screening,
  3. The distance from the building site to the key viewing areas from which it is visible,
  4. The number of key viewing areas from which it is visible, and
  5. The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

- (b) Conditions may be applied to various elements of proposed developments to ensure they meet the scenic standard for their setting as seen from key viewing areas, including but not limited to:
1. Siting (location of development on the subject property, building orientation, and other elements),
  2. Retention of existing vegetation,
  3. Design (color, reflectivity, size, shape, height, architectural and design details and other elements), and
  4. New landscaping.

**Staff:** The factors in MCC 38.7040(A)(5)(a) were considered when determining the degree of visibility. There are no permanent structures proposed for this project. Due to the dense vegetation in the area, the temporary roads will only be visible at a couple of access points from I-84. Given the speed of the traveling public on the highway in these locations, these points will be briefly visible but not visually evident. The geotechnical exploration will occur at ground level in areas of dense vegetation, thus will not be visually evident. The conditions applied include retention of existing vegetation, restoring/replanting the disturbed areas, decommissioned temporary roads and erosion controls. The disturbed areas will be restored with native grasses and shrubs as a condition. *These criteria are met through conditions.*

- 4.1.6. MCC 38.7040(A)(6): Sites approved for new development to achieve scenic standards shall be consistent with guidelines to protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources.**

**Staff:** The proposed temporary development is consistent with guidelines to protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources. The following Sections 5 and 6 include findings addressing the proposed development in relationship to these resources. *This criterion is met.*

\* \* \*

- 4.1.7. MCC 38.7040(A)(9): The following guidelines shall apply to new landscaping used to screen development from key viewing areas:**

- (a) New landscaping (including new earth berms) to achieve the required scenic standard from key viewing areas shall be required only when application of all other available guidelines in this chapter is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.
- (b) If new landscaping is necessary to meet the required standard, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to meet the scenic standard within five years or less from the commencement of construction.
- (c) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.



- (d) **The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in this chapter, and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).**

**Staff:** Due to the temporary nature of the proposed project no additional screening vegetation is necessary. Planting of vegetation to restore the disturbed areas will be minimal due to care being taken to minimize disturbance of existing vegetation. The only new vegetation needed is for replanting the disturbed areas after the temporary roads are decommissioned. This can be done through planting native grasses in all the disturbed area and native understory shrubs in the areas that will not be part of the future trail. A condition will require vegetation to be planted as **soon as** practicable and prior to project completion, the applicant be responsible for the proper maintenance of planted vegetation to assure survival and be responsible monitoring of the survival of planted vegetation and replacement if not successful. *This criterion is met through a condition.*

\* \* \*

#### **4.2. Coniferous Woodlands Landscape**

**MCC 38.7040(B): The following shall apply to all lands within SMA landscape settings regardless of visibility from KVAs (includes areas seen from KVAs as well as areas not seen from KVAs):**

\* \* \*

- (2) **Coniferous Woodlands: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous and Oak/Pine Woodland landscape.**
- (a) **Buildings in the Coniferous Woodland landscape setting shall be encouraged to have a vertical overall appearance and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.**
- (b) **Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.**

**Staff:** The proposed project is located within the Coniferous Woodland Landscape. The temporary access roads and geotechnical exploration will not alter the overall appearance of the woodland landscape at this location. The minor intrusions of the access roads into the landscape were designed to minimize the removal of trees. No substantial trees will be removed. The overall visual character of the natural appearance of the Coniferous Woodland Landscape will be retained. No permanent structures or buildings are proposed as part of this project. The applicant states that a native seed mix approved by the USFS will be used for revegetating disturbed area after the project is complete. A condition will require minimizing tree removal and planting of native species. These criteria are met through conditions.

#### **4.3. SMA Requirements for KVA Foregrounds and Scenic Routes**

**MCC 38.7040(C) SMA Requirements for KVA Foregrounds and Scenic Routes.**

**Finding:** Some of the project location are in the KVA Foregrounds and Scenic Routes (Exhibit A.2, Appendices A and B).

**4.3.1. MCC 38.7040(C)(1): All new developments and land uses immediately adjacent to the Historic Columbia River Highway, Interstate 84, and Larch Mountain Road shall be in conformance with state or county scenic route standards.**

**Staff:** The temporary roads are immediately adjacent to I-84. The minor and temporary nature of the access roads ensures compliance with the I-84 Corridor Strategy. *This criterion is met.*

**4.3.2. MCC 38.7040(C)(2): The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to MCC 38.7040(A).**

- (a) The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the requirements of 38.7040(A) and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.**
- (b) Findings must evaluate the following:**
  - 1. The limiting factors to meeting the required scenic standard and/or applicable provisions of 38.7040(A),**
  - 2. Reduction in project size;**
  - 3. Options for alternative sites for all or part of the project, considering parcel configuration and on-site topographic or vegetative screening;**
  - 4. Options for design changes including changing the design shape, configuration, color, height, or texture in order to meet the scenic standard.**
- (c) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as seen from the foreground of key viewing areas:**
  - 1. Form and Line-Design of the development shall minimize changes to the form of the natural landscape. Development shall borrow form and line from the landscape setting and blend with the form and line of the landscape setting. Design of the development shall avoid contrasting form and line that unnecessarily call attention to the development.**
  - 2. Color-Color shall be found in the project's surrounding landscape setting. Colors shall be chosen and repeated as needed to provide unity to the whole design.**
  - 3. Texture-Textures borrowed from the landscape setting shall be emphasized in the design of structures. Landscape textures are generally rough, irregular, and complex rather than smooth, regular, and uniform.**
  - 4. Design-Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious whole, using repetition of elements and blending of elements as necessary.**

**Staff:** The proposed development is of a temporary nature thus ultimately meets MCC 38.7040(C)(2)(a). In the few places that the access roads are visible from I-84 they will be not visually evident to the traveling public and will be decommissioned and replanted when the project is complete. *This criterion is met.*

**4.3.3. MCC 38.7040(C)(3): Right-of-way vegetation shall be managed to minimize visual impact of clearing and other vegetation removal as seen from Key Viewing Areas. Roadside vegetation management should enhance views out from the highway (vista clearing, planting, etc.).**

**Staff:** This project does not include vegetation management. There will be minor vegetation removal to site the temporary access roads but these roads will be decommissioned and replanted at the end of the project. *This criterion is met.*

\* \* \*

**4.3.4. MCC 38.7040 (C) (5) Development along Interstate 84 and the Historic Columbia River Highway shall be consistent with the scenic corridor strategies developed for these roadways.**

**Staff:** The temporary roads are immediately adjacent to I-84. The minor impacts and temporary existence of the access roads ensure compliance the I-84 Corridor Strategy. *This criterion is met.*

**5. SMA CULTURAL RESOURCE REVIEW CRITERIA**

**5.1. Cultural Resource Review**

**MCC 38.7050(A):** The cultural resource review criteria shall be deemed satisfied, except MCC 38.7050(H), if the U.S. Forest Service or Planning Director does not require a cultural resource survey and no comment is received during the comment period provided in MCC 38.7025 (B).

**Staff:** Margaret L. Dryden submitted an email dated July 19, 2010 (Exhibit C.1) in which she states, "I recommend a finding of 'no effect' to historic or prehistoric properties." Oregon State Historic Preservation Office (SHPO) concurred with ODOT's assessment that the project as proposed would have "No Historic Properties Affected (Archaeology)" (Exhibit A.11). A condition of approval will require the project to be conducted in the area as presented to these officials.

**5.2. Discovery During Construction**

**MCC 38.7050(H):** All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Planning Director in the event of the inadvertent discovery of cultural re-sources during construction or development.

- (1) In the event of the discovery of cultural resources, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery pursuant to MCC 38.7050 (G) (3).
- (2) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:
  - (a) Stop all work in the vicinity of the discovery.
  - (b) The applicant shall immediately notify the U.S. Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.
  - (c) The U.S. Forest Service shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.
  - (d) A cultural resource professional shall evaluate the potential significance of the discovery pursuant to MCC 38.7050 (G) (3) and report the results to the U.S. Forest Service which shall have 30 days to comment on the report.

- (3) If the U.S. Forest Service determines that the cultural resource is not significant or does not respond within the 30 day response period, the cultural resource review process shall be complete and work may continue.
- (4) If the U.S. Forest Service determines that the cultural resource is significant, the cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to MCC 38.7050 (G) (4) and (5).

**Finding:** A condition will require these procedures be followed if there is a cultural discovery during construction.

## **6. SMA NATURAL RESOURCE REVIEW CRITERIA**

**MCC 38.7075:** All new developments and land uses shall be evaluated using the following standards to ensure that natural resources are protected from adverse effects. Comments from state and federal agencies shall be carefully considered.

- 6.1. MCC 38.7075(A):** All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in MCC 38.7075 (2)(a) and (2)(b). These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined in MCC 38.7075 (2)(a) and (2)(b).

**Staff:** This decision has been reviewed applying the buffer zones as detailed. See the following findings addressing the wetland and stream buffers applicable to the proposed project. *This standard is met.*

- 6.1.1. MCC 38.7075(A)(1):** All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.

**Staff:** This project includes some work within the wetland and stream buffers (Exhibit A.2, Appendix B). A mitigation plan is proposed. *This criterion is met through the following findings and conditions of approval.*

- 6.1.2. MCC 38.7075(A)(2)** Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. 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) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.
  - (b) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.
  - (c) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:
    - 1. The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.
    - 2. The wetland is not critical habitat.

**3. Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.**

**Staff:** The applicant measured and mapped the buffer areas as outlined in this subsection and are included as Exhibit A.2, Appendix B. *This criteria is met.*

**6.1.3. MCC 38.7075(A)(3): The buffer width shall be increased for the following:**

- (a) When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone.**
- (b) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.**
- (c) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.**

**Staff:** No areas that met these criteria lie within the project work area. The buffers are not increased.

**6.1.4. MCC 38.7075(A)(4): Buffer zones can be reconfigured if a project applicant demonstrates all of the following:**

- (a) The integrity and function of the buffer zones is maintained.**
- (b) The total buffer area on the development proposal is not decreased.**
- (c) The width reduction shall not occur within another buffer.**
- (d) The buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.**

**Staff:** No buffer is proposed to be reconfigured for this project.

\* \* \*

**6.2. MCC 38.7075(B): When a buffer zone is disturbed by a new use, it shall be replanted with only native plant species of the Columbia River Gorge.**

**Staff:** A condition will require the use of native plants for the revegetation of disturbed areas. *This criterion is met through a condition.*

**6.3. MCC 38.7075(C): The applicant shall be responsible for identifying all water resources and their appropriate buffers.**

**Staff:** The applicant's submittal identifies all water resources and their appropriate buffers. *This criterion is met.*

**6.4. MCC 38.7075(D): Wetlands Boundaries shall be delineated using the following:**

- (1) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U. S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.**
- (2) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.**

- (3) **The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the ‘1987 Corps of Engineers Wetland Delineation Manual (on-line Edition)’.**
- (4) **All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.**

**Staff:** Pacific Habitat Resources wetland specialists delineated and mapped the wetland boundaries for the applicant, included as Exhibit A, Appendix B. *This criterion is met.*

- 6.5. MCC 38.7075(E): Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for streams and the high water mark for ponds and lakes. The project applicant shall be responsible for determining the exact location of the appropriate boundary for the water resource.**

**Staff:** Pacific Habitat Resources wetland specialists delineated and mapped the wetland boundaries for the applicant, included as Exhibit A.2, Appendix B. *This criterion is met.*

- 6.6. MCC 38.7075(F): The local government may verify the accuracy of, and render adjustments to, a bank full flow, high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary is contested by the project applicant, the local government shall obtain professional services, at the project applicant's expense, or the county will ask for technical assistance from the U.S. Forest Service to render a final delineation.**

**Staff:** The delineation is satisfactory and does not need further verification. *This criterion is met*

- 6.7. MCC 38.7075(G): Buffer zones shall be undisturbed unless the following criteria have been satisfied:**

**Staff:** Some of the proposed work is within stream and wetland buffer areas as discussed in the application narrative included as Exhibit A.2 and shown on the maps in Appendix B of that exhibit. There is no in-water work proposed within the streams. See findings below addressing the following criteria.

- 6.7.1. (1) The proposed use must have no practicable alternative as determined by the practicable alternative test. Those portions of a proposed use that have a practicable alternative will not be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.**

**Staff:** The applicant states, “The proposed alignment of the geotech exploration access roads are located in areas that will result in minimum disturbance possible and allow access for the collection of essential geo-tech information.” The applicant has provided a detailed Practical Alternatives Test Narrative along with the Mitigation Plan included as Exhibit A.2, Appendix G. The narrative states, “The proposed alignment was chosen because it has the least impacts to all the sensitive resources associated with the site.” It continues, “...any attempt to complete the project outside the buffer zones would have resulted in more impacts.”

The temporary access roads are needed to bring in drilling equipment for geo-tech exploration. The type of equipment necessary for these borings must be used due to the hardness of the

subsurface materials and to have enough power to adequately complete the borings. In a letter dated September 20, 2010 (Exhibit C.3), Daniel T. Harkenrider, USFS Scenic Area Manager, stated that:

“The construction of temporary roads within the 200 foot buffer zones (i.e. wetlands/riparian/talus) meet the no practical alternative test and have sufficient mitigations in place – if the project proceeds in dry weather.” Ideally, if the project occurs in the dry season, then seed mix will have time to germinate. This would help control any potential erosion or transfer of sediment to streams/creeks/river. During the wet weather or rainy season, three areas that have the potential for sediment transfer are the GR-4 and GR-8 temporary roads. CRGNSA recommends that this project should not proceed during wet weather, and that the National Marine Fisheries Service should be contacted for technical expertise in areas where anadromous fish may be affected.”

Staff concurs with the applicant that there are no practical alternative to avoid the proposed temporary disturbance of the buffer areas to complete this project which is necessary to design and build the future HCRH path. In a letter dated September 20, 2010 from Daniel T. Harkenrider, USFS NSA Manager recommended that the project be conducted during the dry season. The applicant has met with USFS biologists to agree on a plan to work in the rainy season to get the information necessary to design the future trail and build it during the next dry season. Mr. Harkenrider submitted a letter dated November 3, 2010 stating that his staff has met with the ODOT staff on site on November 2, 2010 and “have developed suitable mitigations that will protect the National Scenic Area. Mr. Harkenrider continued stating, “I am recommending that this project be approved for drilling during wet weather.” *This criterion is met.*

- 6.7.2. (2) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:**
- (a) A documented public safety hazard exists or a restoration/ enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question.**
  - (b) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project.**
  - (c) The proposed project minimizes the impacts to the wetland.**

**Staff:** No wetland will be filled or drained as part of the proposed project. The project includes a temporarily crossing of a wetland. The applicant proposes a temporary access across in an area that impacts the least amount of wetland as possible.

In an email dated Oct. 26, 2010 (Exhibit A.10), Kristen Stallman, ODOT, forwarded an email dated October 26, 2010 from Claire Carder, ODOT Wetland Specialist stated:

“The Geo-technical exploration plan is proposing to drive equipment over a portion of existing wetlands. Unless permanent fill is placed for a roadbed, driving the equipment over the small portion of wetland is not generally considered a permanent impact.

In the case of the geo-technical exploration, the affects of driving the equipment through the wetland area will be minimized by using palettes placed on the wetland to

distribute the weight of the vehicles and keep soil compaction and surface changes to hydrology to a minimum, or by placing geo-tech cloth on the roadway, placing any gravel that may be needed on the cloth, then removing all the fill and the geo-tech cloth after the work has been completed. With either method, the area of access will be scarified after work is complete to remove any possible soil compaction, and the area of equipment access seeded with native wetland species. Since the wetland meadow area is considered very degraded in quality due to the dominance of weedy plant species, seeding with native plant species would be enhancing the existing condition of the wetland.”

As described by Claire Carder, the project will have minimal impact on the wetland and includes restoration of the wetland of any impacts resulting from the temporary crossing. A condition will require the restoration of the impacted wetland. *These criteria are met through a condition.*

**6.7.3. (3) Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.**

**Staff:** The applicant has submitted a mitigation plan for the minor temporary impacts of proposed geotechnical exploration project to the wetland, wetland buffers and stream buffers. The restoration and enhance of the impacted wetlands and riparian areas are proposed to be restored by the removal of noxious weeds and replanting of native vegetation in the areas impacted. The plan is included as Exhibit A.2, Appendix G. A condition will require the restoration and enhancement of the impacted wetlands and riparian areas. *This criterion is met through a condition.*

**6.8. MCC 38.7075(H): Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are within 1000 feet of a sensitive wildlife/plant site and/or area. Sensitive Wildlife Areas are those areas depicted in the wildlife inventory and listed in Table 2 of the Management Plan titled “Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge”, including all Priority Habitats Table. Sensitive Plants are listed in Table 3 of the Management Plan, titled “Columbia Gorge and Vicinity Endemic Plant Species.” The approximate locations of sensitive wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory.**

**Staff:** The project is located within 1000 feet of mapped sensitive wildlife areas. ODOT Biologist Michelle Guay surveyed the project area and prepared a botanical clearance report for the project included as Exhibit A.2, Appendix C. ODOT staff has consulted with Brett Carre, US Forest Service biologist, David Leal, US Fish and Wildlife Service wildlife biologist, Jim Brick, ODFW biologist (Exhibits A.8). The applicant has conducted the necessary studies to inventory sensitive wildlife and/or plant areas. *This criterion is met.*

**6.9. MCC 38.7075(I): The local government shall submit site plans (of uses that are proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the U.S. Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife for wildlife issues and by the Oregon Natural Heritage Program for plant issues).**

**Staff:** The applicant has consulted the U.S. Forest Service, the Oregon Department of Fish and Wildlife during the preparation of the application (Exhibit A.8). Multnomah County Land use Planning has submitted the application material to the U.S. Forest Service, the Oregon



Department of Fish and Wildlife, and the Oregon Natural Heritage Program for completeness review and opportunity to comment notice. Other than emails submitted by the applicant and included as Exhibit A.8, County Planning has not received comments from these agencies except for a letter dated September 20, 2010, from Mr. Harkenrider, USFS (Exhibit C.3) and letter dated November 3, 2010, from Mr. Harkenrider (Exhibit C.5), cited in Finding 6.7.1 of this decision. *This criterion is met.*

**6.10. MCC 38.7075(J): The U.S. Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:**

- (1) Identify/verify the precise location of the wildlife and/or plant area or site.**
- (2) Determine if a field survey will be required.**
- (3) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season.**

\* \* \*

**Staff:** The applicant has consulted U.S. Forest Service biologists and botanists, US Fish and Wildlife Service, and Oregon Department of Fish and Wildlife, biologist as well as ODOT biologist during the preparation of the application with emails attached as Exhibit A.8 In a letter dated September 20, 2010 (Exhibit C.3), Daniel T. Harkenrider, USFS Scenic Area Manager, addressed that the project met the “no alternatives test” and has “sufficient mitigations in place” with the qualifier “if the project proceeds in dry weather.” He continued addressing concern about work in the rainy season (see Finding 6.7.1 of the decision).

The applicant has met with USFS biologists to agree on a plan to work in the rainy season to get the information necessary to design the future trail and build it during the next dry season. Mr. Harkenrider submitted a letter dated November 3, 2010 stating that his staff has met with the ODOT staff on site on November 2, 2010 and “have developed suitable mitigations that will protect the National Scenic Area. Mr. Harkenrider continued stating, “I am recommending that this project be approved for drilling during wet weather.”

The applicant has met with USFS biologists to agree on a plan to work in the rainy season to get the information necessary to design the future trail and build it during the next dry season. Mr. Harkenrider submitted a letter dated November 3, 2010 stating that his staff has met with the ODOT staff on site on November 2, 2010 and “have developed suitable mitigations that will protect the National Scenic Area. Mr. Harkenrider continued stating, “I am recommending that this project be approved for drilling during wet weather.” These criteria are met.

**6.11. MCC 38.7075(K): The local government, in consultation with the State and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:**

- (1) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner 1991).**

- (2) **Physical characteristics of the subject parcel and vicinity, including topography and vegetation.**
- (3) **Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.**
- (4) **Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.**
- (5) **In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range. Delineation**
- (6) **The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife 2000).**
- (7) **The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.**
- (8) **The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.**
- (9) **Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed in the Priority Habitats Table: This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.**

**Staff:** The submitted narrative states that Pam Porter, PhD, ODOT biologist reviewed the proposed project in the field with David Leal, USFWS Wildlife biologist, and Jim Brick, ODFW fish and wildlife biologist. The applicant submitted an email dated August 16, 2010 (Exhibit A.8) from Pam Porter stating she had also met with Brett Carre, USFS wildlife biologist to review the project and proposed mitigation plan and discussed any potential impacts to northern spotted owl, bald eagle, osprey, pileated woodpecker. Ms. Porter states, "Brett felt comfortable with proposal and mitigation plan." While the applicant did not submit any documents from Mr. Carre, we are confident that Ms. Potter is correctly representing Mr. Carre concerning this project. There is no in-water work related to this project. Due to the temporary nature of the project and the minimal impacts followed by restoration, there should be no cumulative effects related to the project. In the letter from Daniel T. Harkenrider USFS (Exhibit C.3), he confirms that there is "sufficient mitigation" proposed for this project with the qualifier that work be conducted during dry weather.

The applicant has met with USFS biologists to agree on a plan to work in the rainy season to get the information necessary to design the future trail and build it during the next dry season. Mr. Harkenrider submitted a letter dated November 3, 2010 stating that his staff has met with the ODOT staff on site on November 2, 2010 and "have developed suitable mitigations that will protect the National Scenic Area. Mr. Harkenrider continued stating, "I am recommending that this project be approved for drilling during wet weather." *These criteria are met.*

- 6.12. MCC 38.7075(L): The wildlife/plant protection process may terminate if the local government, in consultation with the U.S. Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the local government shall**

**incorporate them into its development review order and the wildlife/plant protection process may conclude.**

**Staff:** The proposed project is within the buffer zones.

- 6.13. MCC 38.7075(M): If the above measures fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.**

**Staff:** As discussed earlier in Finding 6.7.1 and explained in detail in Exhibit A.2, Appendix G, there are no practical alternatives thus the proposed project meets the Practicable Alternative Test. In a letter dated September 20, 2010 Daniel T. Harkenrider, USFS Area Manager, states the project meets the “no practical alternatives test.” The applicant has submitted a mitigation plan to offset the adverse effects by deliberate restoration and enhancement. *This criterion is met.*

- 6.14. MCC 38.7075(N): The local government shall submit a copy of all field surveys (if completed) and mitigation plans to the U.S. Forest Service and appropriate state agencies. The local government shall include all comments in the record of application and address any written comments submitted by the state and federal wildlife agency/heritage programs in its development review order. Based on the comments from the state and federal wildlife agency/heritage program, the local government shall make a final decision on whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the local government shall justify how it reached an opposing conclusion.**

**Staff:** The applicant has consulted the U.S. Forest Service, the Oregon Department of Fish and Wildlife during the preparation of the application. We have submitted the application material to the U.S. Forest Service, the Oregon Department of Fish and Wildlife, and the Oregon Natural Heritage Program for completeness review and opportunity to comment notice. We have not received any comments from these agencies other than the email documents submitted by the applicant (Exhibit A.8) except for the letter submitted Daniel T. Harkenrider, USFS (Exhibit C.3). In his letter Mr. Harkenrider stated that the project should occur during dry weather and that it the project should not proceed during the rainy season.

The applicant has met with USFS biologists to agree on a plan to work in the rainy season to get the information necessary to design the future trail and build it during the next dry season. Mr. Harkenrider submitted a letter dated November 3, 2010 stating that his staff has met with the ODOT staff on site on November 2, 2010 and “have developed suitable mitigations that will protect the National Scenic Area. Mr. Harkenrider continued stating, “I am recommending that this project be approved for drilling during wet weather.” This may require minor modifications to the techniques for implementing how the project is conducted and to include addition methods used to protect the buffer areas but will not change the scope of the plan nor the mitigation plan.

The applicant has met with USFS biologists to agree on a plan to work in the rainy season to get the information necessary to design the future trail and build it during the next dry season. Mr. Harkenrider submitted a letter dated November 3, 2010 stating that his staff has met with the ODOT staff on site on November 2, 2010 and “have developed suitable mitigations that will protect the National Scenic Area. Mr. Harkenrider continued stating, “I am recommending that

this project be approved for drilling during wet weather.” *This criterion has been met through a condition.*

- 6.15. MCC 38.7075(O): The local government shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.**

**Staff:** The proposed project including the mitigation plan has been found to not adversely affect a sensitive wildlife/plant area or site. The applicant has met with USFS biologists to agree on a plan to work in the rainy season to get the information necessary to design the future trail and build it during the next dry season. Mr. Harkenrider submitted a letter dated November 3, 2010 stating that his staff has met with the ODOT staff on site on November 2, 2010 and “have developed suitable mitigations that will protect the National Scenic Area. Mr. Harkenrider continued stating, “I am recommending that this project be approved for drilling during wet weather.” These additional methods will not impact the mitigation plan but will provide some additional methods for protecting the resources for work during the rainy season. *This criterion is met.*

- 6.16. MCC 38.7075(P): Soil productivity shall be protected using the following guidelines:**
- (1) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.**
  - (2) New developments and land uses shall control all soil movement within the area shown on the site plan.**
  - (3) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.**
  - (4) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.**

**Staff:** A later section of this decision, Section 8, is a review of proposed erosion control measure for a Hillside Development Permit component of this decision. The proposed soil disturbance will not exceed 15 percent of the project area. A condition will require erosion control measures as well a revegetation with native ground cover of the disturbed areas within a year. *This criterion has been met through a condition.*

- 6.17. MCC 38.7075 (Q): 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. A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:**
- (1) 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, ponds, lakes, riparian areas, wildlife or plant areas and/or sites.**
  - (2) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites.**
  - (3) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. 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 amendment to demonstrate that practicable alternatives do not exist.**

**Staff:** The proposed project location is necessary to obtain geotechnical information for designing and safely establishing the future HCRH State Trail. The proposed project has been designed to minimize impacts to wetlands, streams, talus slopes, sensitive wildlife and sensitive plants. This design uses all of the alternative sites available to minimize the amount of impact to these resources. However due to the topographic restraints limiting the siting area for the trail, this project has some minor impacts to wetlands, stream riparian areas, and talus slopes. There are no alternative sites that avoid these impacts. The applicant is proposing the least amount of impacts necessary to accomplish the work. Alternative locations were used as much as possible in the design of the project. No land use designation or recreation intensity class is a constraint for this project. Mr. Harkenrider, USFS concurs that the proposed project meets the no practical alternatives test. As discussed in earlier findings there is concern about working in the rainy season, for which the applicant is proposing additional methods to protect sensitive area which we will require to be approved by the USFS.

The applicant has met with USFS biologists to agree on a plan to work in the rainy season to get the information necessary to design the future trail and build it during the next dry season. Mr. Harkenrider submitted a letter dated November 3, 2010 stating that his staff has met with the ODOT staff on site on November 2, 2010 and “have developed suitable mitigations that will protect the National Scenic Area. Mr. Harkenrider continued stating, “I am recommending that this project be approved for drilling during wet weather.” *These criteria have been met.*

**6.18. MCC 38.7075 (R): The Mitigation Plan shall be prepared when:**

- (1) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).**
- (2) There is no practicable alternative as determined by MCC 38.7075 (Q).**
- (S) In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).**

**Staff:** A mitigation plan has been submitted and included as Exhibit A.2, Appendix G. The mitigation plan was prepared by appropriate professionals, lead by Pam Porter PhD, biologist and Clair Carder, ODOT Wetlands Specialist. *These criteria are met.*

**6.19. MCC 38.7075(T): The primary purpose of this information is to provide a basis for the project applicant to redesign the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas and sites, that maximizes his/her development options, and that mitigates, through restoration, enhancement, and replacement measures, impacts to the water resources and/or wildlife/plant area or site and/or buffer zones.**

**Staff:** The proposed project has been designed to minimize impact the sensitive water resources, and wildlife/plant areas and sites, and to mitigate for the impacts that can not be avoided to complete this project. *These criteria are met.*

**6.20. MCC 38.7075(U): The applicant shall submit the mitigation plan to the local government. The local government shall submit a copy of the mitigation plan to the U.S. Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by**

**the state and federal wildlife agency/heritage program, the local government shall justify how it reached an opposing conclusion.**

**Staff:** The applicant has submitted a mitigation plan to the County. We have submitted a copy of the plan to the U.S. Forest Service, and appropriate state agencies (ODFW and Natural Heritage Program). The applicant has worked with USFS and state biologists in preparing the mitigation plan. The applicant has submitted a letter of concurrence from, Daniel T. Harkenrider, USFS Area Manager as well as emails documenting the collaboration. This decision does not contradict comments submitted by any state and federal wildlife agency/heritage program. As discussed in earlier findings, the USFS has concern about working in the rainy season, however have altered that recommendation after meeting with ODOT staff as outlined in Exhibit C.5. *This criterion is met through a condition.*

**6.21. MCC 38.7075(V): A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a mitigation plan involving wetland creation.**

**Staff:** This criterion is not applicable; this project does not include wetland creation.

**6.22. MCC 38.7075(W): Mitigation plans shall include maps, photographs, and text. The text shall:**

- (1) Describe the biology and/or function of the sensitive resources (e.g. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.**
- (2) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.**
- (3) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long term use and integrity of the wildlife/plant area or site).**
- (4) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.**
- (5) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans, the local government, appropriate state agencies, and U.S. Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.**

**Staff:** The applicant has submitted the required information. These criteria have been met.

**6.23. MCC 38.7075(X): At a minimum, a project applicant shall provide to the local government a progress report every 3-years that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.**

**Staff:** A condition will require the applicant to submit a progress report every 3-years that documents milestones, successes, problems, and contingency actions until the vegetation has been re-established This criterion is met through a condition.

- 6.24. MCC 38.7075(Y): A final monitoring report shall be submitted to the local government for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The local government shall submit copies of the monitoring report to the U.S. Forest Service; who shall offer technical assistance to the local government in helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.**

**Staff:** A condition will require a the applicant to submit final monitoring report to the County Land Use Planning Office for review upon completion of the restoration, enhancement, or replacement activity. This project only needs to include restoration of temporary disturbed areas. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The local government shall submit copies of the monitoring report to the U.S. Forest Service; who shall offer technical assistance to the local government in helping to evaluate the completion of the mitigation plan. In instances where restoration efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines. *This criterion is met through a condition.*

- 6.25. MCC 38.7075(Z): Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:**

**Staff:** The mitigation does not result in any net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources. Given the submitted information staff finds that the proposed project does not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site if the work is conducted in the dry season. If the work is conducted during the wet season the applicant will need to follow any addition requirements approved in writing by the USFS and submitted to County Planning. Staff finds that the proposed project does not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site if the work is conducted in the wet season if approved in writing by the USFS and according to additional requirements the USFS may include. See the findings below addressing these issues. *These criteria are met through conditions.*

- 6.25.1. (1) Restoration and enhancement efforts shall be completed no later than one year after the sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.**

**Staff:** Due to the temporary nature and minimal impacts of the proposed project only restoration is needed. A condition will require the restoration work to be done as soon as practicable after completed after the completion the projects geotechnical exploration work, not exceeding a year. *This criterion is met through a condition.*

- 6.25.2. (2) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community.**

**Staff:** The proposed project is designed to retain the existing vegetation to greatest extent practicable. A condition will require retention of the existing vegetation to greatest extent practicable. A condition will require within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community. *This criterion is met through a condition.*

- 6.25.3. (3) Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a natural condition. Habitat shall be replicated in composition, structure, and function, including tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such as large woody debris and boulders.**

**Staff:** A condition will require habitat affected by the proposed project be rehabilitated to a natural condition and be replicated in composition, structure, and function.. *This criterion is met through a condition.*

- 6.25.4. (4) If this standard is not feasible or practical because of technical constraints, a sensitive resource of equal or greater benefit may be substituted, provided that no net loss of sensitive resource functions occurs and provided the County, in consultation with the appropriate State and Federal agency, determine that such substitution is justified.**

**Staff:** This criterion is not applicable to this project because it is feasible to protect the resources in the area, thus no substitution is necessary. *This criterion is met.*

- 6.25.5. (5) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods. Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.**

**Staff:** No sensitive plant species has been found in the project area (Exhibit A.2, Appendix C). *This criterion is met.*

- 6.25.6. (6) Nonstructural controls and natural processes shall be used to the greatest extent practicable.**
- (a) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.**
  - (b) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as determined by MCC .38.7075 (Q).**
  - (c) Fish passage shall be protected from obstruction.**



- (d) Restoration of fish passage should occur wherever possible.
- (e) Show location and nature of temporary and permanent control measures that shall 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.
- (f) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.
- (g) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.
- (h) Streambank and shoreline stability shall be maintained or restored with natural revegetation.
- (i) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed.  
 Restoration: 2: 1  
 Creation: 3: 1  
 Enhancement: 4: 1

**Staff:** There are no structural elements proposed a part of this project. Erosion control is designed for this project using the *ODOT Standard Specifications for construction Manual*, (ODOT 2008) Section 00280. The erosion control measures are reviewed in greater detail the Hillside Development Permit review in Section 8 of this decision. If the project is conducted according the proposal there should be no groundwater and surface water quality degraded by the project. The applicant proposes to use mulch and revegetate all disturbed project area. A condition will require the use of proposed erosion control methods and revegetation of disturbed areas. The proposed project includes methods, such as using geotextile and/or pallet surface to reduce the impacts to the wetland that will need to be crossed with a temporary access road. The temporary impacts to the wetland will be minor, such as some compacting and vegetation damage. These minor impacts will be addressed through breaking up any compacted soils and revegetating with native plants. These impacts will not permanently alter or destroy the wetland, thus the 2:1 standard is not applied to this type of impact, however a condition will require the wetland to be restored. *These criteria are met through conditions.*

- 6.25.7. (7) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The U.S. Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the local government to help evaluate such reports and any subsequent activities associated with compliance.**

**Staff:** The criterion is not applicable. No wetland creation is proposed or necessary for this project.

- 6.25.8. (8) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in (Z) (6) (i). These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.

**Staff:** While the applicant states no wetland enhanced or restored, the applicant is referring to the fact that no wetland is not permanently altered or destroyed. The mitigation plan included restoration of a wetland for which the project will result in minor impact to the wetland. *This criterion is met.*

## **7.00 SMA RECREATION RESOURCE REVIEW CRITERIA**

- 7.1. MCC 38.7085(A): The following shall apply to all new developments and land uses:

**Staff:** The proposed project is temporary in nature, with temporary access roads and geotechnical exploration. Given the temporary nature of the project the recreation resources criterion is met.

## **8. Hillside Development Permit**

### **8.1. Application Information Required**

**MCC 38.5515 (E):** A Hillside Development permit may be approved as a Type II decision only after the applicant provides:

- (1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or
- (2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,
- (3) An HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development.
  - (a) If the HDP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted.

**Staff:** The applicant submitted a HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist, Tova R. Peltz, PE, GE, CEG including his professional stamp and signature affixed indicating that the site is suitable for the proposed development (Exhibit A.6).

### **8.2. Grading Standards**

**Staff:** The applicant has submitted site plans showing project work areas and a narrative addressing each the following grading standards included as Exhibit A.7.

- 8.2.1. MCC 38.5520(A)(1)(a): Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;**

**Staff:** No fill will be permanently place during the project. *This standard is met.*

- 8.2.2. MCC 38.5520(A)(1)(b): Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;**

**Staff:** This project will not create any cut or fill slopes steeper than 3:1. *This standard is met.*

- 8.2.3. MCC 38.5520(A)(1)(c): Cuts and fills shall not endanger or disturb adjoining property;**

**Staff:** The project will not be conducted near any properties which are not part of the project. *This standard is met.*

- 8.2.4. MCC 38.5520(A)(1)(d): The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;**

**Staff:** Not applicable, this project does not include any impervious surface.

- 8.2.5. MCC 38.5520(A)(1)(e): Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;**

**Staff:** The project does not include any fill that will encroach on natural watercourses or constructed channels. *This standard is met.*

### **8.3. Erosion Control Standards**

**Staff:** The applicant has submitted site plans showing project work areas and a narrative addressing each the following erosion control standards included as Exhibit A.7.

- 8.3.1. MCC 38.5520(A)(2)(a): Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;**

**Staff:** Due to the scope of the project the removal of vegetation, grading and other soil disturbance is minimized to minor areas where access is needed to conduct the geotechnical exploration including drilling and digging. The project is designed to impact the least amount area necessary to accomplish the job. The applicant will mulch the disturbed areas and plant native vegetation as soon as practical. A condition will require the mulching of disturbed soil areas, silt fences located down slope of disturbed areas and revegetation as soon as practical when the project is completed. This standard is met through a condition.

**8.3.2. MCC 38.5520(A)(2)(b): Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;**

**Staff:** The proposed temporary access is designed to conform to existing topography thus there will be no cuts or fills necessary. The design for the temporary roads will create the least amount of erosion potential and not result in any increased runoff. *This standard is met.*

**8.3.3. MCC 38.5520(A)(2)(c): Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;**

**Staff:** The applicant proposes to use mulching for the disturbed areas as well as other Best Management Practices (BMPs). The disturbed areas will be planted with native vegetation as soon as possible after completion of the project. A condition will require mulching, BMPs and planting native vegetation as soon as possible after the project is complete. This standard is met through a condition.

**8.3.4. MCC 38.5520(A)(2)(d): Whenever feasible, natural vegetation shall be retained, protected, and supplemented;**

- 1. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;**
- 2. The buffer required in 1. may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)" and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;**

**Staff:** Due to the scope of the project, the removal of vegetation, grading and other soil disturbance minimized to minor areas where access is needed to conduct the geotechnical exploration and to the specific location for the drilling and digging to gather geotech data. The project is designed to impact the least amount area necessary to accomplish the job. The project includes work within 100 feet of a stream and wetlands. In the NSA Site Review we found that there is no alternative to conducting the work in these areas to obtain the Geotechnical necessary to design the HCRH Trail. The applicant submitted a mitigation plan that is approved through this decision. The applicant will be using BMPs from the Oregon Standard Specifications for Construction (2008) Manual which can be accessed on the internet at ([www.oregon.gov/ODOT/HWY/SPEC/docs/08book/08\\_00200.pdf](http://www.oregon.gov/ODOT/HWY/SPEC/docs/08book/08_00200.pdf)) which is consistent with Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994) and the City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995). *This standard is met.*

**8.3.5. MCC 38.5520(A)(2)(e): Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;**

**Staff:** Areas that are disturbed will be revegetated as soon as practicable. This standard is met through a condition.

- 8.3.6. MCC 38.5520(A)(2)(f): Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;**

**Staff:** The proposed work will not increase runoff. This standard is met.

- 8.3.7. MCC 38.5520(A)(2)(g): Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;**

**Staff:** The applicant will be using sediment barriers according to the BMPs standards from the *Oregon Standard Specifications for Construction (2008) Manual*. Conditions will required the use of silt fencing down slope of disturbed soil areas.

- 8.3.8. MCC 38.5520(A)(2)(h): Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;**

**Staff:** This standard is not applicable. The proposed project does not include any cut faces or sloping surface of fills.

- 8.3.9. MCC 38.5520(A)(2)(i): All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;**

**Staff:** This standard is not applicable. Due to the minor scope of the project, no drainage carrying capacity will be impacted or increased.

- 8.3.10. MCC 38.5520(A)(2)(j): Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;**

**Staff:** This standard is not applicable. Due to the minor scope of the project, no drainage carrying capacity will be impacted or increased. Thus swales are not needed.

- 8.3.11. MCC 38.5520(A)(2)(k): Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:**
- 1. Energy absorbing devices to reduce runoff water velocity;**
  - 2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
  - 3. Dispersal of water runoff from developed areas over large undisturbed areas.**

**Staff:** The applicant will be using sediment barriers according to the BMPs standards from the *Oregon Standard Specifications for Construction (2008) Manual*. Conditions will required the use of mulching, silt fencing down slope of disturbed soil areas, well as other BMPs as appropriate according to the Manual. This standard is met through a condition.

- 8.3.12. MCC 38.5520(A)(2)(1): Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by**

**location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;**

**Staff:** A condition will require any temporary spoil to be covered with plastic sheeting. The project does not include placing any excess spoils materials, all spoils not used to fill refill test holes and pit will be removed. A condition will require removal and proper disposal of excess spoils materials. This standard is met through a condition.

**8.3.13. MCC 38.5520 (A)(2)(m): Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and cleanup activities.**

**Staff:** There is no construction or use of these materials for this project. A condition will require removal of all construction materials. *This standard is met.*

**8.4. Responsibility**

**8.4.1. MCC 38.5520(B)(1): Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;**

**Staff:** A condition will require any sedimentation is caused by stripping vegetation, regrading or other development is the responsibility of the applicant, ODOT. If this occurs ODOT will be required to remove it from all adjoining surfaces and drainage systems. This standard is met through a condition.

**9. Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the approval of the NSA Site Review and Hillside Development Permits to build temporary access roads and conduct geotechnical exploration in the Gorge Special Open Space Zone District. This approval is subject to the conditions of approval established in this decision.

**10. Exhibits**

**‘A’ Applicant’s Exhibits**  
**‘B’ Staff Exhibits**  
**‘C’ Comments Received**

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
‘A’		<b>Applicant’s Exhibits</b>	
A.1	2	Application for NSA Site Review Application for Hillside Development Permit	6/30/10 8/27/10
A.2	173	Narrative and supporting documents	6/30/10
A.3	3	ODOT interdepartmental letter dated June 2, 2010 from Robert W. Hadlow, Ph.D.	6/30/10
A.4	15	Addendum to the narrative	8/17/10
A.5	61	Hillside Development Permit submittal	8/27/10

A.6	4	HDP Form 1	8/27/10
A.7	6	Hillside Development Permit Narrative	9/20/10
A.8	7	Emails forwarded by Kristen Stallman, ODOT	9/14/10
A.9	2	Email from Pamela Porter ODOT listing professionals consulted	10/21/10
A.10	2	Email from Kristen Stallman	10/26/10
A.11	4	SHPO concurrence	10/19/10
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	A&T Property Map	NA
B.2	1	Zoning Map	NA
<b>‘C’</b>	<b>#</b>	<b>Comments Received</b>	<b>Date</b>
C.1	2	Letter from Margaret L. Dryden, USFS	7/19/10
C.2	1	Email from Vera Sonneck, Nez Perce Tribe	7/26/10
C.3	2	Email from Christine L. Plourde, USFS including attached letter dated September 20, 2010 from Daniel T. Harkenrider, USFS NSA Manager	9/20/10
C.4	5	Letter from Richard Till, Conservation Legal Advocate, Friends of the Columbia Gorge	10/05/10
C.5	2	Letter dated November 3, 2010 from Daniel T. Harkenrider, USFS NSA Manager	11/3/10