



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

Correction NOTICE OF DECISION

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

Case File: T2-2011-1676
Permit: National Scenic Area Site Review
Location: Rooster Rock I-84 overcrossing
Township 1 North, Range 5 East, W.M.,
Section 30
**Applicant/
Owner:** Kristen Stallman, ODOT
Base Zone Gorge Special Recreational District

Vicinity Map

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Summary: To raise the overcrossing nine inches to improve clearance on I-84 and add protective eight foot tall screens on both side of overcrossing approximately 100 feet long tapering at the ends. The correction notice is to correct Exhibit B.2, included with the notice, which shows the correct screen design.

Decision: Approved with Conditions

Unless appealed, this decision is effective **September 30, 2011, at 4:00 PM.**

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: September 16, 2011

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact 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 September 30, 2011.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 38.0030: Existing Uses, MCC 38.2800-.2895: Recreational Zone District (GSPR), and MCC38.7000-.7085: Site Review Criteria Special Management Area (SMA)

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

Scope of Approval

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

Conditions of Approval

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

1. The project shall be conducted as proposed in the application submittal and in the area as proposed in Exhibits A.1 through A.4 for scenic, natural, cultural and recreational resource site review or as amended through these conditions. [MCC 38.7040, .7050, .7075 and .7085]
2. The proposed screen design shall be as shown on Exhibit B.3 and be painted "dapper brown" and the additional nine inches added to the columns shall be a dark brown color as required by the I-84 Corridor Strategy. [MCC 38.7040(A)(1) and (3)]

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.
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Findings of Fact

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

1. PROJECT DESCRIPTION

Staff: The proposal is to raise the Roster Rock overcrossing nine inches (adding to support columns) to improve clearance for traffic traveling on I-84 and to add protective eight foot tall, brown, protective screens required by federal highway regulations on both side of overcrossing approximately 100 feet long tapering at the ends. The site is within the Gorge Special Recreational District and within the River Bottomlands Landscape Setting (Exhibit B.2).

2. SITE DESCRIPTION

Staff: The project is located on an existing I-84 overcrossing. Currently the overcrossing is the lowest along I-84 in the Columbia River Gorge. The overcrossing has been hit by over-height trucks in the past. Currently over-height trucks can not pass under this overcrossing. These trucks have to exit the highway, travel into Rooster Rock State Park parking area and turn around to re-enter the highway. This project will remedy this problem. This overcrossing currently does not have screening installed. The Federal Highway Administration requires that when an overcrossing is modified that safety screening be installed to prevent objects being tossed on to traffic below (Exhibit A.3 and B.3).

3. GORGE SPECIAL RECREATIONAL DISTRICT

3.1. Existing Uses

MCC 38.0030(A): Right to Continue Existing Uses and Structures: Any existing use or structure may continue so long as it is used in the same manner and for the same purpose, except as otherwise provided.

MCC 38.0030(D): Changes to Existing Uses and Structures: Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to this Management Plan.

Staff: The proposed project is a modification of an existing I-84 overcrossing. The proposal has been review and has been determined to meet the Multnomah County Code NSA Site Review Criteria which were adopted to meet the Management Plan. Thus the proposed project has been reviewed and approved pursuant to this Management Plan. *These criteria are met.*

3.2. REVIEW USES

MCC 38.2825(C): The following uses are allowed on all lands designated GS– PR pursuant to MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

* * *

(5) Road and railroad construction and reconstruction.

Staff: The project is a road component construction project. The project has been reviewed with findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied. *These criteria are met.*

4. NSA SMA SCENIC SITE REVIEW

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

Staff: The proposed use is visible the following KVAs: I-84, Rooster Rock State Park, Crown Point, the Columbia River, SR14, and Larch Mountain. The proposed development is located in the immediate foreground of I-84, as part of the I-84 infrastructure, and is located within the I-84 scenic corridor. For I-84 development proposals MCC 38.7040(C)(2) applies and allows the use if the development can not meet the criterion under MCC 38.7040(A).

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 applicable scenic standard is “visually subordinate.” The proposed development is located in the immediate foreground of I-84, as part of the I-84 infrastructure, and is located within the I-84 scenic corridor. For I-84 development proposals MCC 38.7040(C)(2) applies and allows the use if the development can not meet the criterion under MCC 38.7040(A). The proposed development is designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. The development cannot fully meet this standard, because it is located direct above I-84 on an overcrossing which would not allow for screening vegetation. The development uses low-reflective materials and designs. While the proposed screening is metal which is often has a high reflective nature, the design will break up reflections. The components of the project will dark earth tone colors, the screen which is the most potentially visible component of the proposal will be painted “dapper brown” and the additional nine inches of new column will be dark brown meeting the provisions adopted in the I-84 corridor strategy (Exhibit A.2, A.3).

The protective screening will be visible for a short period of time for those traveling along I-84, however due to the project meeting the I-84 Corridor Strategy standards for the proposed development the project will not adversely affect the I-84 KVA. At the distance from the other listed KVAs the screening will blend into the surrounding natural environment and will be visually subordinate. The proposed development is designed to meet the I-84 Corridor Strategy standards and given the dark earth tone colors the project will not have cumulative effects the KVAs. *This criterion is met for all KVAs except for I-84 which is allowed through MCC 38.7040(C)(2).*

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
River Bottom	Forest, Agriculture, Public Recreation	Visually Subordinate

Staff: The site is within the Gorge Special Recreational District and within the River Bottomlands Landscape Setting. This application is evaluated using the “Visually Subordinate” 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: For this project it is not possible to fully blend the new development with the natural landscape, however by using dark colors as provided in the I-84 Corridor Strategy from a distance the screening will blend in into the background vegetation or shadows as seen from the KVAs other than I-84 KVA. *This criterion is partially met for all KVAs except for I-84 which is allowed through MCC 38.7040(C)(2) and the I-84 Corridor Strategy.*

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: This criterion can not be met for the development. *This criterion can not be meet which is allowed through MCC 38.7040(C)(2).*

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: These elements were used when feasible for writing the conditions and per MCC 38.7040(C)(2) and the elements of the I-84 Corridor Strategy were also used when writing conditions. *This criterion is met.*

- 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 site approved to achieve scenic standards 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. *This criterion is met.*

- 4.1.7. MCC 38.7040(A)(7) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas.**

Staff: For all the KVAs, except I-84 KVA, the proposed development will not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas. For the I-84 KVA the screening would appear to protrude above the line of a bluff, cliff, or skyline as seen for brief moments from that KVA when passing under the overcrossing, however per MCC 38.7040(C)(2) this is allowed. *This criterion is met for all KVAs except I-84 KVA from which it can not be met however is allowed through MCC 38.7040(C)(2).*

- 4.1.8. MCC 38.7040(A)(8) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that compliance with this standard is not feasible considering the function of the structure.**

Staff: All structures related to the project will be below the average tree canopy height of the natural vegetation adjacent to the structure. *This criterion is met.*

- 4.1.9. 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 nature of the development screening vegetation is not feasible and can not be required. *Criterion not applicable.*

4.1.10. MCC 38.7040(A)(10) Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors as dark or darker than the colors in the shadows of the natural features surrounding each landscape setting.

Staff: The proposed structures will be dark colors as outlined in the I-84 Corridor Strategy (Exhibit A.2). *This criterion is met.*

4.1.11. MCC 38.7040(A)(11) The exterior of structures on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. The Scenic Resources Implementation Handbook will include a recommended list of exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets approval thresholds in the “Visibility and Reflectivity Matrices” in the Implementation Handbook. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure meeting the scenic standard. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

Staff: The exterior of the proposed structures have a low-reflectivity due to the proposed materials or the design of the screens which while they are metal the screen reflectivity will be low because of the metal has many gaps breaking up light reflections. *This criterion is met.*

4.1.12. MCC 38.7040(A)(12) Any exterior lighting shall be sited, limited in intensity, shielded or hooded in a manner that prevents lights from being highly visible from Key Viewing Areas and from noticeably contrasting with the surrounding landscape setting except for road lighting necessary for safety purposes.

Staff: No lighting is proposed. *Criterion is met.*

4.1.13. MCC 38.7040(A)(13) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed three months duration.

Staff: No season lighting is proposed. *Criterion is met.*

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

4.2.1. 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 proposed development is in compliance with the I-84 Corridor Strategy thus it is in conformance with state scenic route standards. *This criterion is met.*

4.2.2. 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 located in the immediate foreground of I-84, as part of the I-84 infrastructure, and is located within the I-84 Corridor Strategy area. For such a development MCC 38.7040(C)(2) applies and allows the use if the development can not meet criteria under MCC 38.7040(A), see Sections under 4.1 above for the findings. There are some criteria under MCC 38.7040(A) that could not be met for the I-84 KVA but are predominately met for the other KVAs. The proposed development is designed and sited to meet the applicable scenic standards as best it can and to meet the standards from the foreground of the I-84 KVA the best it can while still being able function as designed in a safe manner.

The development cannot fully meet the scenic criteria standards of MCC 38.7040(A) because the project is located directly above I-84 on an overcrossing which would not allow for screening vegetation. The project can not be reduced in size because the size is designed to accommodate vehicle height of vehicles using I-84 and the height of the other overcrossing along the highway. The screen fencing is required by federal regulation to the height proposed. The project is site specific to the location the Rooster Rock overcrossing thus alternative siting is not an option. The development uses material designed to be low-reflective as well using dark earth tone colors that are as called for in the I-84 Corridor Strategy. The project does not include large areas of smooth

texture, regular, uniform textures. The screen which is potentially the most visible component of the proposal will be painted “dapper brown” and the additional nine inches of column is to be dark brown. The project is designed to meet the standard as much as possible. *The project meets this criteria using the guidelines.*

4.2.3. 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: The project has no impact on vegetation. *The criterion is met.*

* * *

4.2.4. 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 proposed development meets the I-84 Corridor Strategy through the design and the dapper brown color of the screening and the dark color of the additional column length. *This criterion is met.*

5. NSA SMA CULTURAL RESOURCE SITE REVIEW

5.1. Cultural Resource Review Criteria

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: The proposed project was reviewed by Margaret Dryden, Heritage Resources Program Manager, Columbia Gorge National Scenic Area, USFS. In a letter dated June 10, 2011, Ms. Dryden states, “A Cultural Resource Reconnaissance Survey is: Not Required” and “A Historic Survey is: Not Required”. Robert Hadlow, ODOT Archeologist states in an email dated June 28, 2011, “This looks fine” referring to Ms. Dryden’s findings and that he has “No additional comments.” The criteria resource review criteria are met by the project.

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).

Staff: The proposed project will be entirely limited to the overcrossing structure involving no digging of undisturbed soils. ODOT is aware of these requirements. This criterion is met.

6. NSA SMA NATURAL RESOURCE SITE REVIEW CRITERIA

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

Staff: The proposed project is located more than 200 feet from wetlands, ponds and streams.

* * *

- 6.2. 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 applicant states,

“ODOT acting as an agent of FHWA, determines that the listed species, designated critical habitat, will not be impacted by this project. The area of the project impact does not overlap with listed species, critical habitation essential fish habitat. This is documented in the ESA determination of NO EFFECT KN16983 I:84 Rooster Rock Vertical Clearance. The work will be done in the disturbed right-of-way.”

The applicant through an ESA has determined there will be no effect on an endangered or threaten sensitive species.

- 6.3. 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 project appears to be within 1000 feet from Special Aquatic Habitat and Waterfowl Habitat. The application was submitted to the USFS, ODFW and the Oregon Natural Heritage Program for their comments. We have not received comments other than those from the USFS. Robin Dobson USFS Biologist in a forwarded email (Exhibit C.4) stated,

“The over-pass work at Rooster Rock Park, although near sensitive natural resources, such as water-fowl and shallow water habitats, is confined to the existing foot-print of I-84. Assuming that the work will occur within the freeway ROW, the impacts, both physical and auditory, will not have any appreciative impacts to the natural resources.”

This standard is met.

- 6.4. 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 wild-life/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.**
- (4) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.**

Staff: The applicant states that, “USFS wildlife biologists and botanists have been consulted prior to application submittal...” and “ORNHC records of special status species were queried within five mile radius of the project area.” The area of the project impact does not overlap with listed species, critical habitation essential fish habitat. This is documented in the ESA determination of

NO EFFECT. Mr. Dobson USFS biologist stated the project "...will not have any appreciative impacts to the natural resources" (Exhibit C.4). *This standard is met.*

- 6.5. (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 County terminates the wildlife/plant protection process upon finding that there have been no comment of concern from state agencies or programs and the comments from Mr. Dobson, USFS (Exhibit C.4) as well as the findings of the ESA (Exhibit A.2). *This criterion is met.*

7. SMA RECREATION RESOURCE SITE REVIEW CRITERIA

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

- (1) New developments and land uses shall be natural resource-based and not displace existing recreational use.**

Staff: The proposed development is to modify an existing use, it is not new development. The proposal reduces the impacts to Rooster Rock State Park by eliminating the trucks from pulling of the highway because the overcrossing is too short and turning around in the park's parking lot to get back on the highway. The existing uses code, MCC 38.0030 allowed to a modification to an existing structure. The proposed use is not a new use thus the criteria of this section do not apply. *Criteria are not applicable.*

8. Letters of Comment Received

Staff: We received comments from:

- An email with attached letter submitted by Marge L. Dryden, Heritage Program Manager, US Forest Service addressing cultural resources as outlined in Finding 5.1 of this decision (Exhibit C.1).
- An email from Robert W. Hadlow, Ph.D. addressing cultural resources as outlined in Finding 5.1 of this decision (Exhibit C.2).
- An email with attached letter from Richard Till, Conservation Legal Advocate, Friends of the Columbia Gorge which outlines the criteria which we must address in this decision. The findings in the previous sections of this decision address the applicable criteria (Exhibit C.3).
- An email from Christine Plourde, Landscape Architect, USFS forwarding an email from Robin Dobson, Biologist, USFS addressing no impacts to sensitive or endangered species.

9. Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the NSA Site Review to install the safety improvements on the Rooster Rock Overcrossing in the Gorge Special Recreation Zone District. This approval is subject to the conditions of approval established in this report.

10. Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Comments Received

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application form	5/24/11
A.2	71	Narrative and addendums including site plan and photos	5/24/11
A.3	9	Technical drawings of the two project element, the column insert and the screening	6/21/11
A.4	1	Drawing representing screen design.	6/28/11
‘B’	#	Staff Exhibits	Date
B.1	1	A&T Tax Map with site highlighted	NA
B.2	1	Zoning Map	NA
B.3	1	Drawing representing approved screen design	NA
‘C’	#	Comments Received (if needed)	Date
C.1	5	An email with attached letter submitted by Marge L. Dryden, Heritage Program Manager, US Forest Service	6/10/11
C.2	2	An email from Robert W. Hadlow, Ph.D.	6/28/11
C.3	7	An email with attached letter from Richard Till, Conservation Legal Advocate, Friends of the Columbia Gorge.	7/18/11
C.4	1	An email from Christine Plourde, Landscape Architect, USFS forwarding an email from Robin Dobson, Biologist, USFS	8/25/11
C.5	68	Emails between County Planning Staff (Joanna Valencia and George Plummer), the applicant (Kristen Stallman), Gorge Commission staff (Jennifer Stallman) and USFS staff (Christine Plourde) discussing screen design	6/2/11 to 6/21/11