



MULTNOMAH COUNTY OREGON
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
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<http://www.multco.us>

NOTICE OF DECISION

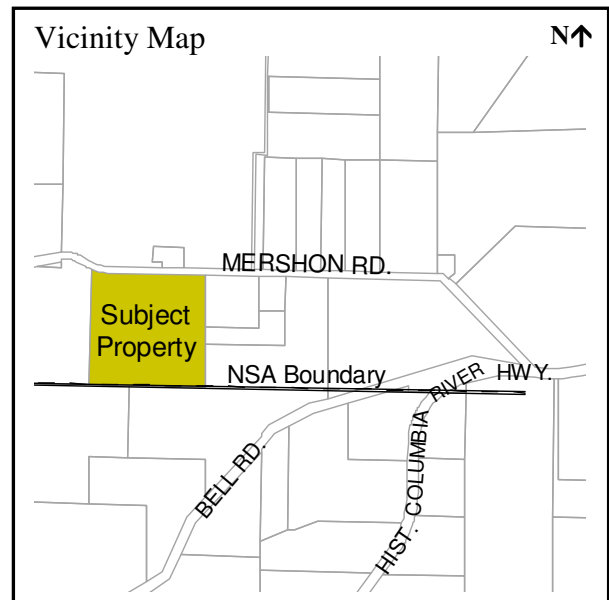
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2011-2054

Permit: NSA Site Review for a Health Hardship Dwelling

Location: 33500 NE Mershon Road
TL 00800, Sec 33A, T1N, R4E, W.M.
Tax Account #R944330080

Applicant/ Janna L. Russell
Owner: PO Box 429
Corbett, OR 97019



Summary: NSA Site Review for a Health Hardship Dwelling, a 1535 square foot manufacture home with a 64 square foot covered porch area for the property owner's father. The project proposal was previously approved in 2005 but has since expired. The property is within the Gorge General Agriculture - 40 Zone District.

Decision: Approved with Conditions

Unless appealed, this decision is effective **Monday, April 16, 2012 at 4:00 PM.**

Issued by:

By: _____

Kevin Cook, Planner

For: Karen Schilling- Planning Director

Date: Monday, April 2, 2012

Instrument Number for Recording Purposes: 00117768

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 Kevin Cook, Staff Planner at 503-988-3043 x26782.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 Monday, April 16, 2012 at 4:00 PM.

Applicable Approval Criteria: Multnomah County Code (MCC): Multnomah County Code (MCC) 38.0510 et. al: Administration and Procedures, MCC 38.0000 et. al: General Provisions, MCC 38.2200 et. al: Gorge General Agriculture and MCC 38.7000 et. al: Site Review. 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: www.multco.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 parenthesis.

1. **Within 30 days of this decision becoming final and prior to building permit sign-off, the applicant shall record the Notice of Decision including the Conditions of Approval (pages 1-3) of this decision) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and filed with Multnomah County Land Use Planning. Recording shall be at the**

applicant's expense. Failure to record the Notice of Decision within the above 30 day time period may void the decision [MCC 38.0670].

2. This permit is issued for a 2 year period. This approval is subject to annual review for compliance with the provisions of this section and any other conditions of approval. Prior to one year after this approval is issued the property owner shall submit a letter from a medical doctor that the health hardship continues to exist where conditions relate to the necessary care for father and/or the mother of the property owner [MCC 38.7320].
3. This permit may be renewed through an application for renewal and upon a finding that a family hardship continues to exist [MCC 38.7320].
4. Upon expiration of this permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days [MCC 38.7320]

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

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

Findings of Fact

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

1. PROJECT DESCRIPTION

Staff: The application is for a Temporary Health Hardship Dwelling in the Gorge General Agriculture – 40 (GGA-40) Zone District. The hardship dwelling is an existing 1535 square foot manufactured home with a 64 square foot covered porch area (Exhibits A.2 and A.3) that was previously approved in 2005 via file T2-05-043 (Exhibit A.8) as a hardship dwelling. Because a hardship dwelling requires an annual recertification, the permit eventually expired when no recertification was received. The current application is meant to reinstate the approval of the original hardship dwelling, which remains on the property in the same location as originally approved.

2. SITE AND VICINITY CHARACTERISTICS

Staff: The subject property is located south of Mershon Road about one third of a mile west of the junction with the Historic Columbia River Highway (Exhibit B.6). The vicinity is a mix of small farm and residential uses with some residential woodlot property about a half mile away. The vicinity gently slopes to the south with a few small hills about 30 to 400 feet in height mixed into the landscape.

The subject property includes a hill in the southern center of the property that is about 30+ feet in height above the lower elevations on the property (Exhibit B.6). The existing dwelling and accessory buildings are located on the north flank of this hill. The proposed dwelling site elevation is about 20 feet lower than the other buildings on the site (Exhibit B.6). The subject property is predominately pastureland with a small orchard (Exhibit B.6). There are several trees clustered around the existing buildings and on the south flank of the hill. The proposed building site has a slope of about nine percent dropping towards the west.

3. GORGE GENERAL AGRICULTURE ZONE

3.1 § 38.2225 Review Uses

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

* * *

(7) The temporary use of a mobile home in the case of a family hardship, subject to MCC 38.7320.

Staff: The applicant is applying for a Health Hardship Dwelling which requires a Site Review pursuant to the provisions of MCC 38.7000 through 38.7085. Findings addressing the Site Review Criteria are under Section 7 of this decision.

4. TEMPORARY HEALTH HARDSHIP DWELLING

4.1 MCC 38.7320: Temporary Health Hardship Dwelling – the temporary placement of a mobile home may be granted when:

Staff: The applicant proposes to utilize the existing manufactured home that was previously approved in 2005 as a temporary hardship dwelling. A manufactured home meets the mobile home requirement that the dwelling be temporary and removable. The property is within the General Gorge Agriculture District which is in the General Management Area. The following criteria for a Health Hardship Dwelling have been met as discussed in the individual findings.

4.2 MCC 38.7320(A): A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.

Staff: The applicant has submitted a letter dated December 12, 2011 (Exhibit A.5) from John Custis, MD stating that it would be in Theodore Norman's best interest to be cared for by family due for medical reasons. Theodore Norman's daughter is the applicant/property owner living in the principle dwelling. *The criterion is met.*

4.3 MCC 38.7320(B): The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.

Staff: The dwelling was approved for hook up to the existing sanitary system in 2005 and is currently using the existing system. *The criterion is met.*

4.4 MCC 38.7320(C): The hardship dwelling is found to be consistent with the standards for protection of scenic, cultural, natural and recreation resources of MCC 38.7000 through 38.7085.

Staff: The findings of consistency of the dwelling with the applicable standards for protection of scenic, cultural, natural and recreation resources of MCC 38.7000 through 38.7085 were previously addressed in T2-05-043. The temporary hardship dwelling was found to be consistent. No changes to the location, building materials or colors have been made nor are any changes proposed. This criterion is met as confirmed in Sections 5-10 of this decision.

- 4.5 MCC 38.7320(D): A permit may be issued for a 2 year period, subject to annual review for compliance with the provisions of this section and any other conditions of approval.**

Staff: This permit will include a condition of approval that requires an annual review for compliance with the provisions of this section and any other conditions of approval. The permit expires in two years unless it is renewed through an application for an extension per MCC 38.0700. *This criterion can be met through a condition of approval.*

- 4.6 MCC 38.7320(E): Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.**

Staff: A condition of approval will require removal of the temporary health hardship dwelling within 30 days for the expiration of the permit or cessation of the hardship, whichever comes first.

- 4.7 MCC 38.7320(F): A new permit may be granted upon a finding that a family hardship continues to exist.**

Staff: A condition of approval will requires annual renewal of the permit for as long as the hardship dwelling is needed.

5. NSA SITE REVIEW FOR SCENIC REVIEW CRITERIA FOR GMA

- 5.1 MCC 38.7035(A) The following scenic review standards shall apply to all Review and Conditional Uses in the General Management Area of the Columbia River Gorge National Scenic Area:**

Staff: The subject property is in the Gorge General Agriculture Zone district in the General Management Area of the Columbia River Gorge National Scenic Area thus the GMA criteria are the applicable criteria.

- 5.1.1 MCC 38.7035(A)(1) New buildings and roads shall be sited and designed to retain the existing topography and reduce necessary grading to the maximum extent practicable.**

MCC 38.0015(P)(4): Practicable: Able to be done, considering technology and cost.

Staff: Though the existing hardship dwelling requires new approval, it is currently situated in its previously approved location and no further site preparation is required or proposed. *The criterion does not apply.*

- 5.1.2 MCC 38.7035(A)(2) New buildings shall be generally consistent with the height and size of existing nearby development.**

Staff: This consistency finding was made in the original approval (Exhibit A.8). The temporary dwelling is approximately 1600 square feet. The dwellings in this area range from 484 to 3974 square feet. The largest dwelling without a finished basement is 2412

square feet. The average or mean for dwellings in the area is 1634 without basements or 1784 square feet with finished basement included.

5.1.3 MCC 38.7035(A)(3) New vehicular access points to the Scenic Travel Corridors shall be limited to the maximum extent practicable, and access consolidation required where feasible.

Staff: The temporary dwelling utilizes the property's existing access no additional driveways are proposed. *The criterion does not apply.*

5.1.4 MCC 38.7035(A)(4) Property owners shall be responsible for the proper maintenance and survival of any required vegetation.

Staff: The original approval did not require any vegetation.

5.1.5 MCC 38.7035(A)(5) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

Staff: Information from the submitted site plan was used to determine the compatibility with the landscape setting as required.

5.2 MCC 38.7035(B) All Review Uses and Conditional Uses visible from Key Viewing Areas

Staff: The temporary dwelling is topographically screened from all Key Viewing Areas. Since the proposed development is not visible from KVAs, the criteria under MCC 38.7035(B) do not apply.

5.3 MCC 38.7035(C)(4) All Review Uses and Conditional Uses within the following landscape settings: MCC 38.7035(C)(4) Rural Residential in Pastoral

Staff: The subject property is in the Rural Residential in Pastoral Landscape Setting

5.3.1 MCC 38.7035(C)(4)(a) New development in this setting shall meet the design standards for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral or Coniferous Woodland), unless it can be demonstrated that compliance with the standards for the more rural setting is impracticable. Expansion of existing development shall comply with this standard to the maximum extent practicable.

Staff: Findings below under subsections 5.3.4. through 5.3.7. address the more rural setting design standards of Pastoral Landscape. Findings under subsections 5.3.8. through 5.3.10. address the design standards of the Rural Residential Setting. The use is an expansion of an existing development. This standard is met.

5.3.2 MCC 38.7035(C)(4)(b) In the event of a conflict between the standards, the standards for the more rural setting (Coniferous Woodland or Pastoral) shall apply,

unless it can be demonstrated that application of such standards would not be practicable.

Staff: No conflict between standards exists.

5.3.3 MCC 38.7035(C)(4)(c) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

Staff: No recreation uses are proposed. This standard is met.

5.3.4 MCC 38.7035(C)(1) (a) New development shall be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity. Expansion of existing development shall meet this standard to the maximum extent practicable.

Staff: Findings under subsection 5.1.2. address the compatibility with the general scale of development within the vicinity. This standard is met.

5.3.5 MCC 38.7035(C)(1)(b) Accessory structures, outbuildings and accessways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.

Staff: No accessory buildings are proposed.

5.3.6 MCC 38.7035(C)(1)(c) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordination for new development and expansion of existing development:

- 1. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.**
- 2. Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.**
- 3. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas fir, Lombardy poplar (usually in rows), Oregon white oak, bigleaf maple, and black locust (primarily in the eastern Gorge).**
- 4. At least one-quarter of any trees planted for screening shall be coniferous for winter screening.**
- 5. Structures' exteriors shall be dark and either natural or earth-tone colors unless specifically exempted by MCC 38.7035 (B) (11) and (12).**

Staff: The temporary dwelling is not visible from Key Viewing Areas.

- 5.3.7 MCC 38.7035(C)(1) Pastoral (d) Compatible recreation uses include resource-based recreation uses of a very low or low-intensity nature, occurring infrequently in the landscape.**

Staff: No recreational use is proposed. This standard is met.

- 5.3.8 MCC 38.7035(C)(3)(a) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this standard to the maximum extent practicable.**

Staff: Findings under subsection 5.1.2. addresses the compatibility with the general scale of development within the vicinity.

- 5.3.9 MCC 38.7035(C)(3)(b) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.**

Staff: No trees will be removed.

- 5.3.10 MCC 38.7035(C)(3)(c) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordination for new development and expansion of existing development:**
- 1. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.**
 - 2. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.**
 - 3. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.**
 - 4. Structures' exteriors shall be dark and either natural or earth-tone colors unless specifically exempted by MCC 38.7035 (B) (11) and (12).**

Staff: The proposed development will not be visible from any Key Viewing Area. These standards do not apply.

- 5.4. MCC 38.7035(D) All Review Uses and Conditional Uses within scenic travel corridors:**

- 5.4.1. MCC 38.7035(D)(1) For the purposes of implementing this section, the foreground of a Scenic Travel Corridor shall include those lands within one-quarter mile of the edge of pavement of the Historic Columbia River Highway and I- 84.**

Staff: The land affected by the proposed development is more than 1700 feet from the Historic Columbia River Highway. The criteria under this section do not apply to this proposal.

6. THE PROPOSAL MEETS NSA GMA SITE REVIEW FOR CULTURAL RESOURCE REVIEW CRITERIA

6.1 MCC 38.7045 (A) Cultural Resource Reconnaissance Surveys

(1) A cultural reconnaissance survey shall be required for all proposed uses, except:

*** * ***

(f) Proposed uses occurring in areas that have a low probability of containing cultural resources

Areas that have a low probability of containing cultural resources will be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the U.S. Forest Service, public agencies, and private archaeologists.

MCC 38.7045 (B) The cultural resource review criteria shall be deemed satisfied, except MCC 38.7045 (L) and (M), if:

(1) The project is exempted by MCC 38.7045 (A) (1), no cultural resources are known to exist in the project area, and no substantiated comment is received during the comment period provided in MCC 38.0530 (B).

Staff: Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service submitted a cultural resources report (Exhibit C.2). According to Ms. Dryden, USFS, stated, “A cultural resources reconnaissance survey is: Not Required” and “A Historic Survey is: Not Required.”

These criteria are met.

6.2 MCC 38.7045 (L) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(1) Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(2) Notification – The project applicant shall notify the Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(3) Survey and Evaluation – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (see ORS 273.705 and ORS 358.905 to 358.955). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC 38.7045 (C) (2) and MCC 38.7045 (E).

(a) The Planning Director shall, based on the survey and evaluation report and any written comments, make a final decision within 10 days of the receipt of the report of the Gorge Commission on whether the resources are significant.

(b) The Planning Director shall require a Mitigation Plan if the affected cultural resources are found to be significant.

(c) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC 38.0530 (B).

(d) The decision of the Planning Director shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC 38.0530 (B).

Construction activities may recommence if no appeal is filed.

(4) Mitigation Plan – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J).

Construction activities may recommence when the conditions in the mitigation plan have been executed.

Staff: No construction is proposed.

6.3 MCC 38.7045 (M) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(1) Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(2) Notification – Local law enforcement officials, the Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.

(3) Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(4) Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.

(5) Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760.

(a) If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report standards of MCC 38.7045 (I).

(b) The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the standards of MCC 38.7045 (J) are met and the mitigation plan is executed.

Staff: No new construction is proposed.

7. THE SITE DOES NOT CONTAIN GMA WETLANDS

MCC 38.7055 GMA Wetland Review Criteria

(A) The wetland review criteria shall be deemed satisfied if:

(1) The project site is not identified as a wetland on the *National Wetlands Inventory* (U.S. Fish and Wildlife Service, 1987);

Staff: The subject site does not have an identified wetland listed on the National Wetland Inventory maps.

8. THE SUBJECT SITE DOES NOT CONTAIN GMA STREAMS, LAKES OR RIPARIAN AREAS

Staff: There are no streams, lakes or riparian areas near this property. Criterion is met.

9. THERE ARE NO KNOWN SENSITIVE WILDLIFE WITHIN 1000-FEET OF THE SITE

MCC 38.7065 GMA Wildlife Review Criteria

Wildlife Habitat Site Review shall be required for any project within 1,000 feet of sensitive wildlife areas and sensitive wildlife sites

Staff: There are no known sensitive wildlife areas or sites within 1000-feet of the subject site according to maps listing such areas and sites provided to Multnomah County by the Columbia River Gorge Commission. Criterion is met.

10. THERE ARE NO KNOWN RARE PLANT SPECIES WITHIN 1000-FEET OF THE SITE

MCC 38.7070 GMA Rare Plant Review Criteria

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

Staff: There are no known rare plant species within 1000-feet of the subject site according to maps listing such areas and sites provided to Multnomah County by the Columbia River Gorge Commission. Criterion is met.

11. CONCLUSION

Based on the findings, narrative, and other information provided herein, this application has satisfied the applicable approval criteria or can meet the criteria through conditions of approval as required for Site Review in the National Scenic Area.

12. EXHIBITS

12.1 Exhibits submitted by the Applicant:

- Exhibit A.1: NSA application form submitted 12/27/2011 (1 page);
- Exhibit A.2: Site plan submitted 12/27/2011 (1page);
- Exhibit A.3: Profile Elevations submitted 12/27/2011 (3 pages);
- Exhibit A.4: Narrative submitted 12/27/2011 (1 page);
- Exhibit A.5: Letter dated December 12, 2011 from John Custis, M.D. submitted 12/27/2011 (1 page);
- Exhibit A.6: Fire Dist. Review submitted 12/27/2011 (1 page);
- Exhibit A.7: Certificate of On-Site Sewage Disposal submitted 12/27/2011 (1 page);
- Exhibit A.8: Staff Decision T2-05-043 Submitted 12/27/2011 (20 pages);

12.2 Exhibits included by County:

- Exhibit B.1: County Assessment Record for the subject property (2 pages);
- Exhibit B.2: Wildlife Habitat Map (1 Page)
- Exhibit B.3: County Completeness Review (2 Pages)
- Exhibit B.4: Letter confirming application complete (1 Page)
- Exhibit B.5: Opportunity to Comment, mailed materials, and mailing list (13 Pages)
- Exhibit B.6: County zoning map w/contours (1 page)

12.3 Exhibits submitted by other parties:

- Exhibit C.1: A letter received on March 26, 2012 from Margaret (Molly) Bates, 33730 NE Mershon Road (1 page);
- Exhibit C.2: Email dated March 23, 2012 with attachment from Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service Heritage Resource Inventory Report (3 pages);
- Exhibit C.3: Letter dated March 28, 2012 received that date from Rick Till, Conservation Legal Advocate , Friends of the Columbia Gorge, (6 pages).