



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
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DECISION OF THE PLANNING DIRECTOR

Columbia River Gorge National Scenic Area Site Review **Case File No.: NSA 22-99** **January 11, 2001**

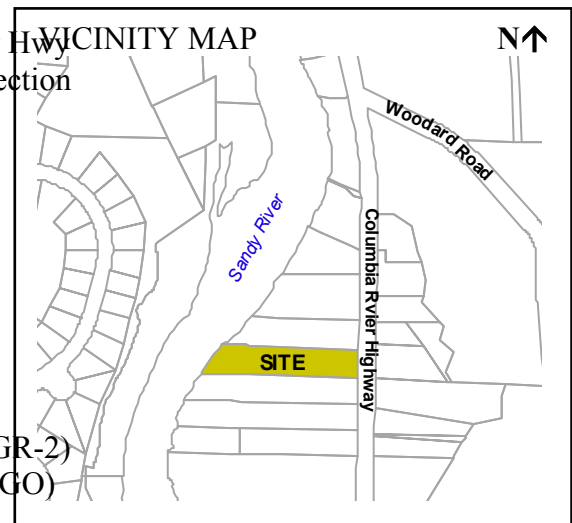
Proposal: Applicant requests approval to construct a new single family dwelling.

Location: 1969 E. Hist. Columbia River Hwy
Tax Lot 2000 (Old Lot 11), Section
31, T1N, R4E, W.M.
Tax Account #R944310110

Applicant/Owner: Wade Johnson
Post Office Box 159
Troutdale, OR 97060

Site Size: 1.00 acre

Zoning: Gorge General Residential (GGR-2)
Gorge General Open Space (GGO)



Approval Criteria: Multnomah County Code (MCC): MCC 11.15.3550, Columbia River Gorge National Scenic Area General Provisions; MCC 11.15.3650, Columbia River Gorge National Scenic Area Open Space Districts; MCC 11.15.3670, Columbia River Gorge National Scenic Area Residential Districts; MCC 11.15.3800, Columbia River Gorge National Scenic Area Site Review.

Decision: **Deny this application. Construction of a new single family residence, as proposed, cannot be approved because the applicant has failed to show that the dwelling will not noticeably contrast with the surrounding landscape as viewed from the Sandy River, in accordance with standards for establishing “visual subordination” set forth under MCC 11.15.3814(B)(1), (6) & (7). Further, the applicant has failed to show that proposed development will not adversely impact sensitive salmonid species in the Sandy River, as is required by wildlife review criteria listed under MCC 11.15.3826. This decision is based on the following findings and conclusions.**

Findings of Fact

(Formatting Note: Staff as necessary to address Multnomah County ordinance requirements provides Findings referenced herein. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written responses to code criteria prepared by or on behalf of the applicant are *italicized*. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation “Staff” precedes such comments.)

Comments From Other Agencies/Individuals

Notice of the subject request was mailed to the following agencies/individuals:

Columbia River Gorge Commission/Cultural Advisory Committee
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs
Nez Perce Tribe
State of Oregon Historic Preservation Office
U.S. Forest Service NSA Office
Yakima Indian Nation
Friends of the Columbia Gorge
Oregon Department of Transportation
Oregon Park & Recreation
Oregon Natural Heritage Program
Oregon Department of Fish & Wildlife
Corbett Together
Corbett Community Association
Northeast Multnomah County Community Association
East Multnomah Soil and Water Conservation District
City of Troutdale, Community Development Department
Surrounding property owners

Comments were received from the following agencies/individuals:

U.S. Forest Service NSA Office
Oregon Department of Fish & Wildlife
Oregon Department of Transportation
East Multnomah Soil and Water Conservation District
City of Troutdale, Community Development Department
Friends of the Columbia Gorge

1. Project Description:

The applicant is requesting approval to construct a new 3,480 square foot single family dwelling on a piece of property located at 1969 E. Historic Columbia River Highway. The location, dimensions, and height of the proposed structure are illustrated with the applicant's site plan (Exhibit 1) and exterior architectural elevations (Exhibit 2).

2. Site and Vicinity Characteristics:

The applicant's property lies within the corporate limits of the City of Troutdale. It is rectangular in shape, is 1.0 acre in size, and is located between the Historic Columbia River Highway and Sandy River approximately 1000 feet south of the intersection of the Historic Columbia River Highway and Woodard Road. Existing on-site development consists of a 1,440 square foot single family residence and garage, approved by Gorge Commission staff under interim guidelines in 1993 (Case #C93-0132-M-G-11), and constructed in 1994. On-site slopes are gradual, dropping east to west across the property toward the river. Limited ground cover exists on the property, however, several larger fir trees do exist around the residence and between the residence and highway.

The applicant's property is characteristic of the many residentially developed parcels that exist within a long strip of land sandwiched between the Sandy River and the Historic Columbia River Highway, north of the Stark Street bridge. The area is within the Columbia River Gorge National Scenic Area. Land upslope of the ordinary high water mark of the Sandy River is zoned Gorge General Residential (GGR-2), a designation which allows single family dwelling and accessory structures provided they do not adversely effect the scenic, cultural, natural, and recreational resources of the National Scenic Area. Land below the ordinary high water mark of the river is zoned Gorge General Open Space (GGO). As illustrated on the applicant's site plan, no development is proposed on GGO zoned portions of the property.

3. Columbia River Gorge National Scenic Area Site Review Required:

MCC 11.15.3678(A), Uses Under Prescribed Conditions, the following uses may be allowed on lands designated GGR, pursuant to MCC .3564:

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

* * *

(2) Buildings exceeding 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling.

MCC 11.15.3564(A), Uses Under Prescribed Conditions are those uses permitted in a district when administratively approved by the Planning Director upon findings by the Director, without action proceedings, that the NSA Site Review standards of MCC .3800 through .3834 and applicable policies of the Management Plan have been satisfied.

Staff: The property is subject to Columbia River Gorge National Scenic Area, Gorge General Residential (GGR-2) zoning as identified on Zoning Maps provided to the County by the Gorge Commission (Exhibit 3). We understand that the land was last divided while inside the corporate limits of the City of Troutdale. As such, the land division requirements of the City would have been applicable. The City commented on this application in letters dated November 24, 1999 and July 3, 2000, respectively. Copies of these letters are included in the case file. In these letters the City did not indicate that any legal problem exists with the creation of the subject property; therefore, we expect that it was lawfully created. Single-family dwellings on lawfully created parcels are allowed in the GGR-2 district as a Use Under Prescribed Conditions, pursuant to MCC 11.3678(A)(1).

As indicated in the December 5, 2000 narrative prepared, on behalf of the applicant, by John Gray, RPG (Exhibit 4), the applicant acknowledges that this zone district provides for only one single family residence, and is prepared to convert the existing residence, containing a single bedroom and kitchen, to

non-living space. The converted area would stand with the garage, as a detached structure incidental and accessory to the residential dwelling, as authorized per MCC .3678(A)(2). All Uses Under Prescribed Conditions require Site Review per MCC 11.15.3564(A).

4. Compliance With MCC 11.15.3682(C) , GGR-2 Yard Requirements:

MCC 11.15.3682(C), Minimum Yard Dimensions - Feet

Front Side Street Side Rear

30 10 30 30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

Staff: The applicant's site plan and exterior elevations demonstrate that the proposed residence will satisfy the minimum yard requirements of MCC .3682(C).

5. Compliance With MCC 11.15.3686, GGR-2 Access Requirement:

Per MCC 11.15.3686, Any lot in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles.

Staff: This requirement has been satisfied. Access to the site is available via an existing private driveway that crosses the property to the south and connects directly to the highway. As indicated in a letter dated January 3, 2000 (Exhibit 5), the Oregon Department of Transportation (ODOT) has an access permit on file for this road. If this application were to be approved, the permit would have to be upgraded to include a paved approach onto the highway. The applicant has not indicated that they would have any problem satisfying this ODOT requirement.

6. Compliance With MCC 11.15.3814, General Scenic Area Review Criteria:

Per MCC 11.15.3814(A), Uses Under Prescribed Conditions, the following scenic review standards shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area: *(Italicized text is from June 23, 2000 and December 5, 2000 submittals prepared by John Gray, RPG, with G2 Associates, Inc.)*

- A. **MCC .3814(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.**

The existing/proposed road rolls into this site with virtually no effect on existing grades and will not require additional cuts or fills to be created. The road currently provides access into this site to the existing utility building and can serve the proposed home as well without further stripping of vegetation, or soil movement other than that which will be necessary for placement of a small portion of the crushed rock driveway beyond the utility building to the home location and the actual foundation excavation/backfill zone (see site plan). Required grading will be at a minimum since the improvements already exist at this writing.

Staff: We concur that this requirement has been satisfied. The area of planned construction is on gradually sloped ground, requiring minimal grading.

B. MCC .3814(A)(2), New buildings shall be generally consistent with the height and size of existing nearby development.

The applicant site plan depicts the size of the proposed new home as 3,350 square feet and one story in height. He has also performed an extensive appraisal and survey of all homes on the Sandy River in the subject area. The purpose was to ascertain the mean home size along the river front. A copy of those documents are attached to this report for the County review. The applicant appears to justify his intended structure sizing based on this thorough survey and analysis. The intended height is depicted on the attached building profiles as referenced under MCC 11.15.3814(B)(4).

Staff: This criterion has been satisfied. The survey of residential structures in the area was prepared, on behalf of the applicant, by Wherity Appraisal Service. This survey includes detailed information on the size of dwellings on 25 properties within close proximity of the applicant's site, and serves to provide a reasonable benchmark of the size of existing nearby development. A copy of the survey report is included in the case record.

The applicant's exterior elevation and site plan for the proposed home establish the height and size of the structure. As last revised, the new residence is a single story, 3,480 square foot structure, with a peak building height of 19 feet. Two of the 25 dwellings listed in the report exceed this size, one at 3,983 square feet (1820 SE Historic Columbia River Hwy) and the other at 4,514 feet (2150 SE Historic Columbia River Hwy). Since the size of the proposed dwelling falls within the range of what currently exists in the area, it is considered to be generally consistent with that of existing nearby developments.

At 19 feet, the building height of the proposed residence is typical for single story construction and considerably less than the peak height of two story dwellings in the area.

C. MCC .3814(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.

The proposed development will not require additional highway accesses since there is an approved existing driveway currently serving the utility building/garage.

D. MCC .3814(A)(4), Project applicants shall be responsible for the proper maintenance and survival of any required vegetation.

The applicant acknowledges responsibility for establishment of site vegetation which might be required under the relevant stipulations of the Wetland and/or Wildlife Management plans agreed upon for this property.

E. MCC .3814(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: This requirement is noted. Compliance with landscape setting standards is discussed under Finding 8.

7. Compliance With MCC 11.15.3814(B), Review Criteria For Key Viewing Areas:

Per MCC 11.15.3814(B), the following scenic review standards shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area which are visible from Key Viewing Areas: *(Italicized text from June 23, 2000 and December 5, 2000 submittals prepared by John Gray, RPG, with G2 Associates, Inc.)*

- A. **MCC .3814(B)(1), Size, height, shape, color, reflectivity, landscaping, siting or other aspects of proposed development shall be evaluated to ensure that such development is visually subordinate to its setting as seen from Key Viewing Areas.**

Pertaining to structure visibility from Key Viewing Areas (KVAs), the applicant can meet the required 100 foot physical setbacks from both the Sandy River and the Historic Columbia River Highway KVAs. Existing trees growing throughout the 100 foot highway setback zone remain intact and do well to minimize visibility into this site the entire 100 foot (north-south) width of this parcel. The applicant will plant native and indigenous area plantings (brush and trees) between the structure and the river KVA to soften the visibility issue from that location. Close inspection of the river elevations, and looking into this site reveal that there is an approximately 22-25 foot vertical rise into the site. The natural embankment is heavily vegetated in brush, grasses, and a few trees. The applicant benefits via the neighbor's lattice screening along their common boundary to the north, which will block public visibility in both directions along the river. In terms of structure enhancements, the applicant intends to meet the County requirements for exterior structure color choices, non-reflective finish flashings, and the specifics of minimization of reflective surfaces, glass exposures, etc. It is through the staggering of vegetation plantings, careful tree placement and structure color selections that minimization and subordination of the structure presence will be achieved.

Placement of the proposed new structure east of an existing tree grove does not work since the trees screen the existing garage/utility building and there is no other viable space existing to afford this requirement. Concentration of efforts to restore and enhance existing vegetation cover and tree plantings, the possible use of restored native vegetation, the creation of vegetation covered man-made screens (e. g. the photograph of the neighboring boundary screen), etc., will create the desired obscurance from both KVA areas. The applicant will choose exterior color and finishes which will meet the requirements of County specifications to greatly aid in structure subordination. Photographic evidence is provided in support of existing and proposed improvements on the subject project.

Staff: Visual subordinance has not been established. Visual subordinance is defined as "The relative visibility of a structure where that structure does not noticeably contrast with the surrounding landscape, as viewed from a specified vantagepoint (generally a Key Viewing Area). Structures which are visually subordinate may be partially visible, but are not visually dominant in relation to their surroundings (Per MCC 11.15.3556)." Key Viewing Areas from which the subject property is visible are the Historic Columbia River Highway and Sandy River.

Visual subordinance of development as seen from the highway is not an issue with this application provided that trees and ground cover between the existing residence and highway are maintained in their existing condition. The site plan and photographs of the

property (Exhibit 6) show that such vegetation substantially screens the existing residence and the western portion of the site when viewed from the highway. If dark earth-tone colors had been used for the exterior treatment of the existing dwelling, as required under the gorge commission permit authorizing its construction (ref: Condition #8, Case #C93-0132-M-G-11), the structure would blend with the surrounding landscape and would be more difficult to see from the highway.

It is the visibility of the proposed residence from the Sandy River that conflicts with this approval criterion. Photographs of the property show that the western portion of the site is relatively flat and devoid of significant vegetation. Placement of the residence in this area, approximately 100 feet from the ordinary high water mark of the river, will cause the structure to be fully visible from this Key Viewing Area. While this might be desirable to the applicant because it will provide a panoramic view of the river, it is problematic because site topography provides little in the way of relief, causing the structure to visually dominate its surroundings. The large size and orientation of the residence exacerbates this problem. As illustrated on the site plan, the structure extends lengthwise at a slight angle across the full width of the lot, maximizing the structure's visibility as seen from the river.

Visibility of the proposed residence as seen from the river was an issue of concern raised early in the review of this application. It was discussed in three letters from the Friends of the Gorge, dated December 15, 1999, July 13, 2000 and December 20, 2000, copies of which are included in the case file. Staff also identified this as a concern in letters dated December 29, 1999, and August 14, 2000 (see file), and informed the applicant that this issue caused the denial of a site review application on property immediately to the south, where a residence was proposed in a comparable location with similar topography (ref: Case #NSA 11-98).

Although this application fails to achieve visual subordination, development alternatives do appear to exist that could satisfy this criterion. Alternatives pointed out to the applicant in staff correspondence include the alteration of the existing residence or construction of a new residence if reduced in size and located further east behind a line of mature fir trees. By taking advantage of existing mature vegetation for screening purposes, using dark earth tone exterior colors, and orientating development to minimize the amount of a structure visible from the river, it is apparent that some additional development can occur on this property in compliance with visual subordination requirements.

- B. **MCC .3814(B)(2), The extent and type of conditions applied to a proposed development to achieve visual subordination should be proportionate to its potential visual impacts as seen from Key Viewing Areas. Primary factors influencing the degree of potential visual impact include: the amount of area of the building site exposed to Key Viewing Areas, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Areas it is visible from, the number of Key Viewing Areas it is visible from, and the linear distance along the Key Viewing Areas from which the building site is visible (for linear Key Viewing Areas, such as roads). Written re-ports on determination of visual subordination and final conditions of approval shall include findings addressing each of these factors.**

Due to the site elevation above the river, the visually protective (vegetated) slope and the positioning of the site on an inside river bend, visibility from the river KVA will be greatly

mitigated even without additional enhancements. Proper placement of select bushes and small trees will adequately obscure the proposed structure and improvements from lateral visibility and achieve the desired visual blocking. The visibility issue from the highway KVA (from the east) is virtually already resolved due to the existence of a healthy grass and brush undercover which fills in the space between a moderately dense fir tree grove (see enclosed photographs) and the road. The relatively narrow width of this lot (100 feet) and the dense tree and brush coverage on adjacent lots also acts well to obscure the building site from both the river and the highway KVAs. The grove lies between the road and the developing interior of this parcel. Since the single width gravel drive winds its way through the trees into the property, it will be an easy task to plant a few bushes at key locations to achieve visual obscurity. The intended home will be sited east of the appropriate river front 100 foot setback. In terms of the final developed site conditions, all improvements will lie within an internal envelope as determined by required side setbacks, and both of the required roadway and river KVA setbacks. Through implementation of the above features that we conclude the development will fully meet the current development subordination requirements.

Staff: No conditions have been applied to this development. This application could not be approved through implementation of reasonable conditions, because the applicant failed to establish that visual subordination could be achieved, as discussed herein.

C. MCC .3814(B)(3), Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

Staff: When reviewing case-by-case development, this criterion requires that the County consider whether or not an individual project contributes to a cumulative visual impact of development as viewed from a key viewing area. Like the applicant's property, most parcels in the area contain single family residences. Many of these residences were constructed prior to the establishment of the National Scenic Area, are clearly visible from the Sandy River, and significantly contrast with the surrounding natural environment. As discussed under Finding 7A above, if this application were to be approved and the dwelling constructed where proposed, it also would noticeably contrast with the surrounding landscape, and would thus contribute to a cumulative visual impact of development along the river corridor.

D. MCC .3814(B)(6), New buildings or roads shall be sited on portions of the subject property which minimize visibility from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, sensitive wildlife sites or conflict with the protection of cultural resources. In such situations, development shall comply with this standard to the maximum extent practicable.

The applicant has conducted a rather intensive survey of the average residence sizes along this river for over a one-mile distance. The proposed size of the new home is 3,350 square feet which is based on those values, and is considerably smaller than the median home size identified in that document. Copies of those research documents are attached to this report as validation of this stand. The concept of pushing the home further east than shown on the project site plan, is not advised, since that act would require the loss (removal) of two or more large fir trees. This would actually conflict with the client's

intent to meet the requirement for retention of natural vegetation and trees. Since it is the objective of this development to blend into the existing environment as much as practicable, the applicant prefers to hold the structure as graphically shown and to place efforts into adding the bushes and trees at key locations to better overall enhance site conditions and thus return it sooner to a condition which would resemble a better vegetated environment than the current condition.

Staff: This criterion has not been satisfied. To satisfy this standard buildings must be designed and located on those portions of the property that are least visible from all Key Viewing Areas. With respect to the subject property, the least visible area is where the existing dwelling is located. This area is roughly an equal distance from both the river and highway and, as illustrated on the site plan and photographs, is at least partially screened from both Key Viewing Areas by existing stands of mature fir trees. The area around the existing dwelling is large enough to allow for an addition or replacement with a larger structure, without requiring the removal of a significant number of trees.

- E. **MCC .3814(B)(7), In siting new buildings and roads, use of existing topography and vegetation to screen such development from Key Viewing Areas shall be prioritized over other means of achieving visual subordination, such as planting of new vegetation or use of artificial berms to screen the development from Key Viewing Areas.**

Items B 6-7 (Previous narrative) above also address and support the context of the proposed development in terms of using both all of the existing vegetation to achieve site obscurance, as well as the addition of new vegetation to aid in maximization of the goal. Vegetation types can be discussed and agreed upon by the owner/applicant and the County to attain this objective. It should be understood that the County road crew or another private contractor was responsible for denudation of the adjacent lot to the immediate south of this parcel. The applicant on this site is currently already planting and berming to "close-in" and to obscure this site in advance of the development. We see this as an advance act of good faith to improve conditions and actually achieve restoration of land previously graded by others along this river front.

Staff: This requirement has not been satisfied. As indicated in their previous narrative (ref: Finding 7D), the applicant prefers to construct where proposed and plant new screening vegetation rather than use existing vegetation to provide visual relief, as is required by this criterion. The applicant has offered no alternatives to the current proposal to locate a 3,480 square foot residence 100 feet from the ordinary high water mark of the river, even though areas exist within the property, farther from the river, where development at a more limited scale could occur and be partially screened by existing mature vegetation.

- F. **MCC .3814(B)(8), Driveways and buildings shall be designed and sited to minimize grading activities and visibility of cut banks and fill slopes from Key Viewing Areas.**

As previously stated under item MCC 11.15.3814(A)(l), the existing and unaffected natural topography of the subject site, plus the existence of the sole access road into this site, presents us with a site which will not require further grading or road building. No cuts or fills will be visible from either KVA based on the applicant portrayal of development plans and our onsite evaluation of field conditions. The gravel road already

exists and has for some years, and will not have to be extended, or widened to provide the necessary access to the proposed new structure position.

Staff: We concur. The site plan and photographs of the property show a site that is relatively flat. No significant fill slopes or cut banks should be needed for development given such terrain.

- G. **MCC .3814(B)(9), The exterior of buildings on lands seen from Key Viewing Areas shall be composed of non-reflective materials or materials with low reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topographic features.**

MCC .3814(B)(10), Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

The client will comply on all issues regarding exterior lighting, paint colors, trim and reflectivity matters as required in their agreement with the County. Exterior lighting locations have been shown on the site plan for this project and will focused in a downward direction as required.

Staff: Compliance with these requirements can be achieved with conditions of approval.

- H. **MCC .3814(B)(13), The silhouette of new buildings shall remain below the skyline of a bluff, cliff or ridge as seen from Key Viewing Areas. Variances may be granted if application of this standard would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use, and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the standard have been made.**

A high bluff does exist east of the eastern highway KVA and forms a spectacular back drop from an aesthetic perspective. The structure positioning has been evaluated from the river KVA perspective, and none of the proposed improvements will "break" the visual skyline. Photographs have been taken and included within this report to document this issue in support of compliance with the code requirements. This issue is also seen as a compliance matter within the general sense of the development subordination requirement.

Staff: We concur. Photographs of the property show that existing topography to the east prevents development from extending above the skyline as viewed from the river.

- I. **MCC .3814(B)(20), New buildings shall not be permitted on lands visible from Key Viewing Areas with slopes in excess of 30 percent. A variance may be authorized if the property would be rendered unbuildable through the application of this standard. In determining the slope, the average percent slope of the proposed building site shall be utilized.**

Staff: The site plan and photographs of the property illustrate that portions of the property proposed for development are relatively flat, with slopes of less than 10 percent.

- J. **MCC .3814(B)(21), All proposed structural development involving more than 100 cubic yards of grading on sites visible from Key Viewing Areas and which slope**

between 10 and 30 percent shall include submittal of a grading plan. This plan shall be reviewed by the Planning Director for compliance with Key Viewing Area policies. The grading plan shall include the following...

Staff: Since slopes are less than 10 percent in areas proposed for development, a grading plan is not required.

- K. **MCC .3814(B)(26), Compliance with specific approval conditions to achieve visual subordination (such as landscaped screening), except mining and associated activities, shall occur within a period not to exceed 2 years after the date of development approval.**

Staff: No conditions have been applied to this development. As is evident from previous findings, this application could not be approved, and visual subordination achieved, through the imposition of conditions of approval.

8. Compliance With MCC 11.15.3814(C), Landscape Setting Requirements:

Per MCC 11.15.3814(C)(3), Uses Under Prescribed Conditions, the following scenic review standards shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area which reside in a Rural Residential landscape setting:

- A. **MCC .3814(C)(3)(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.**

The applicant has conducted a thorough appraisal and analysis of all existing homes along the river for a distance of one mile. Those results support the construction of the proposed 3,350 square foot home. Its size, construction style, positioning to the river (given adherence to the required setbacks on all sides), does visually conform to several existing newer homes already in existence along this river both inside the National Scenic Area and outside of its upstream boundaries.

Staff: This criterion has been satisfied. The report prepared by Wherity Appraisal Service, included in the case file, shows that three of the 25 properties within close proximity of the applicant's site contain an overall mass of development (all structures) in excess of the 4,920 square feet proposed by the applicant. This appraisal report also shows that the height and dimensions of existing and proposed development on the subject property is comparable to that which exists on other properties in the area.

- B. **MCC .3814(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.**

All existing tree and shrub vegetation will remain intact at the subject site. The client is actively taking steps to density boundary vegetation to enhance privacy and to increase visual obscurance in an attempt escalate site improvements through vegetation mediums.

- C. **MCC .3814(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:

- (i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.
- (ii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.
- (iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.
- (iv) Structures' exteriors shall be dark and either natural or earthtone colors unless specifically exempted by MCC .3418(B)(11) and (12).

The applicant agrees to the stipulations of vegetation maintenance, the planting of new and indigenous tree species to achieve visual obscurance and screening value, and to the choices of exterior structure colors as required by existing rules.

- D. **MCC .3814(C)(3)(d), Compatible recreation uses should be limited to small community park facilities, but occasional low-intensity resource-based recreation uses (such as small scenic overlooks) may be allowed.**

Staff: Proposed development is not recreational in nature, therefore, this criterion is not applicable.

9. Compliance With MCC 11.15.3814(D), Scenic Travel Corridor Review Criteria:

Per MCC 11.15.3814(D), Uses Under Prescribed Conditions, the following scenic review standards shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area which are within scenic travel corridors:

- A. **MCC .3814(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 subject property adjoins the Historic Columbia River Highway; therefore, this site review application is subject to scenic travel corridor review criteria listed under this section.

- B. **MCC .3814(D)(2), All new buildings and alterations to existing buildings, except in a GGRC, shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway. A variance to this setback requirement may be granted pursuant to MCC .3576. All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway, to the maximum extent practicable.**

Staff: As illustrated on the site plan, both the existing residence and the location proposed for the new dwelling satisfy the 100 foot setback requirement.

10. Compliance With MCC 11.15.3818 GMA Cultural Resource Review Criteria:

MCC 11.15.3818(A)(1), establishes that 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...

Per MCC 11.15.3818(B)(1), the cultural resource review criteria shall be deemed satisfied, except MCC .3818(L) and (M), if the project is exempted by MCC .3818(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 .3810(B).

Staff: Written findings dated August 21, 2000 from Michael Boynton, Heritage Resource Program Manager with the Forest Service (Exhibit 7), establish that a Reconnaissance Survey, as defined under MCC .3818, is not necessary because the proposed activities are occurring in an area that has a low probability of containing cultural resources (MCC .3818(A)(1)(f)). Furthermore, Mr. Boynton indicated that no additional survey work is needed on this property.

Given this evidence, we recognize that this application satisfies all cultural resource review criteria, except MCC .3818(L) and (M), which relate to the discovery of cultural resources during construction (MCC .3818(B)(1)). Compliance with the requirements of MCC .3818(L) and (M) could be established with conditions of approval.

11. Compliance With MCC 11.15.3822, Wetlands Review Criteria:

Per MCC 11.15.3822(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);**
- (2) The soils of the project site are not identified by the *Soil Survey of Multnomah County, Oregon* (U.S.D.A. Soil Conservation Service, 1983) as hydric soils;**

* * *

- (4) The project site is not within a wetland buffer zone; and**
- (5) Wetlands are not identified on the project site during site review,**

Staff: This application satisfies applicable National Scenic Area Wetlands Review Criteria (MCC 11.15.3822(A)). The project site, or area proposed for development, does not contain wetlands identified on National Wetlands Inventory (NWI) Maps. NWI Maps do illustrate a narrow linear band of wetlands adjacent to the ordinary high water mark of the river. However, field observations by the applicant's consultant, Fred Small, an Ecologist with Pacific Habitat Services, Inc., indicate that there is

no evidence of wetlands along the stretch of river adjoining the subject property (Exhibit 8). After visiting the site, we concur with these observations. The Soil Survey of Multnomah County, Oregon, prepared by the U.S.D.A. Soil Conservation Service, indicates that Dabney loamy sand soils exists within the project area. Dabney loamy sand soils are not hydric as defined by the Soil Conservation Service.

12. Compliance With MCC 11.15.3824, Stream, Lake, & Riparian Area Review Criteria:

MCC .3824(F), Stream, Pond, and Lake Buffer Zones

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

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

* * *

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

Staff: The applicant has not satisfied this requirement. In the National Scenic Area, the ordinary high water mark is defined as "the mark on all streams, ponds, and lakes where the presence and action of waters are so common and usual, and so continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting land (MCC .3556)." Using this definition, Dale Hult, PLS, with All County Surveyors visited the subject property and determined the ordinary high water mark for the Sandy River to be at an elevation of 25 feet. A brief summary of his methodology is included in a letter to the applicant dated November 3, 2000 (Exhibit 9).

The 25 foot elevation line and, the 100 foot setback from this line required under MCC .3824(F)(1)(a), are illustrated on the applicant's site plan. The site plan shows the patio area for the residence extending into the setback. MCC .3824(F)(2) expressly prohibits any development within this setback area.

Further, MCC .3824(F)(2) requires that the setback area be replanted with native plant species if disturbed. Photographs of the property show that areas within the setback were recently graded. The applicant has provided no plans for replanting graded areas with native vegetation.

13. Compliance With MCC 11.15.3826, Wildlife Review Criteria:

Per MCC 11.15.3826(D), Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

- (1) Site plans shall be submitted to Oregon Department of Fish and Wildlife by the Planning Director. State wildlife biologists will review the site plan and their field survey records. They will**

- (a) Identify/verify the precise location of the wildlife area or site,**

- (b) Ascertain whether the wildlife area or site is active or abandoned, and**

- (c) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons.

In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

* * *

- (5) The project applicant shall prepare a wildlife management plan if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.
- (6) The Planning Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife. The Oregon Department of Fish and Wildlife will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Planning Director.

The Planning Director shall record and address any written comments submitted by the Oregon Department of Fish and Wildlife in its site review order.

Based on the comments from the Oregon Department of Fish and Wildlife, the Planning Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and standards. If the final decision contradicts the comments submitted by the Oregon Department of Fish and Wildlife, the Planning Director shall justify how the opposing conclusion was reached.

The Planning Director shall require the applicant to revise the wildlife management plan to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

...The applicant disagrees with the 240 foot setback (ref: January 28, 2000 ODF&W letter) which seems to be non-applicable, but is also punitive to this property since there are existing homes immediately on either side of his parcel which are just as close to the river. Adjacent parcels also have more than one structure. Those same homes may or may not meet the 100 foot setback from the ordinary high water line and surely do not set back from the water at the 240 foot line. It is our opinion that we can offer additional runoff mitigation which would resolve the need for implementation of the 240 foot ruling. We have stipulated that the development plans include piping of all collected runoff from structure and pavement to be carried easterly and away from the river. The water would be transported via tightline piping toward the highway and released to an existing natural swale east of the shop building. This process will permit a good means of natural soil filtration to cleanse runoff, thus resolving concerns for the entire runoff created by the home, the existing shop building, and all paved areas on a permanent basis. To the extent of our investigations of local structures, we have found no other instance where others have gone to this extreme in order to protect the stream and fish, and feel that it is a good practical means of resolving the issue. In this instance, the runoff from two adjacent structures as well as the existing shop on this property are already releasing runoff to this swale. Having to place the new home over the swale (east of the 240 foot line) would force the routing of all drain lines via other routes toward the river, which we feel is less desirable. Moving the new home to the 240 foot line will require the removal of several large conifer trees, and would place the structure on top of the approved auxiliary septic drainfield location, all of which are undesired consequences.

Placement of the proposed structure at the 240 foot setback position would require: (1) probable demolition of the existing shop/garage structure, (2) disruption of the site service utilities which exist through the area of the road and the existing swale locations, (3) clearing of several large conifer trees

to permit the road realignment and swale filling, plus (4) the clearing out of the swale, followed by the engineered filling of the swale to design grades. The latter issue is of technical concern to this office since the swale is actually the remnant of former stream channel abandoned years ago by the river movement to the west to the current position. The swale has been preserved in its natural state and is currently utilized as a storm water detention basin for three structures and the northern neighbor's driveway runoff. The swale permits the detention of runoff and its slow filtration (cleansing) and gradual return to the river groundwater regime in an acceptable manner thus eliminating potential storm rush to the river.

The applicant contends that the Gorge Commission approved of the development of the intended shop and home (two structures) to be constructed in a graduated manner back in 1993, thereby permitting the intended development in a manner and location similar to the proposal. Forcing the positioning of the proposed home literally on top of the shop building location seems contradictory with the prior approval and creates a logistical nightmare.

Failure to successfully resolve these matters based on the above history and reasoning is expected to impose a severe economic loss to the owner and the property based on land area, lot width, and land-based comparative valuation to other properties in the project vicinity. The economic "hit" imposed if structures have to be razed and the new home rebuilt on the same position as the existing garage/shop building would make the project unviable. The applicant himself; has been a real estate broker and realtor, and estimates at least a 50 to 60 percent value loss to the property if the insistence for a 240 foot structure setback is maintained. The applicant is willing to obtain professional property appraisal opinions from the open market if this information would assist in the formulation of a fair decision regarding the matter. We hold a strong concern that denying the proposed home in tandem with the existing shop building as the Gorge Commission apparently approved in 1993, would reflect negatively on the property valuation. This raises the perception that the property has become an example of a "taking issue" via the forced devaluation of the land in the open market. We wish to avoid creating that image as it would be a serious precedent which we do not believe is the true intent of the existing regulations or land use laws.

Staff: This application does not satisfy National Scenic Area habitat review criteria. The subject property is within 1,000 feet of the Sandy River, which is habitat for steelhead and salmon species that are listed as threatened under the Federal Endangered Species Act. Therefore, in accordance with MCC .3826(D), a copy of this application was forwarded to the Oregon Department of Fish and Wildlife (ODF&W) for their review and comment.

Gregory Robart, a habitat biologist, conducted the review of this application on behalf of ODF&W. In a letter dated January 28, 2000 (Exhibit 10), Mr. Robart indicated that proposed development will adversely impact the habitat of these fish species unless mitigation measures, as described in the letter, are implemented. Such mitigation measures include a 120 foot "no touch" buffer from the ordinary high water mark of the river coupled with an additional 120 foot "soft" or transitional buffer. The applicant has not revised their application to incorporate the recommended mitigation measures.

Applicant's proposing projects that will adversely impact sensitive wildlife areas, such as in this case, are required to prepare wildlife management plans (MCC .3826(D)(5)). Wildlife management plans must be prepared by a professional biologist (MCC .3826(E)) and offer the applicant an opportunity to redesign the project and propose alternative mitigation to alleviate any adverse impacts on sensitive wildlife habitat. The applicant's June 23, 2000 submittal included a wildlife mitigation plan prepared by Pacific Habitat Services, Inc. (Exhibit 8), and copies of the plan were forwarded to ODF&W for comment on June 29, 2000 and December 6, 2000. No comments were received from ODF&W.

MCC .3826(D) requires the Planning Director to make a final decision on whether or not proposed development is consistent with scenic area wildlife standards. Such a decision must be based on comments received from the Oregon Department of Fish & Wildlife. Any deviation from recommendations provided by ODF&W must be justified. The County does not have any professional biologists on staff; therefore, we rely heavily on ODF&W's analysis in determining whether or not a project will adversely impact sensitive wildlife habitat. Since ODF&W failed to provide comment on the wildlife management plan, we must refer back to their original letter, dated January 28, 2000, to establish their position on this application. In this letter they request a 240 foot buffer between proposed development and the high water mark of the river, as a means of ensuring that sensitive salmonid habitat is not adversely impacted. Ample analysis is included in the letter to support this request. Since the applicant has failed to incorporate the requested mitigation into their plans and has not, through a wildlife management plan, developed alternate mitigation acceptable to ODF&W, this application adversely impacts sensitive salmonid habitat and; therefore, fails to satisfy scenic area wildlife criteria.

14. Compliance With MCC 11.15.3828, Rare Plants Review Criteria:

Per MCC 11.15.3828, Rare Plant Site Review shall be required for any project within 1,000 feet of endemic plants and sensitive plant species.

Staff: No inventoried Endangered Plant Species have been identified within 1,000 feet of the applicant's site, therefore, rare plant site is not required.

15. Compliance With MCC 11.15.3832, Recreation Resource Review Criteria:

Staff: The proposed development is not recreational in nature, therefore, the Recreational Review Criteria listed under MCC .3832 are not applicable.

Conclusion

Based on the findings and other information provided above, the applicant has failed to carry the burden necessary to receive National Scenic Area Site Review approval for construction of a new dwelling. Specifically the applicant failed that the dwelling will not noticeably contrast with the surrounding landscape as viewed from the Sandy River, in accordance with standards for establishing "visual subordination" set forth under MCC 11.15.3814(B)(1), (6) & (7). Further, the applicant has failed to show that proposed development will not adversely impact sensitive salmonid species in the Sandy River, as is required by wildlife review criteria listed under MCC 11.15.3826.

Exhibits

All materials submitted by the applicant, prepared by county staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record for this application. Exhibits referenced herein are enclosed, and a brief description of each is listed below:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
1	3	The Applicant's Site Plan
2	2	Exterior Elevations of the Residence
3	2	County Zoning Map Illustrating The Subject Property

4 5 Narrative prepared by John Gray, RPG, received December 5, 2000
5 1 Letter from the Oregon Department of Transportation, dated January 3, 2000
6 8 Photographs of the Property (various sources)
7 1 August 21, 2000 letter from Michael Boynton, U.S. Forest Service
8 4 Report prepared by Pacific Habitat Services, Inc
9 1 November 3, 2000 letter from Dale Hunt, PLS with All County Surveyors
10 8 January 28, 2000 letter from Gregory Robart, Habitat Biologist, Oregon
 Department of Fish and Wildlife

In the matter of NSA 22-99

By: _____ Date: _____
Derrick I. Tokos, AICP, Planner
For Kathy Busse, Planning Director
Multnomah County Department of Environmental Services
Land Use Planning Division

Notice:

The Administrative Decision detailed above will become final unless an appeal is filed within the 14-day appeal period that starts the day after the notice is mailed. If the 14th day falls on a Saturday, Sunday, or a legal holiday, the appeal period extends through the next full business-day. If an appeal is filed, a public hearing will be scheduled before a County Hearings Officer pursuant to Multnomah County Code section 11.15.8290 and in compliance with ORS 197.763. To file, complete an Appeal of Administrative Decision for, and submit to the County Planning Division Office, together with a \$100.00 fee and supplemental written materials (as needed) stating the specific grounds, approval criteria, or standards on which the appeal is based. To review the application file(s), obtain appeal forms, or other instructions, call the Multnomah County Planning Division at (503) 248-3043, or visit our offices at 1600 SE 190th Avenue, Portland, Oregon, 97233(8:00am to 4:00pm).

The appeal period ends Thursday, January 25, 2001 at 4:30pm.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.
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