

Hearings Officer Decision

Case: T3-2017-9784
Permit: Conditional Use and NSA Site Review

Hearing Date: Friday, December 14, 2018, at the Land Use Planning Division office
located at 1600 SE 190th Avenue, Portland, OR 97233.

Location: Columbia River Gorge National Scenic
Area North of the Historic Columbia
River Highway just east of Coopey
Creek (no address)
Tax Lot 600, Section 14C,
Township 1 North, Range 5 East, W.M.
Tax Acct.# R945140110, ID# R322887

Applicant: Sarah Eastman/Tova Peltz (ODOT)

Owner: Oregon Department of Transportation

Base Zone: Gorge Special Forest (GSF-40)
Special Management Area (Forest)

**Landscape
Setting** "Coniferous Woodland, Oak-Pine
Woodland" Landscape Setting and a
minor amount of "River Bottomland"

Vicinity Map

N↑



Proposal: Request National Scenic Area Conditional Use and Site Review to approve using the Coopey Quarry as a long term disposal site for spoil materials from public road maintenance activities (project started as an emergency permit). Project includes restoration/reclamation of the quarry to a forested landscape habitat mitigating for the work in buffer areas resulting in restored vegetative riparian areas and creation of two wetland areas on a property.

Opportunity to Review the Record: A copy of the Staff Report 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. The Staff Report contains the findings and conclusions, along with recommended conditions of approval. A copy of the Hearings Officer Decision will be available once it is issued. The Hearings Officer Decision will include findings, conclusions and Conditions of Approval. Copies of all documents may be purchased at the rate of 30-cents per page. For further information on

this case, contact George Plummer, Planner at george.a.plummer@multco.us (503) 988-0202 (8 am to 4 pm Tuesday through Friday).

Opportunity to Appeal: The Hearings Officer Decision may be appealed to the Columbia River Gorge Commission.

Applicable Approval Criteria: Multnomah County Code (MCC):

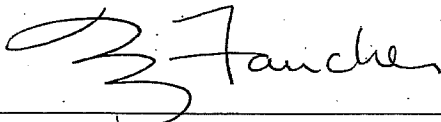
- MCC 38.0015: Definitions
- MCC 38.2000: Purposes
- MCC 38.2030(B)(9): GSF-40 Conditional Uses (Disposal Sites Managed and Operated by ODOT)
- MCC 38.7020: Required Findings
- MCC 38.7035: GMA Scenic Review Criteria
- MCC 38.7040: SMA Scenic Review Criteria
- MCC 38.7050: SMA Cultural Resource Review Criteria
- MCC 38.7075: SMA Natural Resource Review Criteria
- MCC 38.7085: SMA Recreation Resource Review Criteria
- MCC 38.7090: Responses to an Emergency/Disaster Event
- MCC 38.7300: Review and Conditional Uses, and
- MCC 38.7350: Disposal Sites for Spoil Materials from Public Road Maintenance Activities

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

Decision

The hearings officer approves ODOT's conditional use and site plan applications subject to compliance with the conditions of approval below.

Dated this 7th day of March, 2019



Liz Fancher, Hearings Officer

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. The code citation for the associated approval criterion follows in brackets.

1. Prior to any additional debris disposal at the Coopey Quarry site, the property owner shall record the Hearings Officer Decision including all of the Conditions of Approval and the site plan labeled Exhibit A.19 (Landscape Plan for Revegetation on page 3 of the exhibit) with the County Records. The Hearings Officer Decision shall run with the land and the conditions shall be met by the current and future property owner(s) unless amended through a later decision by an authorized authority. Proof of recording shall be submitted to Multnomah County Land Use

Planning prior to any additional debris disposal at the Coopey Quarry site. Recording shall be at the property owner's expense. [MCC 38.0670]

2. Approval of this land use permit is based on the submitted written narratives and plans as amended and as conditioned. 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 to comply with these documents and the limitations of approval described herein. Debris placed on the site shall only be road maintenance and/or landslide debris removed from an ODOT facility within the Columbia River Gorge National Scenic Area. [MCC 38.0670]
3. This land use permit expires two years from the date the decision is final, if the required berm installation and tree plantings as described in Condition 4 have not been completed. If the berms are installed and trees planted, this permit approval will continue through completion of the restoration of the quarry site. It is understood that placement of debris from ODOT road maintenance projects and landslides happens periodically due to the occasional need for the disposal activity and the episodic nature of landslides. The debris disposal/restoration project may continue many years before all five phases of the project are complete. The project shall be implemented as proposed in the revised "Mitigation Report" dated May 24, 2018 included as Exhibit A.14 and as shown/described on the Reclamation Plans' five pages included as Exhibit A.19. [MCC 38.0690]
4. For project screening purposes, prior to any additional work in the quarry, the applicant/property owner shall re-contour the existing earthen berms along the Historic Columbia River Highway (HCRH) to have a more natural shape and appearance as shown in Exhibit J.7. The berms within the quarry (that were placed under the Emergency Response action) and the two berms along the HCRH shall be planted as soon as possible during the current planting season. The applicant shall plant the existing berms along the northern property as described within Exhibit A.19 as modified by Exhibits J.6 and J.8 All existing trees along Coopey Quarry frontage on the HCRH and the planted vegetation shall be maintained in a living status or replaced the next planting season. The property owner shall monitor the existing vegetation and the planted trees throughout the project and maintain the vegetative density and planted trees in living status. If the vegetative density is decreased, the property owner shall replace vegetation that has not survived. Any planted trees and/or vegetation that does not survive shall be replaced. Compliance with the visual subordination requirements of the code must be met by September 2022, five years from commencement of construction. [MCC 38.7035(B)(27), MCC 38.7350(C)(1) & (2), and MCC 38.7040(A)]
5. The applicant/property owner shall ensure the quarry restoration be completed as described in the "Mitigation Report" (Exhibit A.14) and in the "Landscape Plan for Revegetation" and "Plant and Materials" list included as part of Exhibit A.19. When the quarry restoration project is complete, as described within Exhibit A.19: Reclamation Plan, it shall be landscaped and planted with native species to achieve an overall appearance of a woodland landscape as proposed in Exhibit A.14 and A.19. The property owner shall monitor the planted vegetation for five years after the project is completed and shall replace vegetation that does not survive. The applicant/property owner shall ensure removal of the two berms added along the HCRH frontage and vegetation planted along those berms upon project completion. [MCC 38.7040(B) & (C) MCC 38.7040(C)(5)]
6. The applicant/property owner shall ensure that inactive equipment (period of non-operation lasting more than three hours) when on-site only be stored in an area that is fully screened from

any Key Viewing Areas. The applicant/property owner shall ensure that equipment only be temporarily stored on the property during active work periods on the property. Equipment shall be removed from the property during inactive periods of or more than 84 hours (allows for a holiday weekend). [MCC 38.7035(B)(27)]

7. The property owner shall ensure that the disposal/placement of materials only consist of debris from ODOT road maintenance projects. The debris shall only consist of earthen materials (Defined in MCC 38.0015) and interspersed vegetation. The property owner shall ensure there is no burning of materials on-site. [MCC 38.7300(B)(4)]
8. The applicant/property owner shall maintain best practices sediment and erosion control measures according to the ODOT's Erosion Control Manual. Any plastic fencing for erosion control shall be black and shall be removed once ground cover vegetation is established. The property owner is responsible for removing any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within adjacent public right-of-way are disturbed, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality. Multnomah County can require additional erosion control methods if it is discovered that sediment is flowing off-site. [MCC 38.7090(A)(1) and MCC 38.7350(C)(2)]
9. Cultural Resource Discovery During Construction [MCC 38.7050(H)]:
The property owner shall immediately notify the Planning Director in the event of the inadvertent discovery of cultural resources 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).
10. ODOT shall provide to the county planning division a progress report every 3 years that documents milestones, successes, problems, and contingency actions with its mitigation plan. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress. MCC 38.7075(X).

11. ODOT shall complete all restoration and enhancement efforts described in their mitigation plan no later than one year after the alteration of the buffer zone has been completed (completion of disposal site use described in plan and application) or as soon thereafter as is practicable. MCC 38.7075(Z)(1).
12. Within five years, at least 75 percent of the replacement vegetation provided by the mitigation plan must survive. MCC 38.7075(Z)(2).
13. Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover. MCC 38.7075(P)(4).

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. Applicant statements from the submittal are included in quotation marks and in *italic* font. Staff findings may include a conclusory statement in *italic*. All facts and findings contained in this decision, including those provided by the applicant (labeled “**Applicant**”), are adopted as findings of the hearings officer except those that are inconsistent with the specific findings made by the hearings officer. Staff findings have, in places, been revised by the hearings officer. New findings by the hearings officer are labeled “**Hearings Officer.**” Comments provided by Friends of the Columbia River Gorge are quoted or summarized in the text of this document and are preceded by the label “Friends.” These comments are not adopted as findings of the hearings officer.

1. PROJECT DESCRIPTION:

Staff: The Oregon Department of Transportation (ODOT) requests National Scenic Area Conditional Use and Site Review to approve using the Coopey Quarry as a long term disposal site for spoil materials from public road maintenance activities (project started as an emergency permit). The project includes restoration/reclamation of the quarry to a forested landscape habitat mitigating for the work in buffer areas resulting in restored vegetative riparian areas and creation of two wetland areas on a property in the Gorge Special Forest – 40 (GSF-40) Zone.

The proposal is for a five-phase debris disposal project (Exhibit A.3.a) for disposal of earthen debris from ODOT yearly highway maintenance and for landslide debris that impacts the Historic Columbia River Highway and Interstate 84. The project will be used for reclamation of an abandoned quarry site, and restoration and mitigation of the quarry site resulting in a native vegetation forest (Exhibit A.14 and A.19). For a list of exhibits, see the last four pages of this Staff Report.

2. **PROPERTY DESCRIPTION & HISTORY:**

Staff: The subject property is located within the Columbia River Gorge National Scenic Area Gorge Special Forest Zone in the Special Management Area (SMA) within the Coniferous Forest and River Bottomland Landscape Settings. The subject property is 10.84 acres. The quarry site is located within the subject property and coincides with the location of abandoned quarry activities, a portion of the site is natural landscape that is not disturbed by the abandoned quarry activities. The subject property is located along the Historic Columbia River Highway (HCRH) to the northeast. The floor of the quarry is about 30 to 40 feet higher in elevation than I-84 which is across the railroad to the northeast. The site is directly adjacent to a railroad and close to the same elevation. The site area consists of mostly the abandoned quarry with a rock floor and cliff wall running parallel with the HCRH.

The property includes what appears to be a human-made pond in the northeastern corner of the property. The southwestern corner of the property is an area that was not mined (Exhibit A.3.a); it is heavily forested, rising in elevation from the quarry floor to the elevation of the HCRH, this is the area where the access road is located. The quarry floor is covered by several inches of soil formed from vegetative debris that has fallen on the rock surface. The existing quarry floor, with its few inches of vegetative debris soil perched on a layer of rock base, has resulted in a sparse dwarf forest with short unhealthy trees and a clearing with perched wet areas. These wet areas have been determined to not qualify as wetlands.

Hearings Officer: The pond is a mapped wetland on the National Wetlands Inventory (PUBH).

Staff: The quarry floor has a relatively shallow slope rising up to the west about five feet in the mined area. There are a couple rock outcroppings along the northern property line. The reclamation plan shows the rock outcroppings will continue to exist after the restoration project is complete (Exhibit A.19).

The applicant submitted a brief history in the archaeological study titled "Coopey Quarry: Archaeological Investigation with Technical Report" by Kaylon McAlister and Thomas Connolly. Appendix G (Exhibit A.3.g). Much of the early history presented here is gleaned from that document.

Coopey Quarry was established in 1906 as a quarry to provide rock for the construction of the railroad. Later, the quarry was purchased by a private construction firm and used for the construction of the Historic Columbia River Highway (HCRH). For a brief spell Minnie Franklin Coopey owned the property. Oregon State Highway Commission purchased the Coopey Quarry in 1939 to be used as a materials source for building a highway along the river lowlands and later, the building of Interstate 84 in the 1950s and 1960s. The quarry was abandoned in the 1970s.

Applicant: *"ODOT has been working on a National Scenic Area Permit for the subject property since at least 2014, when it became apparent that ODOT needed a more permanent and closer location for materials storage in or near the Gorge. The Pre-Application conference with Multnomah County occurred on June 15, 2017 prior to the Eagle Creek Fire (started September 2nd, 2017). After the fire started, ODOT issued a request to the County for emergency use of the Quarry for spoils to ensure that the agency could provide timely emergency maintenance activities including landslide debris removal (Exhibit B.4.a email from Mary Young 9/7/17). That*

request was granted by the County (**Exhibit B.4.b** email from Mike Cerbone 9/7/17), and then both the applicant and the County agreed that ODOT would submit the full NSA permit to allow ODOT permanent use of the site even after the emergency actions were complete. The initial action is allowed per the emergency permit process, and ODOT has submitted a full permit application (which is more rigorous and exceeds the information requirements of the Emergency Permit) within the required timeline (90 days of the initial emergency action notification – 30 days, ODOT requested two additional extensions for additional 30 days [**Exhibits B.4.e and B.4.f**]) for emergency action permit to satisfy Multnomah County Code 38.7090 Responses to an Emergency/Disaster Event.”

Staff: ODOT began using the site in the fall of 2017 as a *Response to an Emergency/Disaster Event*. ODOT provided the proper notifications required by the Multnomah County Code (more information about this process is included as Exhibit B.4.a through B.4.f and B.5). At that time, ODOT began using the site to dispose of debris resulting from the National Scenic Area Eagle Creek Wildfire. As part of that response, ODOT created a berm to screen Interstate 84. Prior to placing material from the Eagle Creek Wildfire, ODOT had been in discussions with the County about utilizing the site as a Disposal Site for Spoil Materials from Public Road Maintenance Activities. Since ODOT had already been working on the Conditional Use Permit application that is the subject of this review, they elected to submit this application in lieu of finalizing the *Response to an Emergency/Disaster Event*.

Hearings Officer: Opponent Friends of the Columbia River Gorge argues that the dumping of highway spoils and landslide debris began in September 2017 without NSA permits and is continuing. ODOT’s actions in using Coopey Quarry to respond to an emergency were allowed outright, upon notification of the county. DCC 38.7090. They were conducted without a permit but a permit was not required until after the fact. ODOT began the permit process for an after-the-fact approval but determined that it made more sense to seek approval for a more extensive use of the site as a new disposal site. If ODOT has used the property for non-emergency activities, it is possible that it might be using the property in violation of County code. Given this fact, the hearings officer has considered whether MCC 37.0560 precludes her from approving the pending permit.

MCC 37.0560, Code Compliance and Applications.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or *****

If ODOT complies with the conditions of approval of this permit, the property will be in full compliance with all applicable provisions of the Multnomah County Code. ODOT has also advised the county that it will remove materials deposited on the subject property and restore it to its state in September 2017.

3. COMMENTS

3.1. Notice of Public Hearing

Staff: The notice of public hearing was published in the Oregonian November 23, 2018 and mailed on Tuesday November 20, 2018 to owners of properties with 750 feet, neighborhood groups, Native American Tribes with interest in the Columbia River Gorge and agencies with interest more than 20 days in advance of the hearing day. Any comments related to Cultural Review received during that period will be submitted to the Hearing Officer for review.

3.2. Agency and Tribe Completeness Review

Staff: Shortly after the application was submitted, Staff emailed the submitted materials to the Agencies and Tribes with interest in the Columbia River Gorge National Scenic Area (NSA) to assist with identifying and addressing completeness and other concerns. The following are summaries of letters of comment received after sending out the request for completeness review.

3.2.1. Email dated January 11, 2018 from Morai Helfen, Landscape Architect, US Forest Service with comments addressing completeness issues for the application included as Exhibit C.1.

Staff: Ms. Helfen expressed concerns about the submitted application materials regarding the buffer areas, location of Coopey Creek, and wetlands creation that is proposed. These concerns were addressed by the applicant in later submittals.

3.2.2. Letter dated January 12, 2018 to Roy Watters, Archeologist, ODOT, from Matt Diederich, MAIS, SHPO Archeologist addressing cultural resources included as Exhibit C.2.

Staff: Mr. Matt Diederich stated concurrence with Mr. Waters' finding of "no effect" regarding archeological resources. Mr. Diederich noted that "in the unlikely event an archeological object or site is encountered" that applicant should follow the ORS and OAR requirements for such circumstances. Staff has recommended including a condition of approval to ensure that if resources are encountered, the correct steps are taken.

3.2.3. Letter dated January 19, 2018 from Chris Donnermeyer, Heritage Program Manager, USFS addressing cultural review.

Staff: Mr. Donnermeyer made a stated concurrence with the finding of "No Historic Properties Adversely Affected" by Robert Hadlow, ODOT Archeologist. Mr. Donnermeyer also expressed concern about what would occur if there is discovery of cultural resources or human remains. He recommended that the applicant be required to follow the MCC 38.7050(H) requirements for such circumstances. Staff has recommended including MCC 38.7050(H) as a condition of approval to ensure that if resources are encountered, the correct steps are taken.

4. GORGE SPECIAL FOREST ZONE

4.1. Purposes

MCC 38.2000: The purposes of the Gorge General Forestry and Gorge Special Forestry districts are to protect and enhance forest land within the Columbia River Gorge National

Scenic Area for forest uses. Forest lands are those lands which are used for or suitable for the production of forest products.

Staff: The proposal is to place debris spoils from routine maintenance or emergency/disaster public road maintenance activities as fill for the reclamation of an abandoned quarry. The project includes restoring the site and mitigating for the work in a wetland buffer, stream buffer and pond buffer creating a healthy forested landscape riparian area including the creation of two wetlands.

4.2. Conditional Uses

MCC 38.2030(B): The following conditional uses may be allowed on lands designated GSF, pursuant to the provisions of MCC 38.0045.

* * *

(9) Disposal sites managed and operated by the Oregon Department of Transportation or the Multnomah County Public Works Department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to MCC 38.7350.

Staff: ODOT's proposal is to permit the ability to place earth materials with intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area. The disposal site also serves to reclaim an old quarry, restoring the site to a forested landscape. The proposal is reviewed for compliance with MCC 38.7350 with findings in Section 5 of this Staff Report. *This standard is met.*

5. CONDITIONAL USE REVIEW CRITERIA

5.1. Conditional Uses Review – Forestry

5.1.1. MCC 38.7300(B)(1): The owners of land designated GGF or GGA within 500 feet of the perimeter of the subject parcel have been notified of the land use application and have been given at least 10 days to comment prior to a final decision;

Staff: On Tuesday, November 20, 2018, the County has sent, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract (Exhibit D.4).

5.1.2. MCC 38.7300(B)(2): The use will not interfere seriously with accepted forest or agricultural practices on nearby lands devoted to resource use;

Staff: The proposed use will not interfere seriously with accepted forest or agricultural practices on nearby lands devoted to resource use. The intent of this standard is to protect the ability to conduct farm and forest operations on lands nearby. The intent of the proposed use is to allow ODOT to be able to more rapidly respond to events that could impact passage on the HCRH and I-84. This use, if approved, would allow a quicker response to landslide emergencies which would assist clearing roadways and facilitating movement of agriculture and forestry products to market. Based on site visits and review of aerial photography there are forestlands to the east and south and residential uses to the west and south with no nearby agriculture (Exhibit B.3). The disposal will be maintained on-site with measures taken to prevent erosion and sediment flow both on-site and off-site. Trucks will directly enter the property from the Historic Columbia River Highway and therefore will not obstruct access to the highway for nearby forestry uses.

Hearings Officer: The disposal use proposed, unlike a forest dwelling or other uses where humans are present on site on a daily basis, is one that will not interfere with or impede forestry practices on adjoining lands which may include timber falling, slash burning, and the use of herbicides.

This standard is met.

5.1.3. MCC 38.7300(B)(3): The use will be sited in such a way as to minimize the loss of forest or agricultural land and to minimize the chance of interference with accepted forest or agricultural practices on nearby lands; and

Staff: The proposed disposal of earth materials and intermixed vegetation will be used to reclaim the quarry site as forestland, thus minimizing the loss of forest. Significant portions of the subject property are currently not capable of accommodating a healthy forest landscape as witnessed by the trees within the quarry site that are stunted (Exhibit A.14). The proposal would result in an increase in land within the subject property that is capable of supporting forest uses. The proposal would result in the reclamation of forest land from what is a degraded abandoned quarry site. This will increase the forest use in the area. When the quarry site is fully reclaimed it will support the forest use on nearby properties by providing a use that is compatible with forestry and agricultural practices. No residential or other uses are proposed on the property that would conflict with nearby agriculture and forest uses. The subject property has never been agricultural land and the proposed use will not result in loss of agricultural land. Finding 5.1.2 addresses impacts to adjacent agricultural and forest lands. There should be no impacts from the project to any accepted forest on nearby lands devoted to resource use. *This standard is met.*

5.1.4. MCC 38.7300(B)(4): The use will not significantly increase fire hazard, fire suppression costs or risks to fire suppression personnel and will comply with MCC 38.0085.

Staff: The use has no component related to combustion. Staff has recommended a condition of approval that would require no burning of materials on-site. The use, as proposed, will not significantly increase fire hazard, fire suppression costs or risks to fire suppression personnel. There is no MCC 38.0085 in the current code, but Fire Protection in Forest Zones is addressed in MCC 38.7305. MCC 38.7305 is focused on fire protection for buildings and structures. This proposal does not increase the fire hazard and it does not include any buildings or structures, thus MCC 38.7305 is not applicable. *This standard is met.*

5.2. Disposal Sites for Spoil Materials from Public Road Maintenance Activities

Application Requirements.

MCC 38.7350(A): In addition to other applicable requirements, land use applications for disposal sites shall include the same information that applicants are required to submit for expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

Applicant: *All documentation in this permit is consistent with the information required for an expansion of existing quarries.*

Staff: The applicant's quotes addressing the criteria from the submitted narrative are from the applicant narrative table (Exhibit A.12 replacing Exhibit A.2 and A.6).

5.2.1 (1) A reclamation plan that includes:

- (a) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-reclamation existing grades and post-reclamation final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing, and equipment areas employed for the duration of the use.**
- (b) Cross-sectional drawings of the site showing pre-reclamation and post-reclamation grades.**
- (c) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.**
- (d) Description of drainage/erosion control features to be employed for the duration of the use.**
- (e) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject landscape setting, indicating species, number, size, and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.**

Applicant: *"Appendix B includes a reclamation plan that addresses all the information required in (a) through (e)."*

"ODOT submitted a full application, as indicated in all of the Exhibits labeled with an A. The County and ODOT have worked to provide all required information, often revising reports and findings to ensure all applicable information is included.

Staff: The Applicant's Appendix B is included as Exhibit A.3.b of this Staff report.

The submittal includes maps of the site, labeled with a scale of 1 inch equals 100 feet, a measurable scale (Exhibit A.3.a) including "Existing Topography" a five foot contour map on an aerial photo showing vegetation and landforms; "Existing Conditions" previous map with existing natural features (forest, stunted forest, herbaceous, pond, wetland, and stream); "Proposed Plan Concept" showing a phased filling and restoration of the quarry; Existing Conditions" cross-section; and "Proposed Fill Concept" showing filled and restored cross-section of the quarry.

The revised maps in Exhibit A.15 are not to scale. A revised plan is provided in Exhibit A.19 Included with the submitted documents is a "Landscape Plan for Revegetation," which includes a two page planting list. The landscaping plan includes revegetation consistent with the vegetation patterns of the subject landscape setting and the planning list indicating species, number, size, and location of plantings for the final reclaimed grade. *This standard is met.*

Friends: ODOT has failed to file a complete site plan, elevation drawings and grading plan.

Hearings Officer: The hearings officer agrees with county staff's determination that the application materials filed by ODOT were sufficiently complete and adequate to allow it and others to conduct a review of ODOT's application. This determination was reached after staff required and ODOT provided additional materials beyond those originally filed with the county. The level of detail is sufficient to allow for a meaningful opportunity to comment on the

proposed development. The comments supplied by Friends were detailed and did not appear to suffer from a lack of detail on ODOT's plans.

5.2.2. (2) Perspective drawings of the site as seen from key viewing areas.

Applicant: *"Appendix F includes photos and perspective drawings of the site from key viewing areas as part of the Visual Analysis."*

Staff: The Applicant's Appendix F is included as Exhibit A.3.f of this Staff report. Appendix F includes a submittal of photographs representing views from the Key Viewing Areas (KVA's) of the project site. Many of the photos are from distant KVA's such as the Portland Women's Forum, Crown Point (about 8 miles away), Cape Horn (about 4 miles away), and SR-14 (about 4 miles away). These photos show the site from the KVAs.

Photos from the History Columbia River Highway (HCRH) which is the closest KVA directly adjacent to the road are also included. There is an arrow on each photo pointing to the area off photo. The east bound photos provide a view in the direction of the quarry as a vehicle driver would see the area.

Additionally there are east bound and west bound photos taken from I-84 KVA. Many of these photos were taken at 60 to 90 degree angles providing a good understanding of the view from I-84 KVA. Staff has provided photos from the HCRH and I-84 included as Exhibit B.6.

Those photos, as well as photos taken by Katie Skakel, County Land Use Planning, Senior Planner (Exhibit B.6 – B.9) along HCRH and I-84 show some gaps in the vegetation. *This standard is met.*

5.2.3. (3) Cultural Resource reconnaissance and historic surveys, as required by MCC 38.7045 (A). Disposal sites shall be considered a "large-scale use" according to MCC 38.7045 (D)(2).

Applicant: *"The required cultural and historic resource surveys required are complete and SHPO has provided the concurrence letter to Multnomah County per an email sent by George Plummer 1/12/18."*

Staff: The Cultural Resource Reconnaissance and Historic Surveys were done as a "large-scale use" according to MCC 38.7045(D)(2). Findings for the Cultural Resource Reconnaissance and Historic Surveys are under Section 7 of this Staff report. State Historic Preservation Office (SHPO) has submitted a finding of concurrence with the submitted Cultural Resource Reconnaissance and Historic Surveys in a letter (Exhibit C.2) dated January 12, 2018 to Roy Waters, ODOT, from Matt Diederich, MAIS, SHPO Archaeologist addressing cultural resources stating concurrence with a finding of "no effect."

Chris Donnermeyer, Heritage Program Manager in a US Forest Service letter dated January 19, 2018 addressed cultural resources stating concurrence with "No Historic Properties Adversely Affected" finding of Robert Hadlow, ODOT Archeologist (Exhibit C.3). Because of the presence of Cultural Resources throughout the National Scenic Area there is always a concern that archeological resources could be found during a project. While this project is mostly fill, there is a possibility that some archeological resource could be discovered. Staff recommends a condition that if there is an archeological discovery, the project be stopped and that proper

procedures be followed according to MCC 38.7050(H). *This criteria is met through a condition of approval.*

5.2.4. (4) Written reports of field surveys to identify sensitive wildlife areas or sites and sensitive plants.

(a) Field survey reports identifying sensitive wildlife sites shall:

- 1. Cover all areas affected by the proposed use or recreation facility;**
- 2. Be conducted by a professional wildlife biologist hired by the project applicant;**
- 3. Describe and show all sensitive wildlife areas and sites discovered in a project area on the site plan map.**

(b) Field survey reports identifying sensitive plant sites shall:

- 1. Cover all areas affected by the proposed use or recreation facility;**
- 2. Be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant;**
- 3. Identify the precise location of the sensitive plants and delineate a 200-foot buffer zone;**
- 4. Show results on the site plan map.**

Applicant: *"Appendix C includes the results of the biological field surveys. The surveys were conducted in compliance with all provisions of (a) and (b). Both the wildlife and plant surveys were conducted by ODOT qualified staff. All wildlife and plant resources have been identified and mapped according to the listed provisions and are attached in Appendix C."*

Staff: The Applicant's Appendix C is included as Exhibit A.3.c of this Staff report. A later applicant's submittal replaced Appendix C, which is included as Exhibit A.13. The applicant's biologist Ben White authored a "Biological Resources Impact Memo" documenting a field study with several site visits included as Exhibit A.13 of this Staff report. *This standard has been met.*

5.3. Siting Standards

MCC 38.7350(B): **The proposed disposal site shall only be approved if the applicant demonstrates it is not practicable to locate the disposal site outside the Scenic Area or inside an Urban Area. At a minimum, the applicant shall submit a feasibility and suitability analysis that compares the proposed disposal site to existing or potential disposal sites located both outside the Scenic Area and inside an Urban Area.**

Applicant: *"Appendix H, the Feasibility and Suitability Analysis Coopey Disposal Site includes analysis that demonstrates it is not practicable to locate the disposal site outside of the Scenic Area or inside an urban area. Sites outside the scenic area would require extensive travel time. ODOT staff reached out to Multnomah County Road Maintenance Crews. Multnomah County presently trucks their road debris to a disposal site in the West Hills site. Trucking debris to the West Hills of Portland is not practicable assuming the life line function of ODOT's facilities. Geologic events most often occur during winter. Keeping the transportation corridors open is critical during these times. Access for police and emergency vehicles is very important to public safety. Interstate 84 and the Historic Columbia River Highway are critical transportation corridors through the Gorge. Closures of these facilities require long detours which may also be impacted by slides and rock fall during severe weather conditions."*

"During winter operations maintenance crews have access to one dump truck. The other trucks in the fleet are set up with plows and sanding equipment necessary to maintain access through

the Gorge. During these times maintenance staffing is limited and often spread across the region plowing or sanding to maintain access on the interstate or along the Historic Columbia River Highway. With one truck available, a flagger and loader operator, would need to sit idle waiting for the truck to return from a sites located outside the National Scenic Area."

"Appendix H details how ODOT maintenance staff identified the need for a new disposal site in the Columbia River Gorge. Existing disposal sites are at capacity and permitted for temporary storage. ODOT needs a long term solution to store debris within the Columbia River Gorge due to the cost and time associated with removing materials outside of the Gorge area."

"ODOT surveyed existing ODOT owned lands that could provide opportunities to store materials (spreadsheet attached Appendix H). The existing 8 ODOT managed disposal sites within the Columbia River Gorge National Scenic Area are at capacity."

"Sites outside the scenic area would require extensive travel time. Multnomah County trucks road debris to a disposal site in the West Hills as there are no suitable sites nearby. ODOT is not able to truck debris a long distance and through the Portland Metro because of the life line function of ODOTs facilities (Historic Highway and I-84). Geologic events most often occur during winter, and facility closures require long detours which may also be impacted by slides and rock fall during severe weather conditions. During winter operations maintenance crews have limited access to dump truck as other trucks in the fleet are fitted with plows and sanding equipment necessary to maintain access through the Gorge. During these times maintenance staffing is limited and often spread across the region plowing or sanding to maintain access on the interstate or along the Historic Highway. Having a nearby disposal site would reduce the length of closures and allow ODOT to more quickly reopen lifeline transportation facilities after slides or rockfall events."

Staff: The proposed disposal site shall only be approved if the applicant demonstrates it is not practicable to locate the disposal site outside the Scenic Area or inside an Urban Area. At a minimum, the applicant shall submit a feasibility and suitability analysis that compares the proposed disposal site to existing or potential disposal sites located both outside the Scenic Area and inside an Urban Area. The Applicant's submittal addresses this standard in Appendix H included as Exhibit A.3.h with Staff report. Staff concurs with ODOT's analysis that it is not practicable to locate the disposal site outside the Scenic Area or inside an Urban Area. *This standard is met.*

5.4. Scenic Resource Standards for Disposal Sites

MCC 38.7350(C): Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

Applicant: *"Appendix F includes the site plan including the mitigation to ensure that the proposed activities are visually subordinate from all Key Viewing Areas."*

Staff: Appendix F (Exhibit A.3.f) provides photo images of the existing Coopey Quarry site as seen from various KVAs. Applicant's Appendix F does not include a site plan or mitigation. The Site Plan was included as Applicant's Appendix (Exhibit A.3.b) with the latest revised Site Plan included as Exhibit A.19. The Mitigation Plan is included as Applicant's Appendix E, which has been replaced with the latest revised Mitigation Plan included as Exhibit A.14. The proposed

debris disposal site has been reviewed with findings addressing scenic resources, cultural resources, natural resources and recreational resources located in Sections 6,7, 8,and 9 of this Staff Report.

- 5.4.1. (1) Sites more than 3 miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, according to MCC 38.7035 (B) (25).**

MCC 38.0015: Definitions - Visually Subordinate: The relative visibility of a structure or use where that structure or use does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a Key Viewing Area). Structures which are visually subordinate may be partially visible, but are not visually dominant in relation to their surroundings. Visually subordinate forest practices in the Special Management Area shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

Staff: This standard applies only if there is no Key Viewing Area (KVA) within 3 miles of the site. There are three KVAs within 3 miles of the Coopey Quarry site. The project site is directly adjacent to the Historic Columbia River Highway (HCRH) KVA (Exhibits A.3.a and A.3.f). The site is about 200 feet from the Interstate 84 KVA and about 500 feet from the Columbia River KVA. Thus this criterion it not applicable because KVAs are within 3 miles of the site (Exhibits A.3.a and A.3.f). *The criterion is not applicable to this review.*

- 5.4.2. (2) Sites less than 3 miles from the nearest key viewing area shall be fully screened from any key viewing area, according to MCC 38.7035 (B) (26).**

An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

MCC 38.7035 (B) (26): Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest Key Viewing Areas from which it is visible may be allowed up-on a demonstration that:

MCC 38.7035 (B) (27) Unless addressed by subsection (26) above, new production and/or development of mineral resources may be allowed upon a demonstration that:

- (a) The site plan requirements for such proposals pursuant to this chapter have been met;
- (b) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc. associated with the use would be fully screened from any Key Viewing Area; and
- (c) A reclamation plan to restore the area to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with MCC 38.7035 (A) (6) and (7).

Applicant: *"Appendix F includes the site plan including the mitigation to ensure that the proposed activities are visually subordinate from all Key Viewing Areas."*

Staff: This criterion cites compliance with MCC 38.7035 (B) (26). Staff finds that there is a scrivener's error in MCC. Staff believes that this criterion should have cited MCC 38.7035 (B) (27). The criteria under MCC 38.7035 (B) (26) is specific to projects more than 3 miles from all Key Viewing Areas (KVAs). The criteria under MCC 38.7035 (B) (27) is specific to KVAs projects located within 3 miles of a KVA. A review of the Columbia River Gorge National Scenic Area Management Plan confirmed that Staff is correct.

The Coopey Quarry site is less than 3 miles to some KVAs. The project site is directly adjacent to the Historic Columbia River Highway (HCRH) KVA (Exhibits A.3.a and A.3.f). The site is not directly adjacent to I-84 (the railroad is in-between), the site is about 200 feet southeast of Interstate 84 KVA and about 500 feet southeast of the Columbia River KVA (Exhibits A.3.a and A.3.f). All three of these KVAs are located less than 3 miles from the subject property, therefore portions of the proposed project are required to be fully screened. The requirement to fully screen only applies to, "...the area used for primary processing, equipment storage, stockpiling, etc. associated with the use would be fully screened from any Key Viewing Area." These criteria apply to the active disposal/restoration area of the project only. The fully screened standard does not apply to the driveway or accessway onto the HCRH.

The Coopey Quarry Mitigation Report (Exhibit A.14) describes and shows on a site plan on Page 6 how ODOT will use berms to screen the debris fill operation/restoration project. ODOT addresses screening as seen from I-84, which is shown on Exhibit A.17: Coopey Quarry I-84 / Vegetative Buffer Screening table detailing planting and Exhibit A.18: Coopey I-84 Vegetative Buffer Screening site plan. The proposal includes two berms installed (3 to 4 feet tall) along the Historic Columbia River Highway (HCRH) and tree planting areas along the highway for future screening of the quarry spoils disposal/restoration project. A Reclamation Plan, including site plan, cross-sections, and a landscape site plan with planting list is included as Exhibit A.19.

The proposed project will have long periods of inactivity with minor amounts of debris spoils disposed from yearly maintenance of the highway ditches. The exception will be when there is a major landslide event. Historical need for a spoils disposal site for highway maintenance has generally been for sporadic slide episodes. During most winters, there is a need for disposal for a few minor slides; major slides are historically less frequent. The recent Eagle Creek Fire has resulted in an increased occurrence of landslide activity within the NSA due to a lack of living vegetation as a result of the fire. The risk of landslides should decrease over time as the forest lands become revegetated, holding soils in place. Climate change may result in an increase of heavy rain events during the wet season, which may increase the occurrence of landslides.

A site for disposal of spoils debris is needed for these occasional events, and the fill will be placed after these episodic events. The proposed project includes seeding with native grasses after each disposal event which will be required through a condition of approval. When disposal activities are not occurring on the site, which will be the majority of the time, the project area will blend with the surrounding area because it will be planted with native vegetation that will blend into the existing landscape. Staff is also recommending a condition that requires equipment to be fully screened when not in use and to be removed if not in use for an extended amount of time.

The old quarry is proposed to be filled in five phases as shown on Exhibit A.3.a. Each phase will be completed prior to moving onto the next phase. The disposed materials will be contoured and planted at the end of each phase to complete the restoration. Exhibit A.15 and A.19: Restoration

Plans show contours and cross-sections, which show the fill operation appearing to be higher than the proposed berms. In response to this Staff is proposing a condition requiring planting of coniferous trees north side of the berms on the subject property. Based on Exhibit A3.f and Exhibits B6 through B9 Staff is still concerned that additional plants are necessary to fully screen the site. As a result, Staff has recommended a condition of approval to assist with screening the future stages of the project where additional vegetation is needed along the HCRH. ODOT has proposed planting addition trees along I-84 to fully screen the later stages of Phase I and later Phases from I-84 and the Columbia River KVAs.

The Applicant's Appendix F, included as Exhibit A.3.f of this Staff Report, provides photo images of the existing Coopey Quarry site as seen from the applicable KVAs for this review. From the distant KVAs that are more than three miles from the site, the proposed project will be fully screened due to topography, distance, vegetative screening and blending with the landscape. This is evident from the information contained within Exhibit A.3.f. Each KVA will be discussed below in more detail. It is further evident that the project will be fully screened from the distant KVAs (Portland Women's Forum, Crown Point, SR 14, and Cape Horn) because the existing quarry wall face is not visible from any of these areas currently (Exhibit A.3.f).

Portland Women's Forum KVA:

The Portland Women's Forum KVA is located southwest of the subject property. The applicant has provided a panoramic and standard photo looking from the Portland Women's Forum KVA towards the subject property. These photos in Exhibit A.3.f demonstrate that the project site will be fully screened from this KVA by distance, existing vegetation, and existing topography (particularly Crown Point Ridge).

Crown Point KVA:

The Crown Point KVA is located southwest of the subject property between the Portland Women's Forum KVA and the subject property. The applicant has provided a panoramic, telephoto, and standard photos looking from the Crown Point KVA towards the subject property. These photos in Exhibit A.3.f demonstrate that the project site will be fully screened from this KVA by distance, topography and existing vegetation.

Cape Horn KVAs:

The Cape Horn KVAs are located northwest of the subject property across the Columbia River. The applicant has provided a series of 28 photos looking from various sites within the Cape Horn KVA towards the subject property. These photos in Exhibit A.3.f demonstrate that the project site will be fully screened from this KVA by distance, existing vegetation, and in some instances topography.

Historic Columbia River Highway KVA:

The Historic Columbia River Highway KVA (HCRH) KVA is located immediately south of the subject property. The applicant has provided a series of photos looking from both the east- and westbound portions of the roadway (Exhibit A.3.f). Staff has provided additional photos included as Exhibits B.6 and B.7. The project site is well screened by existing topography and existing vegetation from the HCRH KVA because the disposal site is located lower in elevation than the HCRH. The disposal site is currently fully screened except for a few areas that will be described in more detail below. The existing topographic screening with the cliff drop adjacent to the HCRH right-of-way, along with existing screening vegetation, the vast majority of the disposal site will be screened from the HCRH KVA without any additional planting or berms (Exhibits A.3.a, A.3.f, B.6, and B.7).

There are gaps in the vegetation and topography along the HCRH, these gaps coincide with the proposed berms shown in Exhibit A.18. Based on information supplied at the hearing on 12-14-18 ODOT has already installed these berms. Even with these berms installed Staff is concerned that there may still be gaps that would allow the project to be visible from HCRH (Exhibit B.6 and B.7). The proposed berms will fully screen the project area from the HCRH for the early stages of each phase. Exhibit A.15 and A.19: Restoration Plans show contours and cross-sections, which show the fill operation appearing to be higher than the berms. Staff recommends a condition of approval requiring the berms along the HCRH be installed prior to any additional work in the quarry and that the berms be planted with coniferous trees that will grow to fill the gaps. The photos in Exhibit A.3.f, Exhibit B.6, and Exhibit B.7 demonstrate that the project site, as conditioned will be fully screened from this KVA.

Interstate 84 KVA and the Columbia River KVA:

The Interstate 84 (I-84) KVA is located north of the subject property, the Columbia River KVA is located north of the I-84 KVA. The quarry site is on a bench area with I-84 located at approximately 30 to 40 feet below the bench, and the Columbia River approximately 60 feet below the bench (Exhibit B.10). The relatively flat existing quarry floor level is currently topographically fully screened. This is evident because the floor of the quarry is not visible from these areas as shown on Exhibits A.3.f, B.8, and B.9. Existing topography assures the project site will be fully screened from the Columbia River KVA (Exhibit B.10).

The applicant has provided a series of photos looking from both the east- and westbound portions of the roadway (Exhibit A.3.f). These photos, as well as photos taken by Staff (Exhibits B.8 and B.9), show gaps in the existing vegetation when viewed from I-84. These gaps in the vegetation as seen from I-84 coincide with the location of Phase 1 of the project for later stages of Phase 1 (Exhibit A.3.a). These gaps may result in a portion of Phase 1 and 2 not being fully screened when the elevation of the fill may appear above of the existing vegetation at the end of each phase.

Topographic screening, existing vegetation on-site and existing vegetation along I-84 will fully screen the project from I-84 and the Columbia River KVAs during the majority of Phase 1 and 2 of the project (Exhibit A.3.a). In order to ensure the project is fully screened through the completion of Phase 1 as well as the later phases, the applicant is proposing the planting of trees along the southeast side of I-84. Revised submittals contained within Exhibits A.16 through A.19 propose to plant 180 Douglas fir trees along I-84 in areas where there are gaps in existing vegetation. To ensure the project is fully screened Staff is recommending a condition of approval that additional coniferous trees be planted on the north side of the berms in the quarry.

Proposed Conditions of Approval:

Staff is proposing a series of conditions to ensure that the project site is fully screened. Staff proposes a condition of approval that includes planting trees on the proposed berms to assure the spoils disposal/restoration project will be fully screened from the HCRH KVA and I-84 KVA. A recommended condition (proposed condition 4) will require the applicant to plant native conifer trees along the new berms as well as maintain the existing and proposed vegetation on site. Proposed condition 5 requires the applicant to complete planting plan as proposed in Exhibit A.19 and it also requires the applicant to remove the berms that were placed along the HCRC frontage as part of the completion of the project. Proposed condition 6 requires the applicant to remove equipment from the site when it is inactive for more than 84 hours, and it also requires the applicant to store equipment on site when not in use in areas that are fully screened.

The proposed berms and plantings along with additional trees will ensure the project is fully screened from the HCRH and I-84 KVAs. The additional screening will also be beneficial for screening from the Columbia River KVA. With the existing topography, vegetation and additional planting of trees on the berms that were created during the response to the Eagle Creek Fire and additional planting of 180 Douglas fir trees as shown on Exhibit A.18, the proposed project will be fully screened from I-84 and the Columbia River and the HCRH KVAs. *This standard is met through implementing the recommended conditions of approval.*

Friends: The "fully screened" standard must be met within one year of "the start of on-the-ground activities." MCC § 38.7350(C)(2). Here, on-the-ground activities were started in September 2017, which is when the applicant began using the site without permission. To interpret the starting period any other way would reward this applicant, and future applicants, for initiating a project without first obtaining land use approval.

"[D]isposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.)."

"Reclamation plans shall restore the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns to the maximum extent practicable."

ODOT: As discussed in responses to comments #1, 6, 7, and 9, emergency action allowed through MCC 38.7090, and any future permanent action contingent upon the permit being granted by the County, ODOT was operating within the Multnomah County Code 38.7090 Responses to an Emergency/Disaster Event as evidenced by **Exhibits B.4.a, B.4.b, B.4.e, B.4.f**. ODOT did not initiate any site activities without permission, contrary to the assertion from the commenter.

All materials added to the site went to build earthen berms for visual screening, as required by the code, and the Reclamation Plan (**Exhibit A.19**) includes restoring the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns per MCC § 38.7350(C)(3). A progression of aerial photos shown in **Exhibit J.4** shows that throughout activities in the Quarry, materials went first[ly] to berms to shield activities, and the berms were largely in place before September 2018. The berms along the Historic Highway were added in early October 2018, seeded in late October, which is prior to the Historic Highway re-opening to the general public on November 23rd since being closed by the Eagle Creek Fire in September 2017. All activities were screened for all users as material was available, and the fully screened criteria were met for both I-84 and the Historic Highway (prior to the Highway opening to the general public). Planting and visual modifications to the berms will occur as refinements to reduce the visual impact of the berms [are] as necessary.

Restoration Plan grading mimics pre quarry grading as determined by historic mapping. Restoration planting will emulate plant community found on the south side of the Historic Highway adjacent to the subject property.

Hearings Officer: The hearings officer agrees with ODOT that it acted in response to an emergency when it used the site for disposal and that this action is allowed by law. MCC 38.7090. That law does not require screening to occur before the site is used for disposal. The applicant provided the detailed information and professional assessments required by the code in order to obtain approval for this project; something that takes a considerable amount of time.

5.4.3. (3) Reclamation plans shall restore the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns to the maximum extent practicable.

Staff: Applicant's submittal Exhibit A.14 Coopey Quarry Mitigation Report Pages 5 through 7 describes the mitigation plan to restore the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns to the maximum extent practicable. Exhibit A.19 Reclamation Plan and Landscape Plan for Revegetation show how the site will blend with surrounding landforms and the proposed forested landscape. The applicant is proposing to plant native vegetation throughout the project that is consistent with the existing landscape that surrounds the proposed fill site (Exhibit A.19). The existing subject property does not currently blend with the surrounding landforms and vegetation, and the proposed project will ensure that the reclamation of the site is consistent with this requirement. *This standard is met.*

5.5 Friends: *We support Condition 2 that limits use of the disposal site for the disposal of spoils and materials from locations in Multnomah County only. This will reduce cumulative impacts.*

Hearings Officer: The code does not limit use of disposal sites to materials originating in Multnomah County. Furthermore, such a limitation would extend the life of the site because less material would be available to fill the site – delaying complete site reclamation. This conflicts with Friends claim that the duration of the use is problematic – that it will extend far into the future with no discernible end date. Given the nature of the use, one needed to respond to emergencies of unknown severity, it would be unreasonable to impose a specific end date for the project given ODOT's commitment to conduct its work in phases.

6. SMA SCENIC RESOURCE REVIEW CRITERIA

MCC 38.7040: **The following scenic review standards shall apply to all Review and Conditional Uses in the Special Management Area of the Columbia River Gorge National Scenic Area with the exception of rehabilitation or modification of historic structures eligible or on the National Register of Historic Places when such modification is in compliance with the national register of historic places guidelines:**

Staff: All conditional use reviews for property in the Special Management Area require compliance with scenic review standards. The Coopey Quarry is located in the Special Management Area. Below are Staff findings that address the proposed Coopey Quarry disposal site/restoration project's compliance with scenic review standards. Through the following findings, we finding there are no adverse cumulative effects on scenic resources.

6.1. All Conditional Uses Visible from KVAs

MCC 38.7040(A): **This section shall apply to proposed development on sites topographically visible from KVAs:**

Staff: As previously discussed, portions of the proposed fill site are topographically visible from KVAs, requiring the applicant to comply with this section of the code. The Staff findings in Subsection 5.4.2 of this Staff report address the KVAs from which the site is topographically visible.

- 6.1.1 (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.
- (2) The required SMA scenic standards for all development and uses are summarized in the following table.

REQUIRED SMA SCENIC STANDARDS

LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Coniferous Woodland, Oak-Pine Woodland	Forest, Agriculture, Residential, Public Recreation	Visually Subordinate
River Bottom-lands	Forest, Agriculture, Public Recreation	Visually Subordinate

MCC 38.0015: Definitions - Development: Any mining, dredging, filling, grading, paving, excavation, land division, or structure, including but not limited to new construction of a building or structure.

MCC 38.0015: Definitions - Fill: The placement, deposition or stockpiling of sand, sediment or other earth materials to create new uplands or an elevation above the existing surface.

Staff: The proposal is for a disposal site for spoil materials and restoration of the Coopey Quarry site. The disposal of debris is fill, and filling is development. The project site is mostly in the "Coniferous Woodland, Oak-Pine Woodland" Landscape Setting (about 10 acres) and a minor amount of the subject site is within the "River Bottomland" Landscape Setting (about 0.84 acres). The river bottom landscape setting area includes the pond and an area south of the pond that is angled up towards the east property line, meeting that line at about mid-point. For both of the landscape settings, the scenic standard for new development is "Visually Subordinate."

Staff findings under Subsection 5.4.2 of this Staff report thoroughly address the visual subordination of the proposed project as seen from the applicable KVAs. Those findings include a detailed discussion of the proposed project's existing topographic and vegetative screening. The proposed project includes additional topographic screening through the installation of berms along the HCRH and additional vegetative plantings along I-84 to screen later stages of the project. In order to ensure the proposal is visually subordinate, Staff also proposes a condition that the berms in the quarry and the new berms along HCRH be planted with vegetation.

Staff also recommends a condition of approval requiring maintenance of the existing trees and planted trees in a living status and replacement of any trees that do not survive intended to assure the proposal is consistent with this standard. *This standard is met through implementing the conditions of approval.*

Hearings Officer: The findings, above, demonstrate that the proposed use will be fully screened. This part of the decision addresses the "visual subordination" standard, however, as it is clearly an applicable approval criterion. The point of the exercise is to show that both this lesser standard and the more rigorous "fully screened" standard are met.

6.1.2. (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.

Applicant: *"The scenic standard of "Visual Subordination" will be achieved through land contours and plantings. The proposal to develop a disposal site and eventual reclamation of the quarry will minimize the visual evidence and enhance visual subordination of the site through contouring and planting and thus enhancing the National Scenic Area. Visual Assessment attached as Appendix F."*

Staff: The proposal is to use spoils materials from periods of road maintenance and from small and large episodic landslide events that impact state highways, I-84 and the HCRH to restore the Coopey Quarry site to a natural landscape that will blend with the adjacent landscape. After each debris disposal period exposed areas will be planted with native grasses to blend in with the landscape. *This standard is met through implementing the conditions of approval.*

6.1.3. (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.

Applicant: *"The scenic standard of "Visual Subordination" has been met through design of the proposed use of the site as a disposal and quarry reclamation site as described in the Visual Assessment attached as Appendix F. Berms will be used to visually buffer the most existing viewsheds from KVAs namely I-84. These berms will be planted with native trees and shrubs."*

"The berm along the Historic Highway will be re-contoured and reshaped to have a natural shape and appearance with input from our landscape architect and Jurgen Hess."

Hearings Officer: ODOT's commitment to re-contour the Historic Highway berm is made a condition of approval through Condition of Approval 4.

Staff: The project is designed to blend in with the natural topography and to take advantage of existing vegetation and topography to screen, which minimizes visible grading and other modifications of landforms, vegetation cover, and natural characteristics in order to screen the use.

To meet the scenic standard from key viewing areas, the proposed project screens the debris disposal site through the use of existing topography and existing vegetation which was given the priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms. However, some additional vegetation and berms were needed to assure visual subordination of the project.

The proposed project is mostly topographically screened from KVAs. Additionally existing dense vegetation on the western side of the property, existing vegetation along the HCRH and existing vegetation along the northern side of the property serve to also screen the proposed use. With the installation of two berms along HCRH and by starting the project on the eastern side of

the property, Phases 1 and 2 (Exhibit A.3.a, Applicant's Appendix A), the project will be screened from KVA's meeting the scenic standard of "Visual Subordinance." Later in these two phases as the fill rises in elevation towards the end of each phase, given the existing vegetation the project may become visible from I-84.

To prepare for this possibility, ODOT has proposed planting 180 Douglas fir trees along I-84 as shown on Exhibit A.18. Later Phases 3, 4 and 5 will be screened by existing topography, existing vegetation, berms and additional trees planted along I-84. Staff recommends as a condition of approval requiring trees to be planted on the northern sides of the northern berms shown on Exhibit A.3.a, Applicant's Appendix A, site plan titled "Coopey Quarry – Proposed Plan Concept" and Staff also recommends requiring trees be planted along the two berms added along the HCRH.

Staff also recommends a condition requiring maintenance of the existing trees and planted trees in a living status and replacement of any trees that do not survive. Proposed project is sited to achieve the applicable scenic standards by starting on the east side allowing vegetation to development to screen later phases.

This standard is met through implementing the conditions of approval.

- 6.1.4. (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: To ensure that scenic standard of visual subordinance is met through all phases of the project Staff recommends that conditions of approval be included to require planting of additional trees along the existing and proposed berms, and management of the existing and proposed vegetation. Each proposed condition along with findings are included throughout this report. These conditions are necessary to ensure that the various elements of proposed developments meet the scenic standard of visual subordinance.

6.1.5. (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.

Applicant: *“Visually Subordination has been met by introducing berms to limit view corridors into the quarry floor from KVAs namely Interstate 84. The berms are located within the identified buffers but will enhance the wetland, riparian functions.”*

Staff: The proposed debris disposal project includes the restoration and mitigation of the Coopey Quarry, a site that ceased mining activity prior to the establishment of the NSA. The landscape was not restored after the mining activity was abandoned. Most of the old floor of the quarry site consists of bedrock covered by a layer of decomposed vegetation that has formed into a very thin layer of soil (Applicant’s Appendix D included as Exhibit A.3.d). There are some wet areas that do not qualify as wetlands due to their nature of being perched on a human created on the old quarry bedrock (Exhibit A.3.d). There is a pond partially located on site along the railroad tracks in the northeast corner that has a buffer. There are no known sensitive plant or wildlife sites on the site based on Exhibit A.13. There are no known cultural resources on the subject property, a condition of approval was requested to ensure that resources that may be encountered during development of the site are protected.

Significant portions of the project, including the driveway into the site and the debris disposal areas will be in the buffer area of Coopey Creek, the pond, and/or a couple of small wetlands directly adjacent to the HCRH (Exhibit A.3.d.) The completion of the project will mitigate the interim intrusion into the buffer areas by improving these buffer areas to restore the landform, vegetation and habitat to a condition that is similar to what existed before the site was mined. Implementing the Mitigation Plan (Exhibit A.14) and the Restoration Plan (Exhibit A.19) will result in the transformation of this areas into native forested buffers/riparian areas as detailed in other findings (Sections 5.4.3. and 8.7.3 of this Staff Report).

Hearings Officer: This code criterion requires “new development to achieve scenic standards” must be consistent with guidelines that protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones. ODOT’s construction of berms is new development provided to achieve compliance with scenic standards. Guidelines are provided by county code standards for the entire development and the berms have been considered in conjunction with all other work in the findings related to these guidelines.

6.1.6. (7) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas.

Applicant: *“The proposed contours associated with the proposed disposal site will help blend with existing topography. The existing quarry is visually evident from SR 14 and Cape Horn. The rim of the quarry presents an unnatural horizontal band within the broader landscape setting. The existing quarry contrasts noticeably with surrounding environment. The proposal to recontour the site and fill the quarry will contribute to the site overall visually sub ordinance.”*

Staff: The proposed project will not protrude above the line of a bluff, cliff, or skyline as seen from any Key Viewing Areas (Exhibit B.8 and B.9). Topography rises up on the south side of the HCRH within a half mile raises up 1000 feet above sea level. From the HCRH the project area is down slope. *This standard is met.*

- 6.1.7. (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.**

Applicant: *"No structures are proposed."*

Staff: No structures are proposed. The project will be below the tree height of the adjacent area to the south as seen on photos included as Exhibits B.8 and B.9. *This standard is not applicable.*

- 6.1.8. (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.**

Applicant: *"The primary means to meet the visually subordination standard will be through the use of topography and the introduction berms. The berms will include large boulders and will be designed to mimic the surrounding landscape. The site will be sculpted to generally match the original topography shown in the 1930s survey. This historic survey demonstrates the pre-quarry condition. The slope was generally undulating and sloping to the north to the Columbia River."*

"The proposed use, reclamation of an inactive quarry through use as a disposal site for material from various ODOT maintenance activities, will require berms to achieve the scenic standard of Visual Subordination from the I-84 KVA. The berms will be planted with native vegetation. Please see Appendix F, which includes the Visual Assessment for the proposed use and identifies areas for screening through documentation and analysis of existing visual conditions and exposure. The Reclamation Plan (Appendix B) includes construction of berms in designated locations to provide the most effective screening from key viewing areas."

Staff: The development that is proposed with this application serves two purposes, it provides a location for ODOT to dispose of landslide and maintenance debris while also restoring the landscape to a natural condition similar to how it existed prior to being mined. The location of the development coincides with the location of the existing quarry site. If the project seeks to mitigate the quarry activity it cannot be located elsewhere. Partial mitigation of the site would result in a landform that still bears the scars of mining. This proposed project is unique when compared with other development within the NSA. Visual subordination is a concern primarily while the site is being utilized as a disposal site, once the project is complete it should result in a natural landscape that will blend with its surroundings. In order to achieve visual subordination during the project it will be necessary to utilize berms and new landscaping trees planted along I-84 and trees planted along new berms along HCRH (Exhibit A.17 and A.18) to assist with screening the project activity.

The berms within the quarry were established during the emergency response to the Eagle Creek Wild Fire discussed earlier in this report. At the completion of the project the existing berms will be incorporated into the overall fill for the restoration project. When the project is complete the berms will be a part of the landform and will not be visually discernable as berms, rather they will blend in with the proposed landscape. The applicant is

proposing berms along the HCRH frontage to assist with screening the fill activity as well. The berms will help achieve visual subordination prior to the establishment of the vegetation. The existing and proposed berms will help achieve visual subordination prior to the establishment of vegetation, the proposed plantings will ensure the project is well screened during the later phases as the quarry site is filled (Exhibit A.3.a, A.3.f and A.19). *This standard is met.*

(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.

Applicant: *“ODOT will plant/landscape the berms with native trees and shrubs to provide more effective screening of the site from the I-84 KVA. The Reclamation Plan has been developed by the ODOT Region 1 Landscape Architect. The planting proposal concept is to provide the maximum amount of vegetative screening in the shortest growing time, and to include evergreen/coniferous species to provide every season screening of the disposal site. The planting plan can be found in Appendix B.”*

The Reclamation plan will achieve compliance with the visual subordination standard no later than September 2022. Exhibit J. 1, p. 14.

Staff: The existing on-site vegetative screening and other visibility factors were analyzed to determine new landscaping necessary to meet the required standard. The proposed planting of trees along I-84 (Exhibit A.18) is of a sufficient number and the appropriate size needed to achieve the scenic standard from I-84 and the river. The proposal to plant 180 trees along I-84 in a diamond pattern with spacing of 10 feet on center between the trees will cover the screening gaps as seen from I-84 and the river.

New landscaping including installation of berms and planting of vegetation are needed during various phases and stages of the proposed project to ensure that the proposal meets the visual subordinate standard and to complete the project restoration of the site. The proposed project will be implemented in Phases, with the first two phases being proposed to occur in the area that has the best existing screening (Exhibit A.3.a, A.17, A.18 and B.9). Staff is recommending a condition of approval to install two berms along the HCRH with trees planted on the berms to assist with screening the later stages of Phases 1 and 2 and Phases 3, 4 and 5.

As seen from I-84 corridor, Phases 1 and 2 are well screened by existing topography and existing vegetation except for the final stages of each of those two phase which may be visible from I-84. To ensure visual subordination of the project additional vegetation is proposed as a condition of approval recommended by Staff in order to comply with scenic criteria of MCC 38.7040(A). Vegetation proposed to be planted on the north side of the berms in the quarry and along the HCRH as well as the 180 Douglas fir trees planted along I-84 will screen project in the later stages of Phases 1 and 2 and for Phases 3, 4 and 5. It will take a number of years before the debris fill project level will get to a stage where additional vegetation is needed for screening.

The applicants proposal to plant trees that are 18 to 24 inches tall (Exhibit A.17) will ensure that the trees are established and capable of screening the use when it is necessary. Vegetation planted pursuant to this guideline are sized to provide sufficient screening to meet the scenic standard within five years or less from the approval of this permit. Douglas fir planted on the berms along HCRH and along I-84 at 18 to 24 inches in height should grow at least 13 inches per year up to 24 inches with good growing conditions (according to Arbor Day Foundation) resulting in trees that are approximately 7 feet or more in height within five years. Given good growing conditions the trees can be expected to grow 24 inches in height per year resulting in trees that are over 11 feet in height. The trees are expected to reach a height of at least 6 feet and may be able to achieve a height of over 11 feet, as proposed the trees are adequately sized to meet this standard.

Staff recommends a condition that the trees be planted as soon as possible during the current planting season. Staff also recommends a condition requiring maintenance of the existing and proposed vegetation/trees relied on to achieve visual subordination in a living status and replacement of any trees that do not survive. *This standard is met through implementing the conditions of approval.*

Hearings Officer: The applicant has modified the landscaping such that planting trees along I-84 is not necessary. The plantings proposed by the applicant in the reclamation plan Exhibit A.19, J.6 and J.8 are provided will meet the applicable standard so must be provided as proposed.

(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.

Applicant: *"The berms will be seeded and planted as part of the phase I development. Ideally, ODOT Staff would like to plant the berms this coming fall to ensure vitality of the plant material pending approval of the conditional use application."*

Staff: Staff recommends a condition of approval requiring the two additional berms along the HCRH be installed prior to any additional work in the quarry. Staff recommends a condition that the trees be planted as soon as possible during the current planting season. Staff also recommends a condition requiring maintenance of the existing trees and planted trees in a living status and replacement of any trees that do not survive. *This standard is met through implementing the conditions of approval.*

(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).

Applicant: *"The Scenic Resources Implementation Handbook has been referenced during the development of the planting plan. Additionally, ODOT staff have been coordinating with the USFS Landscape Architect, Morai Helfen to ensure compatible species."*

Staff: The proposed plantings included within Exhibit A.17 and A.19, these species are all identified within Landscape Settings within the Scenic Resources Implementation Handbook. *This standard is met.*

- 6.1.9. (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.**

Applicant: *"No lighting is proposed."*

Staff: No lighting is proposed. *This standard is met.*

6.2. SMA Landscape Settings

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

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

Applicant: *"The proposed use of the site for disposal of material from emergency landslide events and maintenance activities. Use of the former quarry site as a disposal site requires a Reclamation Plan that once filled the reclaimed site will blend with the surrounding coniferous and oak-pine woodland landscape. See the Reclamation Plan attached as Appendix B. No buildings are proposed. Only native plant material has been listed for use in the reclamation site. See Appendix B."*

Staff: The proposed project does not include any buildings. When the quarry restoration project is complete it will be landscaped and planted with native species to achieve an overall appearance of a woodland landscape (Exhibit A.14 and A.19). *This standard is met through implementing the conditions of approval.*

- 6.2.2. (3) River Bottomlands:** River bottomland shall retain the overall visual character of a floodplain and associated islands.
- (a) Buildings should have an overall horizontal appearance in areas with little tree cover.**
- (b) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.**

Applicant: *"Exhibit I.2 shows that only the northeast corner of the subject property is River bottomlands, and ODOT's Reclamation Plan (Exhibit A.19) does not include any modifications to the current pond, which will retain the overall visual character of a floodplain. The Reclamation*

Plan also includes recommendations for native plantings consistent with the areas of the property that fall under the Coniferous Woodland landscape setting. The primary reference landscape for restoration is south of the HCRH section adjacent to the subject property, which is Coniferous Woodlands, not River Bottomlands, and very little of ODOT's proposed actions occur within this landscape setting." **Exhibit J.1**, p. 3.

Staff: The River Bottomlands Landscape is a small portion of the property around the pond area, including the small vegetated area directly adjacent to the pond. The area mapped as river bottomlands is topographically located approximately 70 feet above the Columbia River and about 60 feet above the mapped 100 year floodplain that corresponds with the Columbia River. There is no mapped floodplain located on the subject property.

The River Bottomlands Landscape area was not formed through natural geologic processes such as repeated flooding that typically forms river bottomlands. This site was formed from human manipulation when the rock was mined resulting in a quarry floor that is not capable of supporting the growth of healthy vegetation. It is not possible to retain the overall visual character of a floodplain and associated islands because the site does not have the visual character of a floodplain.

The proposed project will restore that natural topography in the area that existed prior to the human manipulation of the area but will leave the pond in the River Bottomlands area of the site untouched. The proposed project will restore the area near the pond so that it can support the reestablishment of a forested riparian area that will shade the pond and improve the habitat in and around the pond to a better condition. The project when complete will result in the restoration of the landscape into an area that more closely reflects what the site looked like before it was mined.

The proposed project does not include any buildings. When the quarry restoration project is complete it will be landscaped and planted with native species to achieve an overall appearance of a forested landscape (Exhibit A.14 and A.19). *This standard is met.*

6.3. KVA Foregrounds and Scenic Routes

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

6.3.1. (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.

Applicant: *"The proposed is immediately adjacent to or within the foreground of the I-84 and HCRH KVAs. The proposal is in conformance with the HCRH Master Plan as the proposed use is not visible from the HCRH Scenic Route. Additionally, the proposal is consistent with the I-84 Corridor Strategy. See attached Analysis of appearance of Proposed Use with perspective of site from Key Viewing Areas is attached in Appendix F and Appendix B sheet 1 or 5."*

Staff: The proposed project site is located immediately adjacent to the HCRH. Currently the site is not visible from the HCRH except for a few short areas. The applicant's proposal includes installing two berms along the HCRH as shown on Exhibit A.18. We find that those berms need to be vegetated with native vegetation including the planting of trees in order to provide screening of the site. Staff recommends a condition of approval requiring the two additional

berms along the HCRH be installed prior to any additional work in the quarry. Staff recommends a condition that the berms be planted with native grasses, and trees be planted as soon as possible during the current planting season. Staff also recommends a condition requiring maintenance of the existing trees along the project section of the HCRH and planted trees in a living status and replacement of any of these trees that do not survive. *This standard is met through implementing the conditions of approval.*

- 6.3.2. (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).**

Applicant: *"The proposed use is not immediately adjacent to or within the foreground of the listed KVAs. The site is immediately adjacent but is not topographically visible."*

Staff: The subject property is directly adjacent the HCRH, which is the only KVA that contiguous to the subject property. The use is proposed to be located within the subject property and not within the HCRH roadway prism. We concur that the proposed use is not immediately adjacent to or within the foreground of any KVA. *This standard is met.*

- 6.3.3. (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.).**

Applicant: *"Does not apply."*

Staff: The project does not include any clearing of right-of-way vegetation. It does include some planting of vegetation along I-84 and a condition will include planting of vegetation along the HCRH. The planting of the vegetation will enhance views through screening of old previously abandon non-restored quarry site and thus is found to be a restoration project. *This standard is met.*

- 6.3.4 (4) Encourage existing and require new road maintenance warehouse and stockpile areas to be screened from view from Key Viewing Areas.**

Applicant: *"The proposed use will not include a warehouse, but may include stockpiles as part of the disposal of native material generated by landslide events and maintenance activities that impact I-84 and the HCRH. The disposal site will be screened from all views from KVAs through the use of berms and landscaping."*

Staff: As conditioned, we concur that the site including stockpiles will be screened from all views from KVAs through the existing topography and existing vegetation along with the use of berms and additional landscape plantings (Exhibits A.3.a, A.18 and A.19). *This standard is met*

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

MCC 38.0015: Definitions – Highway – Any road or highway designated as such by law or by the Oregon Transportation Commission; includes both primary and secondary state highways.

MCC 38.0015: Definitions – Road: The entire right-of-way of any public or private way that provides ingress to, or egress from property by vehicles or other means, or provides travel between places by means of vehicles. "Road" includes, but is not limited to:

- (a) Ways described as streets, highways, throughways, or alleys;
- (b) Road-related structures, such as tunnels, culverts, or similar structures, that are in the right-of-way

Applicant: *"The proposed use is consistent with the scenic corridor strategies for I-84 and the HCRH. The strategies can be reviewed at http://gorgevitalsigns.org/Misc/I84_201201.pdf The HCRH Master Plan at <http://www.oregon.gov/ODOT/Regions/Documents/HCRH/Master-Plan-Intro-History-HCRH.pdf>"*

Staff: The only element of the project that needs to meet this standard along Interstate 84 is the planting of vegetation (180 Douglas fir trees). The planting of vegetation to screen ODOT projects in an element used to obtain visual subordination for ODOT projects along I-84. The project in the quarry site is not part of I-84 or directly adjacent to I-84 thus the I-84 Scenic Corridor Strategies do not apply to the quarry site.

The Historic Columbia River Highway does not have scenic corridor strategies instead it has a Master Plan. The Master Plan discusses managing vegetation related to specific view areas. The Master Plan includes recommendations for the management and design for the HCRH within the right-of-way. The proposed berms and vegetative planting are located on adjacent property not in the right-of-way.

The two new berms and vegetation along the HCRH are located outside the HCRH right-of-way on the quarry property directly above the cliff. The Master Plan does not include standards for properties adjacent to the highway right-of-way. The applicant is proposing a project which needs to be screened while the project is being completed, but it will not need to be screened when it is complete. Thus the berms are not necessary when the project is complete and can be removed. Given the concerns raised at the hearing about the presence of the berms, Staff recommends a condition of approval, that the two new berms and vegetation plantings on those berms be removed when the project is complete. We concur with the applicant that the project will be consistent with scenic corridor strategies for I-84 and the HCRH through the placement of the berms and additional vegetation. *This standard is met.*

Applicant: *"ODOT completed the Historic Columbia River Highway Master Plan (2006) after the Gorge Management Plan (1991) and associated County Codes were in place. The Master Plan references the CRGNSA Management Plan on page 64, specifically the visual screening and subordination requirements as important to maintain along the Highway. While these documents should be consistent, it is ODOT's view that the Gorge Management Plan supersedes the Master Plan when there is a question of conflicting direction. ODOT recognizes that the development's fully screened/visually subordinate Management Plan/Code requirement is of higher priority than the Master Plan's general direction to enhance the "outstanding vistas and natural wonders." ODOT agrees that the condition of approval to remove the berms along the Historic Highway would address the long-term impacts to the viewshed for users of the Historic Highway."* **Exhibit J.1, p. 2.**

7. SMA CULTURAL RESOURCE REVIEW CRITERIA

- 7.1. 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 38.0530 (B).**

Applicant: *"Criteria A through H have been satisfied. ODOT has contracted with appropriate technical professionals to complete all required surveys, research and coordination with the appropriate agencies. The contracts and the results have been reviewed by qualified ODOT professional staff. The results of the Cultural Resource Review (Built and Archaeology) have been submitted to the appropriate state and federal staff for their review and concurrence. Copies of the appropriate concurrence/clearance letters are attached in Appendix G."*

Staff: Included with the application submittal is Applicant's Appendix G: "Maintenance Memo – No Effect, Coopey Quarry Disposal Site" (Exhibit A.3.g) by Roy Watters, ODOT Archaeologist. Attached to the memo is an archaeologic study titled "Coopey Quarry: Archaeological Investigation with Technical Report" by Kaylon McAlister and Thomas Connolly. Appendix G (Exhibit A.3.g) also includes a "Level of Effect Form" that was submitted to the Oregon State Historic Preservation Office (SHPO). The conclusion of the Exhibit A.3.g is a determination by the Oregon Department of Transportation that pursuant to ORS 358.653, the Coopey Disposal Site Project will have "No Adverse Effect on the Columbia River Highway National Historic Landmark District (Segment 1 of the NHL district or the entire NHL district). ODOT recommends a Finding of No Historic Properties Adversely Affected for the Coopey Disposal Site Project."

Exhibit C.2 is a letter from the SHPO concurring that the proposed use will have "no effect" on archeological resources. Exhibit C.3 is as a letter from the USFS Heritage Program Manager concurring that the proposed use will have "no effect" on archeological resources. Mr. Donnermeyer also expressed concern that if discovery of cultural resources or human remains, that applicant follow the MCC 38.7050(H) requirements for such circumstances. Staff recommends including MCC 38.7050(H) as a condition of approval. Give the findings of no adverse effect on cultural resources, there are no adverse cumulative effects either. The cultural resource review criteria shall be deemed satisfied. *These standards are is met*

- 7.2. MCC 38.7050(B): If comment is received during the comment period provided in MCC 38.0530 (B), the applicant shall offer to meet with the interested persons within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project applicant and the interested persons.**

- (1) Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.**
- (2) All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.**

Staff: The notice of public hearing was posted in the Oregonian published November 23, 2018 and mailed on Tuesday November 20, 2018 to owners of properties with 750 feet, neighborhood

groups, Native American Tribes with interest in the Columbia River Gorge and agencies with interest more than 20 days in advance of the hearing day. Any comments related to Cultural Review received during that period will be submitted to the Hearing Officer for review. At the time of the drafting of this report no comments have been received.

7.3. MCC 38.7050(H): Discovery During Construction

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 resources 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: We recommend adopting the entirety of Section H as a condition of approval. *This standard is met through implementation of this condition if and when necessary.*

8. SMA NATURAL RESOURCE REVIEW CRITERIA

MCC 38.7075: All new developments and land uses shall be evaluated using the following standards to ensure that natural resources are protected from adverse effects. Proposed uses and development within wetlands, streams, ponds, lakes, riparian areas and their buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited. Comments from state and federal agencies shall be carefully considered.

Hearings Officer: ODOT states that MCC 38.7075 was not in effect when it filed its land use application. Nonetheless, they addressed its requirements to assure consistency with the Gorge Management Plan. As a result, the hearing officer has addressed its requirements below. Exhibit J.1, p. 13.

Applicant: *"ODOT's Reclamation Plan (Exhibit A.19) explicitly addresses any negative impacts due to materials storage activities, and the Mitigation Plan will ultimately create a net benefit that would improve the ecological function of the disturbed buffer, resulting in a cumulative environmental improvement."*

The Reclamation Plan also includes ways to improve and enhance the visual character of the site. Prior to ODOT's activities, the site was an abandoned quarry where illegal users would dump trash and drive 4-wheeled vehicles during "mudding" activities. Now, as part of the Mitigation Plan, travelers along I-84 would see planted berms instead of the illegally-disturbed quarry floor caused by trespassers and stunted foliage. From the Historic Highway, travelers see view of the landforms across the Columbia River, with berms blocking view of the quarry and a visually subordinate, matte brown gate at the entrance. See Exhibit I.1.

Cumulative Visual Impacts

Under NEPA, cumulative impacts are considered for the proposed action in relation to past, present and reasonably foreseeable future actions.

Past actions included railroad construction, construction of the Historic Highway, and construction of the water-level interstate route, which later became I-84. These activities created linear, human-made visual impacts to the landscape, which prior was largely steep bluffs and floodplain with dense vegetation, hence the area's landscape setting of river bottomlands and coniferous woodland. With the addition of transportation facilities in the Gorge, residential and commercial development began to occur adjacent to both the Historic Highway and the Interstate as motor inns, vehicle service stations and restaurants were constructed, adding more human-made development in the Gorge.

Additionally, there were impacts to Coopey quarry from roadway building which included blasting and hauling rock out of the quarry site to construct the Interstate. None of these activities were visually screened from any vantage points as they predate the National Scenic Area, and all activities were fully evident from key viewing areas in the Gorge. Over time, the Gorge has been logged, has burned from wildfires, and been developed. More recently, however, as conservation groups and the USFS have purchased land the National Scenic Area has slowly moved toward more natural settings as buildings and associated parking lots have been removed, and with new regulations under the NSA designation. Presently, all new development along both I-84 and the Historic Highway are required to meet existing visual standards per county code and the National Scenic Area Management Plan, which vary depending on the landscape setting, and reduce the potential for negative visual impacts.

Current ODOT actions in the Quarry started with all materials directed towards building berms for visual screening. Temporary visual impacts associated with the work and the interim visual impacts while the visual screening is being constructed are captured as direct impacts in the Mitigation and Reclamation Plans, included in the permit submittal.

As part of the response to the Eagle Creek Fire, ODOT and the US Forest Service installed rockfall catchment systems along the Historic Highway and adjacent to the Multnomah Falls Lodge to address anticipated increased rockfall hazards associated with burned slopes. These rockfall catchment systems (the concrete barriers at Wahkeena, Multnomah Falls, and Oneonta Gorge) are largely temporary, and the permanent fencing upslope of the Historic Highway on either side of Multnomah Falls and at the lodge itself were designed with input and review from the US Forest Service and consistent with the Management Plan to be visually subordinate designed and installed using a dark color and future plantings are required to break up the linear nature of the fencing.

ODOT does not anticipate much additional development on adjacent privately-owned land due to the forest, small woodland, and residential land use designations. Much of the adjacent publicly-owned land is designated public recreation and Open Space.

Future ODOT projects along the I-84 corridor include maintenance and rehabilitation of the interstate and will not have substantial permanent visual impacts as most activities would include replacing existing structures in kind. Anticipated projects include:

- Repairing the deck of the Eastbound Toothrock Tunnel,*
- Replacing the deck on the eastbound I-84 bridge over McCord Creek,*
- Repairing the bridge rail on the Bridal Veil Connector over the UPRR railroad,*
- Replacing culverts on I-84 at Oneonta Creek,*
- Replacing culverts on I-84 at Ruckle Creek ,*
- Applying high friction surface pavement treatment on curves at Ainsworth and Bonneville Dam,*
- Reducing rockfall hazards along I-84 between Bonneville and Cascade Locks, and*
- Repaving the interstate between Multnomah Falls and Cascade Locks.*

All of these projects will be consistent with the I-84 Corridor Strategy, and most will not change the visual character of the Interstate or the landscape.

Future projects along the Historic Highway include adding signage and trimming trees for safety. The only other projects currently planned along the Historic Highway is a bridge footing scour repair on the Historic Highway Bridge east of Troutdale and a walkway replacement on the same bridge. The scour project is directly below the Historic Highway and not visible from I-84 and not visible during high water seasons, and the walkway project will be consistent with the existing facility and visually subordinate.

Based on this analysis, cumulative impacts of this project on the visual character of the corridor from either I-84 or the Historic Highway are expected to be negligible. Screening already in place is adequate to ensure the casual visitor will see only planted landforms and additional vegetation, as part of the coniferous woodland final form once the Mitigation Plan and rehabilitation is complete.

Cumulative Natural (Ecological) Impacts

Past actions described above in the visual impacts analysis were also detrimental to the health of the natural environment in the Gorge. The Railroad was built upon fill, impacting the flow of the river and native fish and the use of culverts and other construction activities reduced the ability of anadromous fish (including salmonids) from moving from the Pacific Ocean to the Columbia River and up Coopey Creek (both east and west) and other creeks and streams throughout the Gorge. Construction of the Historic Highway, while meant to “lie lightly on the land” nevertheless also created fish barriers and likely negatively impacted habitat and sensitive species during construction and beyond. Interstate construction and the associated development along both I-84 and the Historic Highway cleared land for parking lots, hotels, and restaurants, residences, and vehicle service stations. Septic systems and other underground storage tanks associated with these developments likely impacted water quality. Past actions have altered the ecology of the Gorge, fracturing habitat and removing or harming sensitive species. These facilities also bring traffic, and the potential for hazardous chemical spills into the Gorge, further increasing ecological impacts. Air and water quality were negatively impacted over the 100-plus years of modern development in this area.

Direct impacts from current ODOT actions in the Quarry are described in the permit submittal and include placing materials and development in low-quality buffers, as well as restoration and replanting. While ODOT crews are hauling materials into the site and depositing road spoils, disturbances to the low quality buffers may occur, however, ODOT is mitigating these temporary impacts with invasive species removal and early and continuous weed management to offset any current or near-future negative impacts. Additionally, the Restoration and Mitigation Plans are phased stepwise to address impacts as each phase is completed to reduce overall negative impacts due to the uncertain timeframe of filling the entire quarry per the Plan. These measures are intended to reduce the overall potential for negative impacts. ODOT has successfully utilized plantings, invasive species management, and native species restoration for mitigating buffer impacts on other projects, most recently on the Wyeth to Lindsey Creek Historic Highway State Trail project in Hood River.

As a result of the proposed mitigation, it is anticipated that no adverse cumulative impacts will occur for this project and the net results are expected to be beneficial to the natural resources in the area. The Mitigation and planting Plan includes native, Gorge-approved species, and ODOT's Plan includes vernal pools and other natural landforms that will serve to enhance and benefit both the natural resource buffers as well as the natural resources themselves." Exhibit J.1, pp. 3-5.

Staff: The proposed project has been evaluated in the findings below to ensure that natural resources are protected from adverse effects. The project will restore an old abandoned quarry with riparian areas that are currently in a poor condition. The proposed project will transform the existing poor area into healthy forested riparian areas when the restoration project is complete. There are no adverse cumulative effects to natural resources for the restoration project.

Friends: It is not appropriate to use the current condition of the site in the cumulative effects analysis.

Hearings Officer: I find that the poor site conditions referred to by Staff and ODOT are conditions created by surface mining; not by ODOT's emergency use of the site for disposal. In particular, historic surface mining removed most soils from the project area and created a sharp drop off from the scenic highway. I find that the cumulative effects test is met when considering the condition of the site prior to emergency disposal site use by ODOT and the proposed condition that will be achieved by ODOT's project. The Exhibit J.12 photographs from 2017 show grasses, daisies and other low-growing vegetation on the mine floor. They also show the steep, exposed mine wall and surface rock. The area is markedly different in appearance than the forested areas nearby; confirming ODOT and the County's assessment that the site is in poor condition and this condition is primarily due to actions that predate ODOT's emergency use of the site.

Friends: The project's adverse impacts will occur repeatedly for decades without a definite end date.

Hearings Officer: This fact has been considered in assessing cumulative effects and is balanced by the fact that ODOT will be completing its work in phases – completing one phase before moving onto the next. Thus, only a part of the site will be filled at any one time and reclamation of pieces of the project will occur before the entire project is complete. Given the fact this project will reclaim a severely environmentally damaged site, it is reasonable to conclude that the project will improve the condition of the property – providing a benefit for the Gorge. The use proposed

is one needed to assure safe travel in the Gorge and is appropriately located in the Gorge where landslides create a need for the disposal site. This location assures an efficient response to natural disasters/landslides by ODOT which benefits the Gorge and the community at large.

8.1. MCC 38.7075(A): All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in MCC 38.7075(A)(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).

Applicant: *"Appendix C & D includes the Wetlands and Waters Delineation Report for Coopey Quarry. This report identifies three wetlands and one pond (waters of the state) on the property. Much of the site is a former quarry and highly disturbed with little soil and was not considered buffer. The rest of the site is mostly buffer for water resources and the man-made quarry wall/cliff. The Mitigation report (Appendix E) identifies buffer impacts, mitigation and site restoration."*

Staff: Applicant's Appendices C, D and E are labeled Exhibits A.3.c, A.3.d and A.3.e. Biological Resources Impact Memo Coopey Quarry Disposal Site Memo by Ben White ODOT Region 1 Biologist revised February 21, 2018 included Exhibit A.13 states that Coopey Creek a perennial stream located to the west of the subject property, the pond which is partially located in the northeast portion of the subject property and the wetlands located adjacent to HCRH all have a 200 foot buffer. Staff finds that nearly the entire old quarry is within a 200 buffer as shown in Figure 3 of Exhibit A.14).

Friends: *In addition to the water resources identified by the applicant, there is also a waterfall and intermittent stream that flows over the cliff face, then north through the property. The waterfall is in the south central portion of the property, and the stream flows into the wet area in the middle of the property (seen in the middle portion of the Tom Kloster photo above, directly above the middle notation of the word "Berm"). See photo of the waterfall below.*

Applicant: *"It can appear that there are water resources (wetlands or streams) within the quarry other than the large pond. However, they do not meet the wetland or stream criteria.*

*The wetland and waterways delineation report **Exhibit A.3.d** indicates "Two wetlands (A and B) above the top of the quarry wall have had three ditches trenched through them that drain into the quarry. This water drops from the quarry wall onto piles of rocks, created from freeze and thaw actions over the years and from these piles of rock the water spreads out onto the quarry floor. The soils on the quarry floor are lacking and did not have a depth greater than four inches and therefore did not meet the hydric soil criteria. Even though water is found on the quarry floor during the spring the absence of hydric soils, disqualifies this site from meeting all three wetland criteria" and therefore are not wetlands." Also, "The flow of water across the quarry floor was dispersed enough to prevent formation of stream and a stream channel. In a few instances, the water was routed in a tire track. Therefore there was no stream determined to occur in the quarry." Further, there is no naturally defined channel above the quarry and the water on the quarry floor infiltrates before it leaves the site, so there is no channel leaving the site. Additionally, the wetlands and waters determinations were reviewed and confirmed by a second wetland scientist from outside of ODOT Region 1 prior to documenting them in the report."*

Exhibit J.1, pp. 8-9.

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

Applicant: *"To access the proposed disposal site, ODOT will impact 0.15 acres of high quality buffer and 6.0 acres of poor quality buffer, which is the majority of the quarry. Appendix E contains a mitigation report that discusses impacts to natural resources, their buffers and proposes mitigation for these impacts. It also contains a reclamation plan that restores and mitigates for this current action as well as the past quarry actions. The reclamation plan includes plantings and contouring that will restore the site to a better wetland buffer area than the abandoned quarry currently provides by creating a natural forest landscape and a landscape design that will lead to the natural creation of a few additional higher-quality wetlands."*

Mitigation Plan (Exhibit A.14): *"The pond, wetlands, Coopey Creek and the quarry wall (cliff) were all considered to require a 200 foot NSA buffer. The old quarry provides few if any buffer functions. This area is mostly gravel and after fifty years has had some regrowth of vegetation in some areas that may provide "de minimis" buffer functions. Without intervention to restore the site establishment of soils, forest growth and a functioning buffer are centuries away. Excluding the wetlands, pond, and Quarry, the remaining area is mostly buffer (Appendix A, Figure 2). The buffers for different resources overlapped and merged with other buffers. Buffers were not separated by resource."*

Staff: The project plan is to use debris spoils as materials for restoration of the old abandoned quarry site and in the process mitigate the disturbance of the buffer which is currently in poor condition. The proposed project will ultimately restore the buffer area to a natural forested environment including several wetlands areas (Exhibit A.3.d). Staff concurs with the applicant's statement and finds that the proposed use, as conditioned will result in the enhancement of the existing buffers consistent with the intent of this standard. *This standard is met.*

Staff findings regarding this criterion on pp. 2-3 of Exhibit J.13 are incorporated by reference herein.

Hearings Officer: The applicant has proposed a mitigation plan with reclamation occurring in phases. ODOT will not, as claimed by Friends, operate indefinitely until fill reaches the desired grade before beginning mitigation and restoration of the site.

Friends: *A new berm has been built on top of the vegetative buffer on the south side of the pond.*

Applicant: *"There is a small erosion control berm along the toe of the larger berm in the NE corner of the property. ODOT followed best management practices on erosion control when constructing the small berm to ensure that the larger screening berm did not release sediment into the pond. Once the large berm was graded, ODOT applied a two inch compost blanket with tackifier, mycorrhizal inoculate, and native seed. The next step is to plant the berm with appropriate restoration species as listed in the Reclamation Plan. This new vegetated buffer will be an improvement on the mostly blackberry understory that was previously the vegetative buffer for the pond. See Exhibit J.4 for photo of blackberries adjacent to the pond." Exhibit J.1, p. 8.*

Friends: *There was no consideration by the applicant, nor by County staff, of whether this berm could be sited in another location, such as further to the south, in order to preserve the existing vegetative buffer around the pond. Nor was there any consideration of reducing the size and scope of the project to lessen impacts on water resources and their buffers. The applicant could*

have avoided impacts to the pond and its buffer by relocating the berm and focusing the project on the western end of the parcel away from the pond. Instead, the applicant proceeded with the project without permits and is now seeking retroactive approval.

Applicant: “[T]he smaller berm adjacent to the pond is for erosion control, and serves as a protective barrier to prevent impacts to the pond. The larger screening berm is sited further south to avoid impacts to the pond. Per ODOT’s erosion control BMPs, the smaller berm was installed for resource protection. The permit issue is discussed as a response to comments #1, 6, 7, and 9, emergency action allowed through MCC 38.7090, and any future permanent action contingent upon the permit being granted by the County. **Exhibit J.1**, p. 8

Hearings Officer: This berm provides erosion control, as needed for disturbed areas. It is approved as a part of the applicant’s mitigation plan and site plan.

8.1.2. (2) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

- (a) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.**
- (b) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.**
- (c) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:**
 - 1. The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.**
 - 2. The wetland is not critical habitat.**
 - 3. Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.**

Applicant: *“Appendix E contains the Coopey Quarry Mitigation Report which identifies natural resources and their buffers. The pond, wetlands, Coopey Creek and the quarry wall (cliff) are all within the 200 foot NSA buffer. However, the mitigation plan will restore this former quarry site, greatly enhancing the property to pre-quarry conditions.”*

Staff: Staff finds that nearly the entire old quarry is within a 200 buffer as shown in Exhibit A.14. Buffer zones disturbance can be permitted with a mitigation/restoration plan. *This standard is met.*

- 8.1.3. (3) The buffer width shall be increased for the following:**
- (a) When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone.**
 - (b) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.**

- (c) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.

Applicant: *"Does not apply. The buffer width will not be increased; none of the listed conditions (a) through (c) are present in the proposed use area."*

Staff: A significant portion of the subject property is currently considered a buffer to either Coopey Creek, the wetlands adjacent the HCRH, or the pond in the northeast corner of the site (Figure 3 of Exhibit A.14). The subject property is not identified as being located within channel migration zone. Coopey Creek is a small creek which has a small channel that flows across the very southwestern corner of the property. The majority of the creek is located on the adjacent property to the west. It has a well-developed incised ravine up-slope from the culvert south of the HCRH. The creek channel may move a minor amount of feet during a very heavy flow or if some debris blocked the creek. As such it is unlikely the stream will move enough to justify an increase in the buffer because of its steep slope dropping toward the northeast. If the stream buffer were to move it would be relocated in an area that is already in the existing wetland buffer. The subject property is not known to be frequently flooded. While the site may have some areas where water is perched on bedrock within the quarry floor, the topography and slope in this area provides for the drainage of the site without flooding (Exhibit B.10). The subject property is not mapped within a mapped erosion or landslide hazard area. We concur with the applicant, this standard does not apply because none of the conditions described within a, b, or c exist on the subject property. *This standard is met.*

8.1.4. (4) Buffer zones can be reconfigured if a project applicant demonstrates all of the following:

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

Applicant: *"Does not apply. The buffer zones will not be reconfigured."*

Staff: We concur with the applicant, the proposed use that is the subject of this application does not seek to reconfigure the buffer zones. As proposed at the completion of the project the buffer zones will remain intact and in an enhanced state as compared with the current conditions. *Not applicable to this review.*

Friends: *As a first step before intruding into a water resource buffer, an applicant must request that Multnomah County reconfigure the existing buffer. See MCC §§ 38.7075(A)(4) (allowing water resource buffers to be reconfigured if certain conditions are met), 38.7075(M) ("If the above measures [including requests to reconfigure applicable buffer zones] fail to eliminate the adverse effects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.") Exhibit J.1, p. 9*

Applicant: *MCC §§ 38.7075(A)(4) states that "Buffer zones **can** be reconfigured if..." there is no **shall** or **must** language in this code requirement. Instead of requesting modification to the*

buffer zone, ODOT chose to create a mitigation plan that addresses, rehabilitates, and enhances the buffer zone, and in the expert opinion of our professional biologist, will result in a net uplift for the resources in the area.

ODOT's mitigation and restoration plans address 38.7075 (B) – will replant buffers only with native plant species of the Columbia River Gorge, (C) ODOT has identified all water resources and appropriate buffers, (D) delineated wetlands boundaries using (1) the National Wetlands Inventory, (2) planning staff have visited the site and not discovered wetlands not on inventory or soil survey maps, (3) and (4) ODOT has determined the exact location of the wetlands boundary using professional wetlands specialists. Section (G) includes the following language:

“Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.” ODOT has created a deliberate restoration and Mitigation Plan per the requirements in this section of the code. ODOT has met all of the requirements of the above measures, which does not require buffer zone reconfiguration, merely suggests it, and per 38.7075(M) ODOT has prepared a Mitigation Plan to offset, and on the whole improve adverse effects through restoration and enhancement.” **Exhibit J.1**, p. 9.

Hearings Officer: This code section allows buffer areas to be reconfigured but does not mandate that they be reconfigured. If reconfigured, areas within a buffer area removed from the buffer may be developed without following a mitigation plan. If the County had wished to prohibit development within buffer zones, it would not have adopted provisions of law that allow development in the zones if a mitigation plan is approved.

Friends: *The applicant and County staff have skipped over this required step in the analysis, never analyzing whether the existing buffer zones can or should be reconfigured, nor under what circumstances. Instead, the applicant and County staff either failed to recognize that the resources and buffers even exist (as in the case of the intermittent stream across the middle of the subject property), or state that the applicant is not requesting to reconfigure the buffer zones. The applicant and County also assert that the proposed project will ultimately “enhance” the buffer zones, but fail to acknowledge that even if that occurs, it could be decades into the future, and that adverse effects will occur in the meantime. Because the applicant has failed to evaluate reconfiguration of the buffer zones and failed to analyze the criteria for reconfiguration of the buffer zones, the application should be denied.* **Exhibit J.1**, p. 9.

Applicant: *“MCC 38.7075 does not include a prescribed process of analysis, and ODOT has met all of the requirements in that section of code and followed the recommendations of our professional biologist to ensure habitat is enhanced instead of simply redrawing a boundary to suit our needs. The quality of the buffers within the quarry were determined to be low, based on quantities of non-native and invasive species and poor biological and habitat function. ODOT determined that enhancement of these buffers was the preferred mitigation alternative, as it would have the most direct benefit to the habitats, flora, and fauna in the area. ODOT has developed a phased Restoration Plan that will improve habitat, scenic and natural resources. This Plan includes invasive species removal and management, replanting over a 3000 trees and 12,500 shrubs including two diverse forbs and grass seed mixes providing pollinator habitat. ODOT has re-seeded the current berm and will plant it this spring or next fall. ODOT started this mitigation process at the beginning of the project. See staff qualifications in **Exhibit J.5**, submitted as part of these comments.”* **Exhibit J.1**, p. 10.

Hearings Officer: The hearings officer agrees with ODOT's response to the Friends' claim that it is not necessary to evaluate reconfiguration of buffer zones. Reconfiguration has not been proposed by ODOT and it is not required by the applicable law. The hearings officer also agrees with and adopts by reference staff findings regarding this criterion on page 2 of Exhibit J. 12.

- 8.1.5. (5) Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.**

Applicant: *"Does not apply. The buffer zones will not be reconfigured."*

Staff: We concur with the applicant, the proposed use that is the subject of this application does not seek to reconfigure the buffer zones. As proposed at the completion of the project the buffer zones will remain intact and in an enhanced state as compared with the current conditions. *Not applicable.*

- 8.1.6. (6) The local government shall submit all requests to reconfigure sensitive wildlife/plant or water resource buffers to the U.S. Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the local government will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the local government shall justify how it reached an opposing conclusion.**

Applicant: *"Does not apply. The buffer zones will not be reconfigured."*

Staff: We concur with the applicant, the proposed use that is the subject of this application does not seek to reconfigure the buffer zones. As proposed at the completion of the project the buffer zones will remain intact and in an enhanced state as compared with the current conditions. *Not applicable.*

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

Applicant: *"Native plants are shown on the planting plan see Appendix B."*

Staff: Applicant's Appendix B (Exhibit A.3.b) has been replaced by Exhibit A.15. All of the plant species proposed to be planted are native species to the Columbia River Gorge and can be found in the *Scenic Resources Implementation Handbook*. *This standard will be met by implementing the plan.*

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

Applicant: *"Qualified ODOT staff has identified the water resources in the Wetlands and Waters Delineation Report for Coopey Quarry Appendix D."*

Staff: Applicant's Appendix D (Exhibit A.3.d) identified water resources Mitigation Plan (Exhibit A.14) identifying the appropriate buffers. Exhibit A.3.d identifies the following water resources on or near the subject property; Coopey Creek a perennial stream located to the west of the subject property with a 200 foot buffer, the pond which is partially located in the northeast portion of the subject property with a 200 buffer and the wetlands located adjacent to HCRH at the top of the cliff with a 200 foot buffer. All of these water resources have a 200 foot buffer. Staff finds that nearly the entire old quarry is within a 200 buffer as shown in Exhibit A.14 (page 4). *This standard is met.*

- 8.4. MCC 38.7075(D): Wetlands Boundaries shall be delineated using the following:**
- (1) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U. S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.**
 - (2) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.**
 - (3) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the '1987 Corps of Engineers Wetland Delineation Manual (online Edition)'.**
 - (4) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.**

Applicant: *"Qualified ODOT staff has identified the water resources in the Wetlands and Waters Delineation Report for Coopey Quarry (Appendix D) using the methods described here."*

Staff: The applicant has used the standards of the Division of State Lands (DSL) and US Army Corp of Engineers including those standards detailed above to delineate wetland boundaries as presented in as shown in Exhibit A.3.d. *These standards have been met.*

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

Applicant: *"Qualified ODOT staff has identified the water resources in the Wetlands and Waters Delineation Report for Coopey Quarry (Appendix D) using the methods described here."*

Staff: The applicant has used the standards above to delineate stream and pond boundaries as shown in Exhibit A.14 page. *This standard is met.*

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

Staff: Based on our review of Exhibits A.14, we concur with the applicant's accuracy in mapping the buffers. *This standard is met.*

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

Staff: The proposed debris disposal site and quarry restoration project is within buffers. *See findings for criteria below.*

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

Applicant: *"To access the proposed disposal site, ODOT will impact 0.15 acre of high quality buffer and 6.0 acres of poor quality buffer. Appendix E contains a mitigation report that discusses impacts to natural resources, their buffers and proposes mitigation for these impacts to restore the site to pre-quarry conditions. This one lane road with a turn out is the minimum necessary for site access."*

"The proposed use is a deposit site for materials that fall or slide onto either I-84, the Historic Columbia River Highway, or the Historic Highway State Trail within the Columbia River Gorge. I-84 is an interstate route vital to moving goods and people through the Gorge. It is the straightest, fastest way to traverse east-west in the vicinity. It carries interstate commerce and is a vital lifeline for those who commute, rely on goods and services, and is a contributor to the economy of the Gorge and Oregon in general. ODOT's mission is to ensure safe, economical movement of people and goods, and given the geography and terrain, having a place to deposit materials that impede travel is vital to ensuring continued travel through the Gorge. The Historic Highway serves both visitors to the most-visited natural site in Oregon (Multnomah Falls) as well as residents who live along the highway. Ensuring that the Historic Highway remains open is the next highest priority for ODOT in the Gorge. Slides happen often, and both ODOT and USFS Geologists are anticipating increased slide activity for the next four or so years due to burned underbrush and unstable slopes caused by the Eagle Creek Fire. Our current spoils deposit sites are either at capacity or are for temporary storage only. Given the anticipated future slide activity, the length of time it takes to travel within the Gorge in adverse weather conditions, when much of the slide activity occurs, there is no practical alternative to siting a materials deposit site." Exhibit J.1, p. 11.

Staff: Applicant's Appendix E (Exhibit A.3.e) has been replaced by Exhibit A.14. Nearly all the buffer areas in the old quarry site are poor quality buffer. Only the access driveway will be located within a high quality buffer area. There is no alternative site (Exhibit A.3.h) for the access driveway, due to the existing quarry stone face cliff running parallel along the rest of the property, thus it must be located as proposed. The driveway is more than 150 feet from the stream. The buffer while degraded and not a good functioning riparian area cover a majority of the site. The access driveway was a historic access point for the quarry use and was reestablished to facilitate the use of the site in response to Eagle Creek Fire.

ODOT needs a disposal site for spoils debris from road maintenance and from landslides. The Coopey Quarry site is near an area of recent and historic large landslides. There are no other alternative sites as discussed within Exhibit A.3.i. Using the site as a disposal site in the quarry will provide an opportunity to restore the abandon quarry site and buffer areas back to forested

landscape and improve the habitat of the stream, wetland, and pond riparian areas. *This standard is met.*

Hearings Officer: Additionally, as an alternative basis for approval, this criterion is not applicable because the activities proposed are allowed by MCC 38.7075(A)(1) and a mitigation plan will be followed by ODOT.

8.7.2. (2) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:

- (a) A documented public safety hazard exists or a restoration/ enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question.**
- (b) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project.**
- (c) The proposed project minimizes the impacts to the wetland.**

Applicant: *"Does not apply. No wetland draining or filling is proposed."*

Staff: The applicant has included Exhibit A.3.d which includes a wetland delineation report for the subject property. The report used US Army Corp of Engineers and DSL standards. The report identified three wetlands that are located adjacent to the HCRH above the cliff not impacted by the project. The applicant is not proposing to fill or drain these wetlands. The proposed use would result in enhancement to the existing wetlands buffer consistent with this intent of this requirement. (Exhibit A.13, A.14, and A.15). *This standard is not applicable.*

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

Applicant: *"The project will remove 1,000 linear feet of man-made quarry wall/cliff and 0.15 acre of high quality buffer and 6.0 acres of poor quality buffer. As mitigation for these impacts ODOT will:*

- Restore Coopey Quarry creating 7.26 acres of buffer*
- Restore the original 0.15 acre of buffer impact.*
- Utilize large wood cut from the site as downed logs*
- Remove English Ivy and Himalayan blackberry from 2.60 acre of existing NSA buffer.*

See Appendix E Coopey Quarry Mitigation Report."

Staff: Applicant's Appendix E (Exhibit A.3.e) has been replaced by Exhibit A.14. The applicants' narrative states that the project will "...remove 1,000-linear feet of man-made quarry wall/cliff..."; to clarify the quarry stone face cliff will be buried not removed. The proposed project will restore the degraded abandoned quarry site creating 7.26 acres of high quality forested landscape buffer (Exhibit A.15). The mitigation plan outlines a restoration and enhancement that recreates and restores the site including the removal of invasive plant species and creation of additional wetlands within the quarry filled area where none currently exist. *This standard is met through implementing the proposed plan.*

Hearings Officer: The staff findings at pp. 3-4 of Exhibit J.13 are adopted by reference in support of approval of ODOT's application.

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

Applicant: *“Does not apply. No sensitive wildlife or plants were found within the project area.”*

Staff: We confirmed that there are no known sensitive plants areas on the Columbia River Gorge Commission Sensitive Plant Map within 1,000 feet of the Coopey Quarry site. The applicant’s biologist Ben White confirmed this with a field study documented in his “Biological Resources Impact Memo” included as Exhibit A.13. Mr White found there were no sensitive plant species within 1000 feet of the site through checking the Oregon Biodiversity Index Center record and by conducting five site visits (Exhibit A.13). The five site visits were conducted in the spring, starting on March 3, 2017 and ending June 27, 2017. During the sites visits four black swifts were seen flying through the site, while swifts often nest in fissures along rock walls a thorough search of cliff face found no signs of nesting by any species. Black swifts tend to like cliff face fissures in dark and moist places, not sunny open cliff faces. While it may seem an unusual place to nest swifts often nest behind waterfalls. The Audubon Society webpage on black swifts states, “The black swift seems to be limited in range by its very particular choice of nesting sites: it requires shady, sheltered spots on vertical cliffs totally inaccessible to predators, and often nests on the damp rock behind waterfalls.” The cliff face on site while facing north is open and with summer sun, not preferred by swifts. There is no other evidence of sensitive or endangered species found on site or within 1000 feet of the quarry by Mr. White. However, Columbia River is located about 500 feet to the north, and there are sensitive and endangered species in the river. However, it has been stated by Brett Carré, Wildlife and Fisheries Programs Manager, US Forest Service (Exhibit C.4) that this will not create an issue as the project site is self-contained and will continue to be through the project design. In addition, with the railroad and the I-84 between the river and the site there should be no impact to the river habitat. *This standard is satisfied.*

- 8.9. MCC 38.7075(I): The local government shall submit site plans (of proposed uses or development 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 application submittal Exhibits A.1, A.2 and A.3 (Applicant’s Appendices A through I) including “Biological Resources Impact Memo” (Exhibit A.3.c) were sent December 4, 2017 to the US Forest Service, Oregon Department of Fish and Wildlife and the Portland State University, Institute for Natural Resources (formerly known Oregon Natural Heritage Program) for their review. We have responses from USFS Staff.

On January 11, 2018 I received an email from Morai Helfen, Landscape Architect, US Forest Service (Exhibit C.1), outlining completeness issues with the application, including questions about the Biological Resources Impact Memo and the Mitigation Report. The Applicant addressed these issues in subsequent submittals including Exhibits A.13 and A.14.

On November 14, 2018 Staff had a phone conversation with Brett Carré, Wildlife and Fisheries Programs Manager, US Forest Service (Exhibit C.4) in which Staff inquired if the USFS (Columbia River Gorge National Scenic Area) office had concerns about any sensitive or endangered species related to the proposed project. We discussed that while the Columbia River is within 500 feet of the site, the project site is self-contained and will continue to be through the project design; and with the railroad and the I-84 between the river and the site there should be no impact to the river habitat. Mr. Carré sent me an email he had sent to Ms. Helfen in which he made the following statement (Exhibit C.4).

“Although new access and use of Coopey Quarry is within the buffer, access and use is not adversely impacting wildlife or fisheries resources in this already disturbed area. No fisheries or wildlife concerns.”

- 8.10. MCC 38.7075(J): The U.S. Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:**
- (1) Identify/verify the precise location of the wildlife and/or plant area or site.**
 - (2) Determine if a field survey will be required.**
 - (3) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season. Cumulative effects that are adverse shall be prohibited.**
 - (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.**
 - (a) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.**
 - (b) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant, (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.**
 - (c) The local government shall submit all requests to reconfigure sensitive wildlife/plant or water resource buffers to the U.S. Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the local government will make a final decision on whether the reduced buffer zones is justified. If the final decision contradicts the comments submitted by the federal and**

state agencies, the local government shall justify how it reached an opposing conclusion.

Applicant: *"The US Forest wildlife biologists and state biologist may review site plans and field survey documentation to verify its accuracy. No sensitive wildlife or plants were found within the project area."*

Hearings Officer: The applicant addressed cumulative impacts to natural resources in findings in **Exhibit J.1** provided earlier in this decision.

Staff: The applicant addresses consultation with U.S. Forest Service and "other resource specialists, wildlife biologists, and botanists" in Exhibits A.20, A.21, and A.22. There is no known sensitive or endangered wildlife and/or plant area or site located within or directly adjacent Coopey Quarry. The applicant conducted five field surveys for wildlife/plant species, which indicated that no sensitive wildlife/plant species buffers are needed. Given the fact no sensitive or endangered wildlife and/or plant area or site has been found on the property or nearby except for the Columbia River (which has been stated to not be affected see Exhibit A.13). Brett Carré, Wildlife and Fisheries Programs Manager for the US Forest Service provided the following statement "Although new access and use of Coopey Quarry is within the buffer access and use is not adversely impacting wildlife or fisheries resources in this already disturbed area. No fisheries or wildlife concerns." Brett Carré is referring to the sensitive and endangered wildlife 1000 foot buffer of the Columbia River. *We recommend terminating the Natural Resource Review.*

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

Applicant: *"No sensitive wildlife or plants were found within the project area."*

Staff: With findings of no sensitive or endangered wildlife or plants using the site in section 8.10 above and in addition, Brett Carré's statements "Although new access and use of Coopey Quarry is within the buffer, access and use is not adversely impacting wildlife or fisheries resources in this already disturbed area"; "No fisheries or wildlife concerns" assisting Staff with determining the proposed use does not compromise the integrity and function of or result in adverse effects to sensitive wildlife or plants. *We recommend terminating the Natural Resource Review.*

Hearings Officer: The Friends of the Gorge argue that the project site contains a pond, wetlands, an intermittent stream and water resource buffer over most or all of the site. The only mapped wetland on the property is the pond which is located outside of the project boundary. The Friends submitted photographs of water pooling alongside the scenic highway and running off into the former mining pit where it moistens the ground to the point it becomes muddy. ODOT has studied these areas and identified all that constitute jurisdictional wetlands in Exhibit A.3.d. All are located outside of the areas proposed for use as a disposal site but development will occur within their buffer areas.

Friends of the Gorge have also argued that the project is within 200 feet of the east fork of Coopey Creek and that the east fork is a salmon-bearing stream that is habitat for ESA-listed fish. ODOT responded to this claim with the following information that the hearings officer

finds to be credible:

*“The project is within 200 ft of the East Coopey Creek, which is **not** recorded as being salmon bearing and likely is not, due to the culvert (Two 24”x218’ culverts) under I-84 and the Railroad constituting a full fish passage velocity barrier (See **Exhibit J.2**, submitted as part of this response). The nearest recorded Salmonid habitat (other than the Columbia River) is West Coopey Creek which is approximately 1000ft west of the project. After further reviewing available data, this record is likely based on historic use as the culvert under I-84 and the Railroad is also a full velocity and step barrier (24”x156’, perched, see **Exhibit J.3**, submitted as part of this response). So in further review of this project, due to existing fish passage barriers, the nearest Salmon habitat is the Columbia River to the north.*

The only part of the project that extends within 200 feet of the East Fork of Coopey Creek is the temporary access road. ODOT located the access road to minimize impacts to all resources not just the stream buffers. ODOT located the temporary access road through an area of mostly invasive understory plants, avoiding a clump of Oregon white oak within the wetland buffer. ODOT minimized storm water runoff impacts to the stream by 1) locating the access road no closer than 150’ from the stream 2) keeping a low volume of traffic on the road. To mitigate impacts to the riparian buffer, ODOT will remove the road, restore the buffer, remove invasive plants from the buffer on our property and enhance all buffers within the quarry site with native plantings once spoils deposit actions are complete.” Exhibit J.1, pp. 6-7.

*“[T]he Biological Resources Impact Memo (**Exhibit A.13**) includes discussion of Coopey Creek and the Steelhead and Coho Salmon in the West Coopey Creek (over 1,000 feet away from the proposed use). East Coopey Creek (located within 200 feet from the access road) is not recorded to contain any anadromous or sensitive species. Upon further review, both of these creeks have apparent full fish passage barriers as previously discussed in response to comment #8 and likely have not been salmonid habitat since the construction of the Railroad and I-84 (**Exhibits J.2 and J.3**). Mapped extent for these species are likely based on historic use, which is not uncommon for ODFW when a basin lacks survey data.” Exhibit J.1, p. 13.*

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

Hearings Officer: This section of the code authorizes termination of the wildlife/plant protection process because the county has fulfilled its consultation obligation and it has been determined the sensitive wildlife area or site associated with the east fork of Coopey Creek is not active.

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

Hearings Officer: The applicant has met the practicable alternatives test and has prepared a mitigation plan that protects the wetland pond and other identified wetlands.

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

Hearings Officer: The county staff has complied with these agency comment and coordination requirements as documented earlier in this decision. The county has not reached an “opposing condition.”

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

Hearings Officer: The mitigation plan was modified on two occasions in response to staff and agency input to ensure the use will not adversely affect a sensitive wildlife/plant area or site.

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

Hearings Officer: The mitigation plan contains a description of measures that will control soil erosion, including berms. The proposed disposal site use is a new land use but it is also a project that is reclaiming a damaged site harmed by surface mining many years ago. All of the soil in the area of site where fill will be placed has been disturbed – and most of it removed – by historic mining activities and is not productive soil. According to ODOT’s wetlands analysis, the floor of the quarry is basically rock or gravel and has soils no deeper than 4 inches. Filling this area with soil, therefore, is not disturbing a “soil area.”

Soils will be disturbed to create the driveway. ODOT’s plans show this area is less than 15% of the project area. ODOT’s project will disturb the surface by enhancing it. As a result, it will be required to meet the 1 year/80% ground cover requirement as a condition of approval.

- 8.17 MCC 38.7075(Q):** An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into

consideration cost, technology, logistics, and overall project purposes. A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

- (1) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites.
- (2) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites.
- (3) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

Applicant: *“Exhibit A.3.h, and the information in the permit code response addresses each of the points required by MCC 38.7075(Q).*

Sites not owned by ODOT were not considered due to the high cost of acquiring adequately sized property both within the National Scenic Area and the urban areas within and outside of the Gorge. Travel logistics, weather and equipment constraints (as discussed in Exhibit A.3.h) require a site near both I-84 and the Historic Highway.

(1) Exhibit A.3.h includes a matrix of sites ODOT considered for materials storage. All of the sites were either geologically unstable (current or ancient landslides), visible from I-84, in the alignment for the Historic Highway State Trail, too steep, or vegetated. The adverse effects of all the other locations were higher than those in the proposed property.

(2) The volume of debris flow and the scarcity of applicable storage sites requires a large area that can accommodate high volumes of materials. Even without the increased slide effects resulting from the Eagle Creek Fire, ODOT maintenance staff require storage capacity for approximately 300-500 yards a year, and have no other practical alternatives. In the year and a half since the Eagle Creek Fire ODOT has removed approximately 25,000 yards from various slide areas, with much more material anticipated in the five years after the fire as vegetation recovers and steep slopes start to stabilize. Given the magnitude of materials and the uncertain nature of future landslides, and to reduce impacts to other, more ecologically sensitive sites, we determined that the maximum amount of storage would be required to ensure foreseeable future needs are anticipated and planned for.

(3) Active landslide areas are not able to be mitigated, and loading materials on slides exacerbate existing hazards. The sites that conflict with the Historic Highway State Trail alignment could not be mitigated due to the planning and engineering underway to complete the congressionally mandated state trail. All other sites are inadequate or have environmental constraints.”

ODOT has met the practical alternatives test and the County concurs (per the staff report Exhibit I.4).” Exhibit J.1, pp. 10-11.

Hearings Officer: Friends challenged ODOT's analysis claiming it is inadequate because it fails to consider using land not owned by it, the State of Oregon and Multnomah County. Multnomah County's disposal facility is on the far west side of the County and is clearly not a practicable alternative. Friends did not claim there is another adequate site in the area that would be suitable for the proposed use and a practical alternative; just that ODOT erred in failing to analyze other lands. Furthermore, the practical alternatives test allowed ODOT to focus only on lands owned by the State because the analysis includes cost as a consideration in the test. As the State of Oregon owns the Coopey Quarry property and it is not practical for it to consider purchasing or condemning property from a private owner for use as a disposal site. Furthermore, it is highly likely that any alternative site will require extensive excavation at a significant cost; an activity that has already occurred at the Coopey Quarry site due to mining of the site for road and railroad purposes. Given these facts, ODOT did not err in failing to consider privately owned or other public lands in its practicable alternatives analysis.

Friends: *In particular, the applicant failed to consider MCC §38.7075(Q)(2) by reducing the size, scope, configuration, density or design changes to avoid or lessen adverse effects on water resources and their buffers. Again, the project, including the berm, grading and current debris dumps, could be located further away from water resources to avoid impacts to the water resources and the buffers. The applicant and the county staff have failed to consider practicable alternatives. The project, as proposed, must be denied.*

Applicant: *As discussed in the Wetlands and Waters Delineation report (Exhibit A.3.d), and the Biological Resources report (Exhibit A.13), the buffers are of very low quality in this previously-disturbed parcel. This is an opportunity for ODOT to enhance the former quarry and create high-quality buffers for all resources within the property. Answers to comment #16 (comment cited above) include the reasoning behind reducing the size and scope of the activities to lessen adverse impacts given the debris storage needs in the Gorge. Additionally, ODOT has designed the project to completely avoid direct impacts to wetlands and waterways. Contrary to the Friend's assertion, MCC §38.7075(Q)(2) does not refer to buffer impacts, just "...effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites." Exhibit J.1, p. 12.*

Hearings Officer: The hearings officer agrees with ODOT that subsection (Q)(2) applies to the resource protected by the buffer area; not to the buffer area.

Hearings Officer: The staff findings at pp. 4-5 of Exhibit J.13 are adopted by reference in support of approval of ODOT's application.

8.13 MCC 38.7075(R): The Mitigation Plan shall be prepared when:

- (1) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).**
- (2) There is no practicable alternative as determined by MCC 38.7075 (Q).**

Hearings Officer: This section of the code makes it clear that development in a buffer zone is allowed where there is no practicable alternative. ODOT is not required to relocate the buffer zone.

8.14 MCC 38.7075(S): In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).

Hearings Officer: The mitigation plans and wetlands delineation were prepared by ODOT and their qualified, professional staff. Staff members include Ken Sargent, Wetland Specialist; Ben White, Biologist and Mary Young, REC.

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

Hearings Officer: The information provided by ODOT serves this purpose. The applicant has used the mitigation planning process to design a project that remains outside of wetlands and that will protect these areas during the life of the project. As most of the wetlands are above the development site, it is unlikely they will be adversely impacted by the disposal site. ODOT has proposed a berm to protect the pond wetland. ODOT will also restore an already damaged and degraded site by reclaiming it as it fills it with material over the life of the project.

- 8.16. MCC 38.7075(U): The applicant shall submit the mitigation plan to the local government. The local government shall submit a copy of the mitigation plan to the U.S. Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the local government shall justify how it reached an opposing conclusion.**

Hearings Officer: The applicant submitted its mitigation plan to the County. The County submitted it to the USFS and appropriate State agencies as described earlier in this decision. The County has not reached an opposing conclusion from the final conclusions reached by reviewing agencies.

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

Hearings Officer: This code section does not apply because ODOT is protecting rather than creating wetlands.

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

Hearings Officer: The mitigation plan and supplemental materials filed by ODOT provide the information required. They describe the wetland resources on the property. They devised a plan that will protect rather than alter or destroy the wetlands so are not required to provide an ecological assessment of the resource "to be altered or destroyed." The ODOT plan and materials describe the physical characteristics of the subject property. It describes historic uses, the current condition of the property and its future use and associated impacts (none likely with mitigation). The size, scope and configuration of the proposed use in the buffer zones is shown. Techniques to protect wetlands are described and show that the plan will result in no anticipated impacts to protected resources and will enhance buffer areas through mine site reclamation. The plan does not propose a mitigation measure as an alternative to avoidance. All wetlands are being avoided and protected from project uses in the buffer areas.

- 8.19 MCC 38.7075 (X): At a minimum, a project applicant shall provide to the local government a progress report every 3-years that documents milestones, successes, problems, and**

contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

Hearings Officer: A condition of approval has been imposed to assure compliance with this code requirement.

- 8.20 MCC 38.7070 (Y):** A final monitoring report shall be submitted to the local government for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The local government shall submit copies of the monitoring report to the U.S. Forest Service; who shall offer technical assistance to the local government in helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.

Hearings Officer: A final report is not required because ODOT is not proposing to restore, enhance or replacement any wetland or the east fork of Coopey Creek. Rather, it is protecting these resources in their current condition.

- 8.21 MCC 38.7070 (Z):** Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:

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

Hearings Officer: The wetlands and stream buffer areas will be altered during the life of the proposed use.

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

Hearings Officer: The applicant's plan retains all natural vegetation within the buffer zone to the greatest extent practicable by confining most of its use and vegetation removal, other than the driveway, to an existing surface mine pits. The mitigation plan includes weed control and performance standards for new vegetation and will be required to meet the 75% survival standard by this decision.

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

Hearings Officer: The entire site will be rehabilitated to a natural condition upon completion of the project.

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

Hearings Officer: A substitution of a sensitive resource is not proposed. This code section does not apply to the ODOT application.

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

Hearings Officer: Sensitive plants will not be destroyed. This code section does not apply to the ODOT application.

(6) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(a) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

Hearings Officer: The applicant has minimized the length of the road proposed to the extent possible given topography. The steep wall created by surface mining prevents direct access to the site from the adjoining highway in the area where work is proposed. The road enters the property where slope allows and runs directly to the project area.

(b) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as determined by MCC .38.7075 (Q).

(c) Fish passage shall be protected from obstruction.

(d) Restoration of fish passage should occur wherever possible.

Hearings Officer: There are no stream channels on the subject property and none will be altered by the proposed project. This criterion does not apply.

(e) Show location and nature of temporary and permanent control measures that shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

Hearings Officer: Riparian areas will not be disturbed. A common understanding of the term "riparian" as relating to the banks of a river also indicates that this code provision does not apply to the Coopey Quarry property.

(f) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.

Hearings Officer: ODOT is proposing fill with natural materials such as landslide material and is not likely to degrade water quality. There are not natural streams or shorelines on the property. Site reclamation should, actually, result in restoring a site where natural conditions have been destroyed to a condition much more similar to its natural condition before surface mining.

(g) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

Hearings Officer: The applicant has shown that it does not have a practicable alternative to locating its uses in a pond and stream buffer zone.

(h) Streambank and shoreline stability shall be maintained or restored with natural revegetation.

Hearings Officer: There are no natural stream banks on the property.

(i) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed. Restoration: 2: 1 Creation: 3: 1 Enhancement: 4: 1

Hearings Officer: The mitigation plan does not propose restored, enhanced or replacement wetlands. Wetlands are being protected.

(7) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. ***

Hearings Officer: The mitigation plan does not propose to create wetlands. This code criterion is not applicable.

9. SMA RECREATION RESOURCE 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.**
- (2) Protect recreation resources from adverse effects by evaluating new developments and land uses as proposed in the site plan. An analysis of both on and off site cumulative effects such as site accessibility and the adverse effects on the Historic Columbia River Highway shall be required.**

Staff: The proposed project will not have a recreational component and will not displace existing recreational use. There is no designated public recreation nearby. The proposed project has no adverse effects including cumulative effects on and off site on recreation accessibility and no

adverse effects on the Historic Columbia River Highway. The proposed debris disposal site actually allows ODOT to improve access to recreation by allowing for the efficient removal of debris from within the roadway after landslide events which will have a positive effect for the HCRH and visitors and residents who rely upon the roadway to access to recreational uses in the NSA. There are no adverse cumulative effects on recreational resources. *We recommend Recreation Resource review be closed.*

10. ODOT'S RESPONSE TO JURGEN HESS RECOMMENDATIONS

"Coopey Quarry Scenery Analysis, Findings and Recommendations" filed December 28, 2018

Jurgen Hess submitted an evaluation of the site with specific recommendations for Coopey Quarry, Exhibit I.7. The recommendations raise issues regarding the visual subordination and fully screened requirements of the county code. ODOT summarized the report's claims and provided a response to each. This report is addressed separately here because it addresses and demonstrated compliance with a number of relevant approval criteria addressed above. ODOT's statement of what it plans or agrees to do is set out here so that it will be enforceable under Condition of Approval 2 as a part of the final ODOT plan.

Friends: *In the attached report and recommendations, Jurgen Hess, consulting landscape architect and environmental planner, analyzes the project for compliance with these standards. He concludes that, currently, the project is mostly in compliance with these requirements, with the exception of the newly constructed berm along the Historic Columbia River Highway, which needs to be recontoured and reshaped with additional material, and planted with additional vegetation, in order to have a natural shape and appearance blending into the landscape.*

Applicant: ODOT agrees with this assessment. The berm along the Historic Highway will be recontoured and reshaped to have a natural shape and appearance with input from our Landscape Architect and Jurgen Hess.

Friends: *As for future compliance, Mr. Hess concludes that, depending on how much fill would be added to the project site over the next five years, the project might not meet the applicable standards during that time period. Furthermore, he concludes that the proposed intermediate and final slopes of the project would not meet either applicable standard (fully screened or visually subordinate). Finally, Mr. Hess concludes that the proposal to install a linear row of trees along Interstate 84, a key viewing area, would violate the visual subordination standard by introducing an unnatural, discordant feature into the landscape.*

Applicant: The visualizations provided by ODOT as part of this response (Exhibit J.6 for I-84 and Exhibit J.7 for the Historic Highway) show that between the berms and plantings, ODOT will meet the applicable standard per code. After receiving Jurgen's recommendations, ODOT has agreed to not plant the Douglas Fir trees along I-84, and will instead plant trees on the north side of the berm on the north portion of the property. This is consistent with Jurgen's proposal to continue to screen the berms and any activity that starts to rise over the berms.

Friends: *Mr. Hess's report concludes with six recommendations that would help the project comply with the scenic resource protection requirements, now and into the future. Friends of the Columbia Gorge encourages the applicant to evaluate these recommendations and incorporate them into the proposed project description and mitigation measures. If the applicant is unwilling or unable to redesign the project to demonstrate compliance with the scenic resource protection criteria, then the application should be denied on that basis. Mr. Hess's report concludes with six recommendations that*

would help the project comply with the scenic resource protection requirements, now and into the future. Friends of the Columbia Gorge encourages the applicant to evaluate these recommendations and incorporate them into the proposed project description and mitigation measures. If the applicant is unwilling or unable to redesign the project to demonstrate compliance with the scenic resource protection criteria, then the application should be denied on that basis.

Applicant: Evaluation of Mr. Hess's report including his recommendations is included below. ODOT will consider and implement recommendations to the extent practicable as noted below, Mr. Hess's visual analysis is fairly consistent with ODOT's Reclamation Plan (Exhibit A.19). A variety of native understory, trees and seeding is proposed using typical restoration sizes and methods (See sheets 1-5) and will be installed on berms through phased construction.

Friends: ODOT has constructed a 15' -20' tall berm made of soil and rock material on the north and east edge of the quarry; see Photos 1, 2, 3, 4. The berm is visible from I-84 Viewpoints 2,3,4,5. This berm does screen current activity within the quarry from I-84 viewers. As the recently placed waste material on the quarry floor is only about 5' high, the 15' -20' tall berm blocks the view of that material and quarry truck activity from I-84. Photo 7 shows the berm as viewed from the HCRH standing on the through-cut. A cross-section of the existing site is shown in Exhibit H2. Elevations and distances in this cross-section are taken from Google Earth Pro. ODOT cross-section exhibits do not show this 15' berm so it is not clear if the berm will be retained in the final design.

Applicant: The 15' berm is not evident on the finished cross-sections because it is included in the proposed Restoration concept in Exhibit A.14. The berms are interim screening features that will be incorporated into the full fill and will be incorporated and rehabilitated according to the plan. The 15' tall berms screen views from the "casual observer" and will be constructed as fill heights dictated to screen activity. Construction activity is intermittent and triggered by the need to remove landslide or road debris from ODOT transportation facilities within the CRGNSA and should not attract the attention of the casual observer. Therefore this activity is intermittent and not continuous. There are also no permanent structures or equipment stored on-site. The final grading phase will not retain a 15' tall berm, likely final fill phase material will be stored then and placed over a short construction period for final grading (see plan sheets).

Friends: There is an approximate 60' wide buffer of natural coniferous and deciduous trees and shrubs on the property's north edge. Likely some of this vegetation is on railroad property and therefore cannot be required to remain for screening. However, any portion of the buffer that is on ODOT land should be preserved and protected for screening. Unfortunately some of this buffer vegetation has been destroyed by the 15' berm recently constructed, see explanation below; see Photo 5.

Applicant: The Reclamation Plan (Exhibit A.14) will replace low quality buffers within the quarry characterized by poor soils (0-4 inches) over rock or compacted gravel including those around the pond. These poor soils support scattered stunted trees and shrubs (often nonnative Himalayan blackberry) and large area of non-native weeds and grass with a few native camas clumps. The lack of soil will prevent this buffer from establishing a natural forested appearance for a long time. With mitigation, we will create deeper soils and plant these soils with a native Oak woodland dominate forest community when the project is complete. The Mitigation Plan also includes vernal pools in the buffer planted with camas. These new buffers will provide a higher quality buffer by improving water quality and providing superior wildlife habitat when compared to existing low quality buffers.

Friends: It is not clear what ODOT plans for the final disposition of the 15' tall berm on the north edge of the quarry as it is not shown in their cross-sections. Will it remain or be reshaped to blend with the final landscape as shown in their cross-sections on ODOT Exhibit A.19?

Applicant: As noted above in response to comment #28, the berms are interim screening features that will be incorporated into the full fill and rehabilitated according to the plan. See sheet 1 of the Reclamation Plan for proposed grading.

Friends: *A 1,200-foot-long line of 180 coniferous trees is proposed at the north edge of the I-84 ROW (ODOT Exhibit A.18). Presumably the intent of these trees is to screen the quarry. A row of green flags next to the highway ROW fence shows the location of those proposed trees. The flags are staggered 1'-3' apart, but in a long, straight row; the flags are visible in Photos 2 & 3. The trees are planned to be Douglas fir with a height of 18-24" at planting; they will be located at the bottom of a 20 % slope. The proposed trees are proposed to be planted 13' below the grade of I-84 see Section in Exhibit H3. To screen the quarry these trees will need to reach a height of about 28' tall, considering they will be planted 13' below the highway grade. Once established, the trees could be expected to grow 2' to 3' per year. Depending on actual tree growth rate, it is predicted that it would take about 10 years for those trees to afford a degree of screening for the project area. More importantly, the proposed line of trees also presents a different issue that is addressed under Visual Subordinance (below).*

Applicant: ODOT had not originally considered planting these trees, but did so at the behest of Multnomah County (See Exhibits A.16, A.17, and A.18). Per this recommendation, ODOT will be modifying the Reclamation Plan to move the trees planned for installation along I-84 to the berm on the northwest side of the property. These trees, along with the already-planned berm and plantings will adequately meet the visual requirements of the site. (See additional visualizations from I-84 and the Historic Highway in Exhibits J.6, J.7, and J.8 submitted as part of these comments)

Friends: *Due to the configuration of the HCRH though-cut and the newly placed berm at the east project area and existing adjacent dense vegetation at the west project area the project will be fully screened from vehicle travelers. Proposed vegetation screening as shown on ODOT Exhibit A.19 is not needed along the HCRH. However to meet Visual Subordinance Requirements (below), some native planting should be done to blend the berm into the landscape. Also, the new berm is an unnatural shape and should be reshaped with additional material to have a natural shape blending into the landscape.*

Applicant: ODOT agrees with Mr. Hess's conclusion that native planting should be done on the berm along the Historic Highway, and that the berm is adequate to screen quarry activities. The presence of power lines above this berm conflict with ODOT's ability to plant trees, which seems to be in line with what Mr. Hess is indicating in his testimony here "Proposed vegetation screening as shown on ODOT Exhibit A.19 Is not needed along the HCRH". ODOT has plans to add native seeding and modify the new berm with reshaping to blend better into the landscape.

Friends: *It is recommended to add more planting of native shrubs and trees on the interim and final slopes of the new land fill. Also the 15' berm should be reshaped and planted; see Recommendations below.*

Applicant: Phased berm planting is part of the Restoration Plan and will be implemented for each berm and fill sequence until final grades are met.

Friends: *The proposed row of 180 trees next to I-84 is shown in Exhibit H4. This row of trees will appear as a straight line of trees that will have a high contrast with the landscape. Over time the tree row will look like a hedge. The row of trees will not meet visual subordinance; rather the row of trees will be a strong discordant visual element. Accordingly, the row of trees should be deleted from the proposal.*

ODOT modified this proposal and moved the proposed Douglas Fir plantings from along I-84 to the north side of the northwest berm between the two rock landforms at the north/northwest part of the property. See Exhibit J.8.

Friends: *Native plantings should be done on the HCRH berm to blend it into the landscape. Also, this new berm is an unnatural shape and should be reshaped with additional material to have a natural shape blending into the landscape.*

Applicant: Agreed. Native seeding will be applied this spring (2019).

Friends: *Fully Screened requirement: The project as proposed is predicted to be fully screened from the HCRH. However, the berm along the HCRH needs to be reshaped to be a natural shape.*

Applicant: ODOT will reshape the berm on the HCRH into a more “natural” shape. ODOT staff would be able to meet with Mr. Hess in the field to ensure that the natural shape is in line with what Mr. Hess is suggesting.

Friends: *In regards to I-84, I predict the project will initially be fully screened from I-84, as the 15' berm will block the view. However, as the quarry is filled and built up to the final proposed contours, it would not be screened from I-84. MCC 38.7350(C)(2) requires the project to be fully screened within one year, and to remain fully screened thereafter. That requirement will not be met in the future without additional mitigation measures (outlined below).*

Applicant: Final grading may be approached several ways:

- (1) Final berm is constructed and then deconstructed as part of final fill and fine grading.
- (2) Final fill is stored and graded as part of final construction phase, which would be a short construction window of several weeks. Construction activities are not required to be visually subordinate as they are temporary impacts.

ODOT agrees with Mr. Hess’s recommendation to plant trees on the berm on the north, which is adequate to screen activities within the quarry.

Friends: *Recommendation 1: Reshape the berms along the HCRH to have a natural appearance. With a more natural shape and native shrub planting, this berm would meet visual subordination. This will require adding material on the south side of the berm.*

Applicant: As discussed above in response to comment #36, ODOT will reshape the berm on the HCRH into a more “natural” shape and native shrub planting.

Friends: *Recommendation 2: Delete the row of trees proposed along I-84. The proposed linear row of trees is a terrible idea that would introduce a discordant, non-natural element into the landscape, thus violating the visual subordination requirements.*

Applicant: ODOT agrees with Mr. Hess’s recommendation and will modify this proposal and move the proposed Douglas Fir plantings from along I-84 to the northwest side berm in the north/northwest part of the property. See Exhibit J.8.

Friends: *Recommendation 3: Protect the existing vegetation on the north-facing slopes of the 15' tall berms. This vegetation affords some screening of the project from I-84.*

Applicant: ODOT has preserved existing vegetation where practical (See aerial photo series in Exhibit J.4 Before and After Photos and Progressive Aerial shots). Where vegetation was removed, most were invasive species (see responses to comments #11 and 29 about English Ivy and Himalayan Blackberry), and ODOT's Reclamation Plan includes native plantings on those berms to recover any native vegetation removed as part of this action.

Friends: *Recommendation 4: To create a slope for trees to grow, reshape the 15' berms to have a flatter slope, especially the berm section west from the large rock pillar. Plant two hundred 3' tall Douglas fir trees and two hundred 6' tall/1.5 caliper bigleaf maple trees on the berm's north aspect slopes. The trees must be planted in natural groupings on the berm's surface, with watering basins for each tree. The berm, even when reshaped, will have very dry soils as rainwater will run off and drain very quickly downward through the berm. Use "Gator bags" or a similar product to water each tree weekly during the dry season. Fill the "Gator bags" with water brought in by a tank truck. Cover the reshaped berms with 4" of the same mulch material that the new berms along the HCRH are made of.*

Applicant: ODOT has proposed plant species on the berms per the Reclamation Plan. The plan proposes 3 restoration types: Riparian upland, mixed woodland oak dominate, and vernal pools. Both riparian upland and mixed woodland will have about 380 trees and 1550 shrubs per acre, including native herbaceous seeding. The two vernal pools have a willow, salmonberry, red- dogwood mix with herbaceous seed mix. The trees and shrubs per acre is at the higher range for restoration. Restoration plant sizes and planting/seeding techniques are proposed for this project. The proposed plan was developed by a team of restoration professionals (Exhibit J.5). ODOT has modified the mitigation plan to add Douglas Fir trees on the north side of the northwest berm on the property, per Mr. Hess's recommendation.

Friends: *Recommendation 5: For the first 5.5 years after project approval (0.5 years for implementing the berm and landscaping recommendations and 5 years to allow for the newly planted trees to reach the predicted heights), any fill/waste placed on the quarry floor should not exceed 8' in height from the pre-project grade.*

Applicant: A new berm would be built as needed in conjunction with the trees to be planted this year to screen the next phase of construction and is not dependent on plant screening on the previous berm below.

Friends: *Recommendation 6: As the project is being implemented, plant more native shrubs and trees on the intermediate and final slopes of the proposed contours of the project area. This would help lower the contrast of the new fill slopes.*

Applicant: ODOT is pleased that Mr. Hess's recommendations are consistent with the existing Reclamation Plan that includes planting native shrubs and trees on the intermediate and final slopes.

Applicant: There are inaccuracies in Mr. Hess's visual assessment. On Page 5, the photo labeled "Aerial Photo by Tom Kloster" inaccurately labels a berm on the bottom right of the page. That is an existing landform that was not modified by ODOT. See Aerial Photo from Google Earth from July 2017 in Exhibit J.4.

Photo 6 on page 9 indicates the same berm, as looking northwest from the access road, but again, that is an existing landform. The dark color that Mr. Hess indicates is from fire damage caused by the Eagle Creek Fire, not earth disturbance. ODOT did not modify the landforms or create berms in this location, west of the new access road. See sequence of Aerial Photos starting with the Google Earth Aerial in Exhibit J.4.

“Coopey Quarry Scenery Analysis, Findings and Recommendations Supplemental Report” dated January 24, 2019

Jurgen Hess submitted a supplemental report, Exhibit J.10. ODOT summarized the report's claims and provided a response to each. ODOT's statement of what it plans or agrees to do is set out here so that it will be enforceable under Condition of Approval 2 as a part of the final ODOT plan.

Friends: *Page 2 – Both the west and east berm are built and constructed of ground-up trees/branches. If the fence is on the property line between the HCRH right-of-way (ROW) and the subject parcel, the berms are on the HCRH ROW.*

Applicant: The berms are built with rocks and dirt from ditches along the Historic Highway between Multnomah Falls and Horsetail Falls, with a 2 inch layer of compost per the Reclamation Plan. Additionally, as part of our submittal on February 1, ODOT is planning to pull the berm away from the Historic Highway and create a more "natural" landform, reducing the amount of berms on HCRH ROW – see ODOT's Exhibit J.7 visualizations of reshaped and seeded berms.

Friends: *Page 3 – The berms don't need any trees planted on them to screen the view of the project, but they should be planted with shrubs and small understory trees, such as Vine Maple, to blend into the landscape. The conditions of approval should be modified to remove the requirement to plant trees, and to require native shrubs or small understory trees instead.*

Applicant: Per the Reclamation Plan, the berms will be seeded with grasses and flowers to mimic the existing landform. Per our professional Landscape Architect, Magnus Bernhardt (qualifications included in the February 1 submittal), understory plantings are not appropriate in this location simply because there is no "overstory" to shade and protect these types of plants which require, by their very nature larger shading species which do not exist, and cannot exist due to the overhead power lines.

ODOT will continue with the Reclamation Plan as the proposed plants are consistent with both the existing landform and appropriate for the location and site conditions. Planting understory trees would not be advisable as the conditions do not allow for the shade requirements of such plants and they would likely perish. Mr. Hess's Photo 9 in Exhibit 1.7, shows the existing landform with the new berm tied in along the Historic Highway, which has no "understory" type vegetation, just grasses. Exhibits B.6 and B.7 show the Historic Highway prior to adding berms for an idea of the existing vegetation prior to ODOT actions.

Friends: *Page 4 The material that the berms are made of presents an issue for new plantings. The berms are constructed of ground-up trees and branches with no to very little soil in this material. –*

Applicant: As noted above to a similar comment on page 2, there is soil underneath the mulching on the berms. Magnus Bernhardt, ODOT landscape architect, will ensure that the reshaping and composition will support the proposed plantings.

Friends: *Page 4 – When will the project be complete -10, 20, 30 or more years? Will the final completed slopes be indicated in the ODOT cross-sections? Will the final slopes be vegetated within one year to have a natural appearance?*

Applicant: ODOT's estimate is that it may take 30 or so years to complete the restoration of the site, and ODOT plans to restore the subject parcel consistent with the cross-sections, as shown in the Reclamation Plan. Seeding has already begun on the screening berms that will then be incorporated into the final cross section, so we are planning on having appropriate vegetation within one year on each of the berms.

Friends: *Page 5 – Such plantings would be too small to afford any screening of the project.*

Applicant: The proposed Reclamation Plan utilizes restoration best practices in both plant quantity per acre and plant material size. These plant materials and sizes have proven more successful than planting larger plant material. The tree and shrub sizes called out on the plans are actually on the larger end for restoration projects. The USFS uses smaller plant sizes than those proposed for Coopey Quarry for their work within the CRGNSA, as they have found that these sizes lead to less mortality and greater revegetation success. Also note, some of the proposed trees and shrubs will grow faster than others leading to a variety of plant sizes as they grow.

Studies have proven that larger transplanted trees are slowed for several years, whereas smaller trees establish quicker and grow more vigorously than the larger tree.

Friends: *Page 6 - ...projects in the River Bottom/ands landscape setting must "retain the overall visual character of a flood plain and associated islands." A small portion in the northeast corner of the subject parcel (approximately 0.86 acres, according to county staff, and including all or most of the pond) is designated SMA River Bottom/ands Landscape Setting.*

Applicant: ODOT actions within the River Bottomlands Landscape setting, as indicated in the attached aerial with the landscape setting overlaid is under 450 square yards per Google Earth measurements; the rest of the River Bottomlands, as indicated by Mr. Hess's text above is largely the pond. The current landform and ODOT actions are a small portion of the northeastern berm that occur in this landscape setting, however, once the Reclamation Plan is complete in this area (this section is planned to be restored and reclaimed first per the phasing plan), the berm itself becomes part of the landform, creating a transition from the pond up to the Coniferous Woodland setting. This berm, and the future landform to be created per the plan is necessary to maintain a consistent transition between two adjacent landscape settings, and once restored with riparian plants per the Reclamation Plan will be consistent with the required visual character of River Bottomlands.

Friends: *Page 6 – Much of that [River Bottomlands] character has been lost due to that development.*

Applicant: We agree. The Reclamation Plan will do a lot to restore that which has been previously disturbed, including restoring the visual character of River Bottomlands.

Friends: *Page 7 - Cumulative Effects*

Applicant: Our submittal on February 1, 2019 includes cumulative effects analyses for both visual and natural resources. We included past actions that had visual and natural effects, the current actions, which are included as direct effects and mitigated for in the Reclamation Plan, and reasonably foreseeable future actions, and found that both the visual and natural environment

will ultimately benefit from ODOT actions in this parcel as the agency works to restore a former quarry which would otherwise not be enhanced.

Friends: Page 7 - *Addressing the three phases (1-5)*

Applicant:

1. ODOT's aerial photos show that mature trees were avoided to the greatest extent practicable, and the Reclamation Plan will plant trees to mitigate any other trees that were removed as part of this action. See above for the reasoning behind the size of the proposed planting, and ODOT agrees that supplemental watering will be necessary to ensure planted trees continue to grow. The River Bottomland effects are addressed above.
2. ODOT has removed the row of trees as a screening concept, and recommends that Exhibit A.18 be removed from the permit application.
3. The berms work to shield the layers of spoils being built up, and will be vegetated this year, and all spoils will be deposited behind the slope of the berm visible to 1-84, and ODOT actions won't alter the north side of the berm specifically to reduce future visual impacts for drivers along 1-84.
4. See response above on why smaller vegetation/plantings are proposed. In ODOT's experience in the CRGNSA, smaller trees/shrubs are more appropriate as they are more likely to survive the planting process and thrive over time.
5. ODOT's submittal on February 1, 2019 includes a cumulative visual impacts analysis.

Friends: Page 8 - *Recommendations*

Applicant:

1. We agree. ODOT will plant trees with the ability to water and ensure growth on the 15' berms per our February 1, 2019 submittal.
2. We agree. ODOT recommends removing Exhibit A.18 from the permit application (the row of trees along I-84)
3. We agree. ODOT will, in conjunction with landscape architects (ODOT has also invited Mr. Hess), will reshape the HCRH berms for a more natural appearance with shrubs, but declines, for reasons cited above to plant small understory trees. The planting plan was specifically formulated to blend into the existing landscape.
4. The Reclamation Plan includes the current berms into a transition from River Bottomlands to Coniferous Woodland. ODOT's planting plan includes many appropriate riparian plant species to restore the area. Once the Reclamation Plan is complete in this area, the landform will be consistent with the visual character of River Bottomlands.
5. This recommendation is consistent with the Reclamation Plan. The north side of the berms, facing I-84 have already been seeded, and our plan to deposit material does not interfere as all materials will be placed behind these berms. The plants, trees, and vegetated berms will continue to visually screen activities within the Quarry.
6. ODOT is willing to continue to establish monitoring reviews, and can provide access into the quarry to County Staff (and any other interested parties, if requested) to ensure that actions are consistent with the Plan. ODOT has already accommodated multiple staff and interested party tours into the Quarry Site both before and after initiating actions on the property.
7. MCC does not require an end date, but ODOT is willing to revisit the plan in 30 years (in conjunction with monitoring reviews at a cadence requested by the County) to evaluate the progress towards the full reclamation of the quarry site, though requiring an end date when there is uncertainty around the rate ODOT will be able to fill the quarry and rehabilitate the

site to pre-extraction conditions would not, in our opinion be a benefit for the site. ODOT created the Reclamation and Mitigation Plans with the goal of full rehabilitation of the extraction actions taken between the 1930s and 1970s, and would like the opportunity to realize that vision.

Friends: Page 8-*Supplemental Recommendations*

Applicant: There are two "recommendation 7s" on page 8 in Mr. Hess's report, ODOT is responding how they are labeled to try and reduce confusion.

7. The condition of approval to remove the berms on the Historic Highway is a County matter, and ODOT will comply with whatever condition staff see fit.
8. Please see sheet 4 of 5 in Exhibit A.19 for the Riparian upland Mix 'A'. The plant types in the list are a good representation of plants that may live within the riparian designation and have also proven to be "work-horse" species leading to greater plant establishment. The mix is a blend of successional species found in pioneer, seral and climax plant communities in riparian upland landscapes. As discussed above, the small portion of the berm that is currently in the River Bottomlands setting is needed to provide a smooth visual transition between the two adjacent landscape settings. ODOT does not agree that moving the berm back would reduce visual impacts.
9. ODOT is willing to work with staff to establish a schedule to revisit the project, including periodic monitoring reviews by County Staff, though as discussed above regarding the timing, the uncertainty makes it difficult to have a definitive end date, nor is it required by MCC.

Hearings Officer: Conditions 4 and 5 have been modified to reflect the revisions made to ODOT's plans to respond to issues raised by Friends. Based on materials and arguments provided by the parties, I find that the planting of trees along I-84 is not desirable and that the alternative screening plan described by Friends and ODOT and shown on Exhibits A.19, J.6, J.7 and J. 8 exhibits is both acceptable and preferable.

11. HEARINGS OFFICER'S DECISION

Based on the findings and other information provided above, the hearings officer finds the applicant has carried the burden necessary for the approval of a National Scenic Area Conditional Use and Site Review to approve using the Coopey Quarry as a long term disposal site for spoil materials from public road maintenance activities, including the restoration/reclamation of the quarry to a forested landscape habitat mitigating for the work in buffer areas resulting in a restored vegetative riparian areas and creation of two wetland areas on a property in the Gorge Special Forest – 40 (GSF-40) Zone. The Hearings Officer has approved the application request subject to the conditions of approval recommended by County staff.

11. EXHIBITS

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Comments Received
- 'D' Procedural Exhibits

All other exhibits are available for review in case file at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
-----------	------------	------------------------	--------------------------

A.1	1	Application form	12/6/17
A.2	42	Narrative Table Addressing Code (“code compliance table”)	12/6/17
A.3.a	7	Applicant’s Appendix A: Locational Map and Site Plans	12/6/17
A.3.b	5	Applicant’s Appendix B: Reclamation Plan <ul style="list-style-type: none"> • fill proposed contours • fill cross sections • landscape plan for revegetation, and • plant and materials [2 pages] 	12/6/17
A.3.c	7	Applicant’s Appendix C: Biological Resources Impact Memo Coopey Quarry Disposal Site Memo by Ben White ODOT Region 1 Biologist	12/6/17
A.3.d	50	Applicant’s Appendix D: Coopey Quarry ODOT M17016 Wetland and Waters Delineation Report [5 pages] <ul style="list-style-type: none"> • Wetland and Waters Delineation Report Appendix A: Figures (maps and aerial photos) [6 pages] • Wetland and Waters Delineation Report Appendix B: Photos [4 pages] • Wetland and Waters Delineation Report Appendix C: Datasheets [35 pages] 	12/6/17
A.3.e	15	Applicant’s Appendix E: Coopey Quarry ODOT M17016 Mitigation Report [9 pages] <ul style="list-style-type: none"> • Mitigation Report Appendix A: Coopey Quarry Reclamation Plan [6 pages] 	12/6/17
A.3.f		Applicant’s Appendix F: Key Viewing Analysis including an I-84 “Cone of Vision” analysis	12/6/17
A.3.g	29	Applicant’s Appendix G: Maintenance Memo – No Effect, Coopey Quarry Disposal Site by Roy Watters, ODOT Archaeologist	12/6/17
A.3.h	4	Applicant’s Appendix H. Coopey Disposal Site, Feasibility and Suit Analysis, ODOT	12/6/17
A.3.i	10	Applicant’s Appendix I: Photos of the Site	12/6/17
A.4	1	Additional Submittal letter addressing code and detailing additional submittal documents	4/18/18
A.5	6	Emails addressing SHPO concurrence	4/18/18
A.6	43	Revised Narrative Table Addressing Code (“code compliance table”)	4/18/18
A.7	17	Replaces Applicant’s Appendix E (Exhibit A.3.e) Coopey Quarry ODOT M17016 Mitigation Report E revised dated March 2018	4/18/18
A.8	8	Photos of the site	4/18/18
A.9	1	ODOT map of “functional buffers” on aerial photo	4/18/18
A.10	7	Revised Narrative Partial Table Addressing Code (appears to be a working document with assignments)	4/18/18
A.11	3	Additional Submittal letter addressing code and detailing additional submittal documents	4/18/18

A.12	44	Revised Narrative Table Addressing Code (“code compliance table”)	6/4/18
A.13	8	Replacing Applicant’s Appendix C, (Exhibit A.3.c) Biological Resources Impact Memo Coopey Quarry Disposal Site Memo by Ben White ODOT Region 1 Biologist revised February 21, 2018.	6/4/18
A.14	16	Replaces Applicant’s Appendix E (Exhibits A.3.e & A.7) Coopey Quarry ODOT M17016 Mitigation Report revised dated May 24, 2018	6/4/18
A.15	5	Revised Reclamation Plan maps and vegetation planting listed for a mixed coniferous woodland	6/4/18
A.16	1	Applicant additional submittal coversheet	10/15/18
A.17	1	Table titled Coopey Quarry I-84 Vegetative Buffer Screening applicant labeled Exhibit 1B detailing vegetative planting in areas shown on attached aerial photo map titled Coopey I-84 Vegetative Buffer Screening (Exhibit A.18).	10/15/18
A.18	1	Aerial photo map titled Coopey I-84 Vegetative Buffer Screening showing vegetative planting areas described in Exhibit A.17 and 3 to 4 foot high berms along the Historic Columbia River Highway.	10/15/18
A.19	5	Revised Reclamation Plan site plan, cross-sections and landscape site plan with planting list	10/15/18
A.20	1	Email dated Nov 16, 2018 from Terra M Lingley, Columbia River Gorge National Scenic Area Coordinator, ODOT providing addition information on ODOT consultation with other agencies.	11/16/18
A.21		Applicant’s Appendix J: Natural Resource Consultation, narrative addressing consultation with other agencies.	11/16/18
A.22		Revised Narrative Table Addressing Code (“code compliance table”) “...updated code compliance table with the following small modification: on page 22 of the updated code matrix...”	11/16/18
‘B’	#	Staff Exhibits	Date
B.1	2	County Assessment Property Information	NA
B.2	1	County Assessment Map	NA
B.3	1	Coopey Quarry Site 2016 Aerial Photo	NA
B.4		Email dialog between Mary Young Environmental Coordinator, ODOT and Michael Cerbone, Planning Director, Multnomah County regarding an emergency response notification	
		(a) Notification of an emergency response as result of Eagle Creek Fire.	9/7/17
		(b) Cerbone response detail code standards for an emergency response notification.	9/7/17
		(c) Young response to the code standards.	9/12/17
		(d) Cerbone response detailing notice sent to agencies and Tribes and providing information of natural resources and next steps and dialog.	9/13/17

		(e) Young request for additional 30 day extension	11/9/17
B.5	1	Email from Michael Cerbone, Planning Director, Multnomah County notifying agencies and Tribe of the Emergency Response	11/13/17
B.6	1	Photos taken along Historic Columbia River Highway (HCRH) by Katie Skakel, Multnomah County Land Use Planning, Senior Planner on September 18, 2018 of area adjacent to HCRH KVA.	11/8/18
B.7	1	Photos taken along HCRH by Katie Skakel, Multnomah County Land Use Planning, Senior Planner on September 18, 2018 of area adjacent to HCRH KVA.	11/8/18
B.8	4	Photos taken along I-84 by Katie Skakel, Multnomah County Land Use Planning, Senior Planner on September 18, 2018 of quarry area south of the highway showing areas visible from I-84 KVA.	11/8/18
B.9	7	Photos taken along I-84 by Katie Skakel, Multnomah County Land Use Planning, Senior Planner on September 18, 2018 of quarry area south of the highway showing effectiveness of short vegetation screening quarry site along I-84 KVA.	11/8/18
B.10	1	Topographic Aerial Photo of the quarry and nearby area	NA
'C'	#	Comments Received	Date
C.1	7	Email dated January 11, 2018 from Morai Helfen, Landscape Architect, US Forest Service with comments addressing completeness issues for the application.	1/11/18
C.2	1	Letter dated January 12, 2018 to Roy Waters, ODOT, from Matt Diederich, MAIS, SHPO Archaeologist addressing cultural resources with "no effect" finding for archaeological resources	1/12/18
C.3	2	Letter dated January 19, 2018 from Chris Donnermeyer, Heritage Program Manager, USFS addressing cultural resources concurring with "No Historic Properties Adversely Affected" finding of Robert Hadlow, ODOT Archeologist.	1/19/18
C.4	3	Email dated Nov. 13, 2018 from Brett Carré, Wildlife and Fisheries Programs Manager, US Forest Service addressing wildlife and plants.	11/13/18
'D'	#	Administration & Procedures Comments Received	Date
D.1	2	Incomplete Letter	11/4/18
D.2	4	Second Incomplete Letter	5/9/18
D.3	2	Complete Letter (Day 1)	6/18/18
D.4	6	Notice of Public Hearing	11/20/18
D.5	1	Request to toll Clock via e-mail dated August 7, 2018 from Terra Lingly, ODOT	8/7/18
D.6	39	Staff Report	12/6/18
'H'	#	Hearing Exhibits	Date

H.1	7	Letter from Friends of the Columbia Gorge	12/14/18
H.2	1	Hearing sign-in sheet	12/14/18
'I'	#	Post Hearing Comment Submittals Received Prior to 4:00 pm 12/28/19	Date
I.1	4	ODOT Submittal: Photos of the driveway access to HCRH and gate	12/19/18
I.2	2	County Land Use Planning Submittal: Columbia River Gorge National Scenic Area, Bridal Veil Quad Landscape Settings Map	12/28/18
I.3	1	LUP Submittal: Memo to Hearings Officer highlighting changes to the Revised Staff Report dated 12-28-18	12/28/18
I.4	42	LUP Submittal: Revised Staff Report dated 12-28-18 (Exhibits 'I' listed revised 12/31/18)	12/28/18
I.5	1	Friends of the Columbia Gorge email dated 12-28-18 with four attachments listed below	12/28/18
I.6	9	Friends of the Columbia Gorge Submittal: Letter to Hearings Officer with Supplemental Comments dated December 28, 2018	12/28/18
I.7	13	Friends of the Columbia Gorge Submittal: Scenery Analysis, Findings and Recommendations Report by Jurgen A. Hess dated December 27, 2018	12/28/18
I.8	1	Friends of the Columbia Gorge Submittal: Letter to Art Carroll, Scenic Area Manager, US Forrest Service from Bob Thompson, Chair Columbia River Gorge Commission dated July 30, 1993	12/28/18
I.9	19	Friends of the Columbia Gorge Submittal: Columbia River Gorge Commission letter to Planning Directors with attachments addressing revisions to Management Plan dated July 20, 2017	12/28/18
'J'	#	Rebuttal of Comments Previously Received During Post Hearing Comment Period	Date
J.1	27	Emails from ODOT Terra Lingley submitting responses w/memo to Hearings Officer	2/1/19
J.2	1	ODOT picture of East Coopey Creek Fish Passage Barrier	2/1/19
J.3	1	ODOT picture of West Coopey Creek Fork Fish Passage Barrier dated 5/18/16	2/1/19
J.4	19	ODOT Before & after photos & aerial progression, various dates	2/1/19
J.5	7	ODOT Staff qualifications	2/1/19
J.6	4	ODOT I-84 eastbound & westbound existing conditions & visualizations dated 6/6/17	2/1/19
J.7	4	ODOT Historic Highway eastbound & westbound existing conditions & visualizations	2/1/19
J.8	1	ODOT Coopey Quarry NW Berm Planting proposed additional tree planting dated 1/31/19	2/1/19
J.9	6	Email from Nathan Baker, Friends of the Columbia Gorge w/Friends' rebuttal letter dated 2/1/19	2/1/19
J.10	8	Friends' Coopey Quarry Scenery Analysis, Findings & Recommendations submittal report by Jurgen A. Hess dated 1/24/19	2/1/19
J.11	3	Friends' Declaration of Jurgen Hess dated 1/24/19	2/1/19

J.12	17	Friends' email from Nathan Baker w/Coopey Quarry Site photos dated 6/20/17	2/1/19
J.13	5	Staff memo dated 2/1/19 from George Plummer & Michael Cerbone to Liz Fancher, Hearings Officer as supplement to staff report T3-2017-9784	2/1/19
'K'	#	Final Rebuttal by Applicant	Date
K.1	10	Email from Terra Lingley w/Memo to Hearings Officer as final argument	2/8/19