

Notice of Hearings Officer NSA Decision

Attached please find notice of the Hearings Officer's decision in the matter of **Remand of T2-2022-15560** mailed **2/16/2023**. This notice is being mailed to those persons entitled to receive notice under MCC 38.0660(D) and to other persons who have requested the same.

The Hearings Officer's Decision is the County's final decision and may be appealed to Columbia River Gorge Commission by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record. An appeal must be filed with the Columbia River Gorge Commission within thirty days of when the decision is signed by the Hearings Officer. This decision is final at the close of the appeal period unless appealed.

Instructions and forms are available from:

Columbia River Gorge Commission
PO Box 730
1 Town & Country Square
57 NE Wauna Ave
White Salmon, WA 98672

Phone: 509-493-3323
FAX: 509-493-2229
E-mail: crgc@gorge.net

For further information call the Multnomah County Land Use Planning Division at 503-988-3043.

DECISION OF THE HEARINGS OFFICER

Case File: T2-2022-15660 **Permit:** NSA Expedited Review

Applicant/Owner: Fendall Winston

Appellant: Morgon Purvine

Location: 2220 NE Corbett Hill Road, Corbett Map, Tax Lot: 1N4E26CA-00600 (the “site”) Site ID #: R322289
Alternate Account #: R944260910

Zoning: Gorge General Residential – 5 (GGR-5)

Overlays: Geologic Hazard

Key Viewing Areas: Bridal Veil, Columbia River, Historic Columbia River Highway, Interstate-84, Larch Mountain Road, State Route 14

Landscape Setting: Rural Residential

Decision Summary: The applicant proposes to construct two sections of fence on either side of the existing driveway, totaling 95 feet of fence. The applicant proposes to construct the fence with two-foot by two-foot by six-foot concrete blocks as shown on the site plan. (Exhibit A.5).

The director approved the Expedited Review Decision subject to conditions. Noticing errors were made during the processing of the expedited review application in July and August 2022. On December 8, 2022, the County sent a revised notice correcting those errors and granting all parties the opportunity to appeal the expedited review decision. (Exhibit B.3).

Morgon Purvine, the Appellant, filed a timely appeal on December 22, 2022. (Exhibit C.1).

Based on the findings in this Final Order, the hearings officer denies the appeal and affirms the director’s decision.

Applicable Approval Criteria:

Multnomah County Code (MCC): MCC 38.0560 Code Compliance and Applications, MCC 38.1010(A)(3) Expedited Uses, Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length, MCC 38.7100 Expedited Development Review Criteria.



Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link **Chapter 38 - Columbia River Gorge National Scenic Area**

Hearings Officer Decision:

Based on the findings below and the testimony and exhibits in the case, the Hearings Officer denies the Appellant's appeal of Expedited Review T2-2022-15660, affirms the director's decision, and approves the application for the construction of two areas of fence as shown on Exhibit A.5, subject to the following conditions of approval.

Conditions of Approval

1. If, during construction, cultural or historic resources are discovered, the applicant/owner shall immediately cease development activities and inform the Multnomah County Land Use Planning Division, Columbia River Gorge Commission, and the US Forest Service of any discovery pursuant to MCC 38.7045(L) & (M), or MCC 38.7050(H) as applicable. Once halted, construction activities shall not resume until these standards have been satisfied. [MCC 38.7100(A)(2)]
2. Approval of this land use permit is based upon the statements made in this application and attached materials. No work shall occur under this permit other than that which is specified in these documents. [MCC 38.0660(B)]
3. Development of structures must be commenced within two years of the date of this decision and completed within two years of the date of commencement. The site owner may request an

extension of either of these timeframes, as provided in MCC 38.0700. Such a request must be made prior to expiration of the permit. [MCC 38.0690]

4. Within two years, the site owner shall paint the concrete blocks that compose the fences to match one of the following colors: C10, C11 or C12 of the NSA Color Chart (Exhibit C.3) [MCC 38.7100(A)(1)(b) & (f)].
 - a. The paint used on the fences shall have a flat/matte paint finish [MCC 38.7100(A)(1)(c)].

Dated this 16th day of February 2023

A handwritten signature in black ink, appearing to read 'Joe Turner', written over a horizontal line.

Joe Turner, Esq., AICP
Multnomah County Land Use Hearings Officer

This Decision is final when mailed. The Decision may be appealed to the Columbia River Gorge Commission within the time frames allowed by State law.

A. HEARING AND RECORD HIGHLIGHTS

1. Multnomah County Land Use Hearings Officer Joe Turner received testimony at the duly noticed public hearing about this application on February 10, 2023. At the hearing, the hearings officer received into the record and physically inspected the file maintained by the Department of Community Services Land Use and Transportation Planning Program regarding the application. The hearings officer made the declarations required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts and any bias or conflicts of interest.

2. County planner Lisa Estrin summarized the applicable approval criteria, the director's decision, and the Staff Report in response to the appeal.

a. She noted that the hearings officer's decision is subject to appeal to the Columbia River Gorge Commission.

b. The site is a "panhandle" shaped lot with driveway access to NE Corbett Hill Road via the panhandle portion of the lot. The site shares access with two other properties, all of which use the driveway on the site to access Corbett Hill Road. The on-site driveway is a private access, not a public road. The County has no authority to review any easement rights in the shared driveway.

c. MCC 38.1010(A)(3) allows "Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length." The applicant proposed to place two-foot high, by two-foot wide, by six-foot long concrete blocks, creating a 95 foot long fence along the edge of the driveway to demarcate the boundaries of the driveway and the site.

i. The appellant argues that the proposed blocks create a wall, not a fence. However, the dictionary defines "fence" as a barrier and a wall is a barrier. Therefore, the proposed blocks will create a fence. Gorge Commission staff agree with this interpretation.

ii. Although some of the blocks are currently stacked atop one another, the applicant will move the blocks to create a single row of blocks along the driveway.

d. The fence will be visible from some Key Viewing Areas ("KVAs"): the Columbia River and the I-84 freeway. However, the Code only requires that fences and other structures be "visually subordinate" when viewed from KVAs. The Code does not require that such structures be completely screened and not visible. The applicant will paint the blocks a dark brown color to allow them to blend into the background when viewed from nearby KVAs. The applicant is not required to demonstrate that the fence will be visually subordinate when viewed from adjacent properties.

e. The County will not review the location of the blocks in relation to the boundaries of the site. That is a civil issue that is not regulated by the Code. The County Code Enforcement section cannot address civil matters.

3. Attorney Thomas Rask appeared on behalf of the applicant and summarized his written testimony, Exhibit C.6.

a. He argued that the proposed fence complies with all applicable approval criteria. The proposed concrete block wall is a "fence" as that term is used in the Code. The fence is less than 100 feet long and less than six feet high. The applicant will paint the blocks dark brown to ensure that they are visually subordinate when seen from KVAs.

b. The applicant surveyed the site and placed the blocks entirely on the site. There is no evidence to the contrary.

c. The blocks were stacked on top of one another when they were delivered to the site. The applicant was in the process of moving the blocks to create the proposed single-block high fence. The applicant stopped moving the blocks when the appeal was filed. The applicant will complete the fence, eliminating all stacked blocks, once the application approval is final.

d. The fence will not create a hazard for other drivers as the section of roadway bounded by the wall is located entirely on the site. No one but the applicant and the applicant's guests have a right to use that portion of the driveway.

e. He waived the applicant's right to submit a final argument.

4. The appellant, Morgan Purvine, testified that the blocks are currently stacked on the site, which restricts his view of conflicting traffic using the shared driveway, creating a hazard.

5. Victoria Purvine noted that the County's original notice described the proposed use as a "retaining wall," not a "fence." She argued that walls are generally constructed from masonry blocks measuring eight by eight by 16-inches. The proposed blocks are much larger and are not intended for use as a fence. The applicant has shifted the location of the blocks over time and they may extend offsite onto adjacent properties. There is very little code enforcement in this area and the enforcement process is very drawn out. The proposed wall will create a hazard for drivers using the driveway, as vehicles sliding on ice or snow may crash into the wall.

6. The hearings officer closed the record at the end of the public hearing and announced his intention to deny the appeal, affirm the director's decision, and approve the application, subject to the conditions in the director's decision.

B. FINDINGS OF FACT

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

1.0 Project Description:

Hearings Officer: The applicant is proposing to place two-foot high by two-foot wide by six-foot long concrete blocks ("ecology blocks" as shown in Exhibit A.3) along two areas of his shared driveway to construct two fences demarcating the edges of the driveway. The fences will be placed along the edge of the passageway/dogleg on the site as shown on Exhibit A.5. The fence will be two feet tall, the height of a single block; the blocks will not be stacked. Once the blocks are installed and drier weather occurs, the blocks will be painted a dark brown similar to the color C10, C11 or C12 on Exhibit C.3, as shown in Exhibits A.7 and C.4.



The Expedited Review Decision was approved with conditions. Noticing errors were made during the processing of the expedited review application in July and August 2022. A notice correcting those errors was sent on December 8, 2022, granting all parties the opportunity to appeal the expedited review decision. Fence construction started on or around the same time as this corrected notice went out and was in the mail. The applicant chose to move forward as he believed he had a final permit from the County. Following the issuance of the corrected notice, the Appellant filed an appeal on December 22, 2022.

2.0 Site Description & History:

Hearings Officer: The site contains an existing single-family dwelling (mobile home) and a detached garage. The driveway to the site is located in a narrow panhandle portion of the site and is used to gain access to NE Corbett Hill Road. Two other properties also take access via this driveway. The driveway is not located in a public right-of-way. The County and the hearings officer have no authority to review the easement or other rights, if any, regarding use of the driveway. That is a civil matter.



3.0 Expedited Review Criteria:

MCC 38.0560 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 site line adjustments, or issue a building permit for any site 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 site 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**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected site.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the site that endanger the life, health, personal site, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Hearings Officer: This standard provides that the County shall not make a land use decision approving development for a site that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the site coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

Importantly, a finding of satisfaction of this standard does not mean that a site is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the site are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the site, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 38.0560.

Due to the issue with the notification error, the applicant purchased the concrete blocks when he thought he had a final decision in the Fall of 2022. The blocks were placed on the site around the same time as the corrected Notice of NSA Expedited Decision was mailed on December 8, 2022. The applicant has not finished the final placement of the blocks on the south side of the driveway route. If the decision is upheld, no violation will exist and the fences may continue to be constructed. The applicant has verbally indicated that he would remove the blocks if the decision was overturned. For purposes of the current application, there is no evidence of any other issues on the site.

The appellant argued that the project already violates the height limit at the corner of his driveway as two blocks are piled up. However, the applicant has two years from the date the permit becomes final to finalize the project; install the blocks to create a two-foot high fence in the proposed location and paint the fence to achieve visual subordination. The approval of this permit will rectify the situation.

4.0 Expedited Uses Criteria:

MCC 38.1010 EXPEDITED USES.

(A) The following development may be reviewed using the expedited process listed in MCC 38.0530(B), and are permitted when found to satisfy the applicable approval criteria pursuant to the provisions of MCC 38.7100.

* * *

(3) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length.

* * *

(22) Retaining walls accessory to existing dwellings less than or equal to 2 feet in height (of exposed surface area) and less than or equal to 100 feet in length.

Hearings Officer: The applicant initially applied for a solid fence and a retaining wall. After discussions with staff, the applicant amended his application to propose just a solid fence. The fences are two-feet in height and a total of 95-feet long: one fence will be approximately 71 feet in length and the other 24 feet. (Exhibits A.4 and A.5). The applicant states the purpose of the fence is to create a barrier.

Chapter 38 does not include a definition for “fence” or “retaining wall.” Therefore, the word should must be given its “[p]lain, natural and ordinary meaning.” *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 611, 859 P.2d 1143 (1993). Courts “[g]enerally look to the dictionary to determine a word’s ordinary meaning.” *City of Lake Oswego v. Albright*, 222 Or. App. 117, 120, 193 P.3d 988 (2008), citing *State v. Murray*, 340 Or. 599, 604, 136 P.3d 10 (2006). Webster’s dictionary provides the following relevant definitions:

“Fence”...“a barrier intended to prevent escape or intrusion or to mark a boundary, *Especially* : such a barrier made of posts and wire or boards.”
 (“Fence.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/fence>. Accessed 14 Feb. 2023).

“Wall”

1.a “a high thick masonry structure forming a long rampart or an enclosure chiefly for defense - often used in plural”

b “a masonry fence around a garden, park, or estate”

...

“Retaining Wall : a wall that is built to keep the land behind it from sliding”

The hearings officer finds that the proposed rows of concrete blocks constitute a masonry “fence” as defined above and as that term is used in the Code. The applicant states that the blocks are intended to create a barrier to mark a boundary (Exhibit A.4). The dictionary notes “[a] barrier made of posts and wire or boards” as only one, non-exclusive, example of a type of fence. The applicant argues that excavations for posts needed for a wire or wood fence could potentially damage an underground waterline on the site. The blocks can be moved if necessary to allow access to the water line for maintenance (Exhibit A.4).

The applicant not proposing retaining wall, as the blocks are not intended to keep the land behind the blocks from sliding. Whether the original notice described the proposed structure as a “retaining wall” is irrelevant, as any such error did not impact any parties substantive rights. The County resent a

corrected notice and the appellant filed a timely appeal that was considered at a duly noticed public hearing.

The appellant has stated in the appeal (Exhibit C.1.a) that the fence is not “based on any acceptable industry standard, and the only purpose for placing this style of block in this location is to prevent free and clear access of the surrounding properties.” Ms. Purvine argued that the proposed “ecology blocks” are not intended for use as a fence. However, they failed to identify any “industry standard,” evidence that the manufacturers intent is relevant to whether the proposed materials can be used to construct a fence, a Code provision that requires compliance with such a standard, or an alternative definition of a “fence” that would preclude the use of concrete blocks.

Assertions that the blocks preclude the appellant’s access or that they extend beyond the boundaries of the site are civil matters that are not relevant to the applicable approval criteria. Based on the submitted site plan (Exhibit A.5) the blocks are proposed to be placed parallel to and on either side of the existing shared driveway and entirely on the site. The blocks will demarcate the boundaries of the driveway and prevent vehicles from leaving the driveway, leaving the driveway itself open and accessible to vehicular traffic.

Claims that the vehicles sliding on ice or snow may crash into the blocks are not relevant to the approval criteria for the proposed use. This is also a civil matter that is beyond the jurisdiction of staff or the applicant.

5.0 National Scenic Area (NSA) Site Review Criteria:

MCC 38.7100 EXPEDITED DEVELOPMENT REVIEW CRITERIA

(A) Proposed developments reviewed using the expedited review process shall comply with the following resource protection guidelines:

(1) Scenic

(a) In the General Management Area, the scenic resource protection provisions MCC 38.7100 (A)(1)(b) through (f) shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.

Hearings Officer: The proposed project is not for a woven wire fence or for agricultural use. This criterion is not applicable.

(b) Except signs, the colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. This guideline shall not apply to additions, which may match the color of existing buildings.

Hearings Officer: Based on information supplied by the Gorge Commission, the panhandle portion of the site where the fences are located is topographically visible from various KVAs. These include Bridal Veil, Columbia River, Historic Columbia River Highway, Interstate 84, Larch Mountain Road, Larch Mountain, Sherrard Point, and State Route 14. The concrete blocks qualify as a structure; when installed, they will be composed of parts joined together in some definite manner (a fence) [MCC 38.0015 Definitions, Structure]. The fence will be painted a dark earth-tone as shown in the applicant’s Exhibit A.7. The color shown in Exhibit A.7 corresponds with the approved color chart falling between C10 and C11 in the NSA color chart (Exhibit C.3). Condition No. 2 requires that the applicant follow his application materials. Condition No. 4 requires that the applicant paint the blocks an appropriate color with a flat/matte finish within two years from the date of this approval.

(c) Except signs, structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.

Hearings Officer: The proposed dark earth-tone paint is conditioned to be a flat/matte paint medium which will qualify as a low or non-reflective building material.

(d) Outdoor lights shall be directed downward and sited, hooded, and shielded such that they are not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

Hearings Officer: The applicant has not proposed any exterior lighting as part of the project.

(e) Signs shall comply with the applicable sign provisions of MCC 38.0080.

Hearings Officer: The applicant has not proposed any signs as part of the project.

(f) Structures within ½-mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and/or designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).

Hearings Officer: MCC 38.0015 provides the following relevant definitions:

Visually subordinate: One of the two scenic standards applicable in the National Scenic Area. A description of the relative visibility of a development, structure or use where that development, structure or use does not noticeably contrast with the defining landscape setting characteristics, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan), and the setting appears only slightly altered (distinctive characteristics of that setting remain dominant). As opposed to development, structures or uses that are fully screened, structures that are visually subordinate may be partially visible but would be difficult to discern to the common viewer. Visually subordinate development, structures, or uses as well as forest practices in the SMAs shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of scale, proportion, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

Not visually evident (Special Management Area): One of the two scenic standards applicable within the National Scenic Area. A description of the relative visibility of a development, structure or use that provides for developments, structures or uses that are not visually noticeable to the casual visitor and the defining landscape setting characteristics appear intact. Deviations may be present but must repeat form, line, color, texture and pattern common to the natural landscape setting so completely and at such scale, proportion intensity, direction, pattern, etc., that it not be noticeable.

The proposed fences are proposed within a ½ mile of Interstate-84 and the Columbia River, approximately 1000 feet from Interstate-84 with an elevation change of 280 feet (29.5-percent slope rise from I-84 to the panhandle). The applicable scenic standard is visual subordination, which does not prohibit any views of the proposed structures. The Code only requires that the structures “[n]ot noticeably contrast with the defining landscape setting characteristics, as viewed from [KVAs] and the setting appears only slightly altered.”

The fences may be topographically visible from various key viewing areas (KVAs), but the two-foot height of the structure reduces the potential visibility from the KVAs. In addition, the applicant will paint the fences a dark earth-tone with a flat/matte finish which will blend with the surrounding environment, making them visually subordinate from these areas. The fences at two feet tall and painted dark earth-tone will not be visually dominate (Exhibit C.4). The applicant has also provided photographs from across the river (Exhibit A.6). The photos were taken during summer months with a

camera with a telescopic lens allowing it to zoom in to the area. The photos show significant vegetation screening the area during the spring, summer and fall. The fences may be visible during the winter months when they are no longer screened by deciduous vegetation. However, the low height and dark matte color of the blocks will limit visibility of the fences and ensure they are visually subordinate.

The appellant submitted photos of the fences looking out towards the Columbia River during the winter season (Exhibit C.1.b). The photos show that the KVAs are visible from this location, with evergreen and deciduous trees between the fences and the KVAs. However, the Code requires Visual Subordinance when viewed from the KVAs, not when viewed from the site towards the KVAs. The fences are currently under construction and when fully installed and painted will blend in with the gravel, tree trunks and other vegetation behind and in front of them to achieve visual subordination from the KVAs to the extent any portion of the fences are visible.

As conditioned, criteria met.

(2) Cultural

(a) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey or historic survey. The GMA Cultural Resources Reconnaissance Survey Criteria in MCC 38.7045(A)(1), (2), and (3) shall be used to determine if a reconnaissance and/or historic survey is required for a proposed development.

(b) The GMA provisions that protect cultural resources in MCC 38.7045(L) and human remains discovered during construction in MCC 38.7045(M) shall be applied as conditions of approval for all development approved under the expedited development review process.

Hearings Officer: The proposed fences are exempt from a reconnaissance survey as the placement of the blocks will not disturb the ground and the area is an existing graveled area which has been disturbed by human activities in the past [MCC 38.7045(A)(1)(b) & (d)]. A historic survey is not required as the fences are new and do not alter the exterior appearance of a building over 50 years of age [MCC 38.7045(A)(4)]. The US Forest Service provided comment that neither a Cultural Resource Reconnaissance Survey nor a Historic Survey is required (Exhibit C.2). Condition No. 1 requires work to cease if cultural resources or human remains are discovered. *Criteria met.*

(3) Recreation

The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

Hearings Officer: The uses on adjacent parcels are residential in nature. No recreational sites exist on adjacent parcels. *Criterion not applicable*

(4) Natural

(a) Wetlands, Streams, Rivers, Ponds, and Lakes

The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

Hearings Officer: The fences line portions of the driveway within the panhandle area. There are no known wetlands, streams, rivers, ponds or lakes within the area; hence, the fences are located outside

of any buffer zones for these features. A portion of the driveway is likely subject to easements that allow the properties to the north and south access to NE Corbett Hill Road. *Criterion met.*

(b) Sensitive Wildlife and Sensitive Plants

1. The development meets one of the following:

a. The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range, and turkey habitat) and known sensitive plants; or

b. The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained; or

c. For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines

1) the sensitive wildlife area or site is not active; or

2) the proposed development would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.

2. Development eligible for expedited review shall be exempt from the field surveys for sensitive wildlife in MCC 38.7065 (A) or sensitive plants in MCC 38.7070 (A).

Hearings Officer: The proposed fences do not disturb the ground. Various Gorge Agencies were sent notice of the Expedited Review application and no comments were received that the project would occur within 1000 feet of a known sensitive wildlife area or site or sensitive plant site. *Criteria met.*

(B) Proposed developments reviewed using the expedited review process shall comply with the following treaty rights protection guidelines:

(1) Proposed developments shall not adversely affect treaty or other rights of any Indian tribe.

(2) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

(3) Except as provided in MCC 38.7100(B)(2) above, the GMA and SMA treaty rights, and the consultation process discussed in MCC 38.0110 shall not apply to proposed developments reviewed under the expedited review process.

Hearings Officer: Notice was given to the Governments of the four Columbia River treaty tribes as required by the expedited review process. No comments from the treaty tribes were received. *Criterion met.*

6.0 Exhibits

'A' Applicant's Exhibits

'B' Procedural Exhibits

'C' Pre-Hearing Exhibits

All exhibits are available for Case File T2-2022-15660 at www.multco.us/landuse/hearings-officer.

Exhibit #	# of Pages	Applicant Exhibit	Date Received/Submitted
A.1	6	NSA Expedited Residential Application	4/12/2022
A.2	1	Site Survey	4/12/2022
A.3	1	Ecology Block Plan	4/12/2022
A.4	1	Applicant Narrative	7/05/2022
A.5	1	Revised Site Plan	7/05/2022
A.6	6	Photos Page 1 & 2: Photos from KVAs Page 3: Photo from Driveway looking towards Neighbors house to North Page 4: Aerial with Site Highlighted and Surrounding Area Shown Page 5: Aerial Page 6: Site	7/05/2022
A.7	1	Paint Chip (Color C12)	7/05/2022
'B'	#	Procedural Exhibits	Date
B.1	3	Incomplete Letter	5/12/2022
B.2	6	NSA Expedited Decision	8/12/2022
B.3	11	Notice of NSA Expedited Decision	12/8/2022
B.4	5	Mailing Lists a. 8.11.2022 Mailing List – 1 page b. 12.8.2022 Mailing List – 2 pages c. 1.20.2023 Mailing List – 2 pages	Various
'C'	#	Pre-Hearing Exhibits	Date
C.1	9	Notice of Appeal - Appellant a. Appeal Narrative – 2 pages b. Photographs – 4 pages c. Appeal Fee – 1 page	12/22/2022

C.2	2	USFS Cultural Resources Survey Determination dated August 2, 2022 - Staff	1/18/2023
C.3	1	NSA Color Chart - Staff	1/18/2023
C.4	1	Photograph of Painted Concrete Block submitted by Applicant	1/18/2023
C.5	10	T2-2022-15660 Staff Report	1/31/2023
C.6	2	Opposition Letter to Appeal of T2-2022-15660	2/2/2023