

**FACTS AND FINDINGS  
COLUMBIA RIVER GORGE COMMISSION STAFF REPORT**

**APPLICANT:** Jim Sizemore

**LANDOWNER:** Washington State Parks and Recreation Commission

**FILE NO.:** C14-09

**REQUEST:** To install a livestock watering facility and fencing as a conservation proposal being implemented by the National Resources Conservation Service.

**LOCATION:** The subject parcels are located in Columbia Hills State Park near Dalles Mountain Road, in Sections 6, 7 and 8, Township 2 North, Range 14 East, W.M., Klickitat County, Washington (Klickitat County Assessor's ID 02140600000200, 02140700000200 and 02140800000000).

**LAND USE DESIGNATION:** The subject property is designated Large-Scale Agriculture A-1(160) in the General Management Area.



*Figure 1-A View of the Site Looking South*

**HISTORY:** Prior development actions were reviewed under C12-001. The proposal was to construct a new water supply system for the Dalles Mountain Ranch section of the Columbia Hills State Park.

**SCOPE OF REVIEW:** This development review application, C14-09, has been reviewed for consistency with the Columbia River Gorge Commission Chapter 350, Division 81 Land Use Ordinance.

**COMMENTS FROM OTHER INDIVIDUALS/AGENCIES/GOVERNMENTS:**

Notice of the subject request was mailed to property owners within 200 feet of the subject parcel and the following individuals/agencies/governments:

Confederated Tribes and Bands of the Yakama Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of Warm Springs Reservation of Oregon  
Friends of the Columbia Gorge  
Klickitat County Planning Department  
Klickitat County Building Department  
Klickitat County Health Department  
Klickitat County Assessor  
Nez Perce Tribe  
U.S. Forest Service National Scenic Area Office  
Washington State Department of Fish and Wildlife  
Washington State Department of Natural Resources Natural Heritage Program  
Washington State Historic Preservation Office  
White Salmon Library

Written comments were received from Friends of the Columbia Gorge, Washington State Department of Fish and Wildlife and Washington State Department of Ecology.

**DATE THIS REPORT WAS FINALIZED:** August 7, 2015

**STAFF PERSON THAT PREPARED THIS REPORT:** *Terry Cullen, AICP, Principal Planner, Columbia River Gorge Commission*

**HOW/WHERE TO OBTAIN FURTHER INFORMATION:** Questions and comments should be directed to Terry Cullen, AICP, Principal Planner, Columbia River Gorge Commission, 57 NE Wauna Ave, PO Box 730, White Salmon WA 98672, (509) 493-3322 Ext 223, [terry.cullen@gorgecommission.org](mailto:terry.cullen@gorgecommission.org). A copy of this report may be obtained online at [www.gorgecommission.org](http://www.gorgecommission.org) or by contacting Terry Cullen at any of the above listed contacts.

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**USE, AS PROPOSED BY THE APPLICANT, AND FINDINGS OF SCOPE OF REVIEW WITH CHAPTER 350-81-LAND USE ORDINANCE, COLUMBIA RIVER GORGE COMMISSION**

**PURPOSE AND APPLICABILITY**

Columbia River Gorge Commission Administrative Rules 350-81-010 through 350-81-018 describe the purpose and applicability of the Chapter 350-81-Land Use Ordinance.

**DEFINITIONS**

Columbia River Gorge Commission Administrative Rule 350-81-020 sets forth the definitions of words and word derivations used throughout Chapter 350-81-Land Use Ordinance.

Findings of Fact: The definitions were consulted and used as part of the review of this development review application.

Conclusions of Law: In the staff's best professional opinion, the staff review and report for development review application C14-09 is consistent with the definitions in Chapter 350-81-Land Use Ordinance.

**APPLICATIONS AND PROCEDURES**

Columbia River Gorge Commission Administrative Rules 350-81-030 through 350-81-046 specifies the standards for applications, the application, pre-application conference, acceptance of application, notice of development review, comment period, decision of the executive director, expiration of approvals and changes or alterations to an approved action.

**350-81-030 Standards for Applications**

Findings of Fact: To current staff's best knowledge, development review application C14-09 was accepted on behalf of the Executive Director as a complete application. The file contains a complete application form, a complete site plan and all the applicable information specified in the various sections of this land use ordinance. Development review application C14-09 is a complete application and staff is able to review it in accordance with Rule 350-81-030.

Conclusions of Law: Development review application C14-09 is consistent with this rule requirement.

**350-81-032 Application for Review and Approval**

Findings of Fact: Development review application C14-09 was completed pursuant to this rule (350-81-032(1)). A Columbia River Gorge Commission planner, on behalf of the Executive Director, accepted development review application C14-09 and reviewed the application for consistency with guidelines specified in Rules 350-81-030 through 350-81-046 (350-81-032(2)). The Columbia River Gorge Commission may charge a fee to review development review applications after a public hearing (350-81-032(3)). The Commission has not done so. As such, no fee is charged to the applicant for this development review application. Standard application forms are available at Commission's offices and provided to county and city planning offices and the Forest Service (350-81-032(4)). The applicant obtained a development review application from the Commission's offices and submitted as part of the overall application. There are multiple information needs that are required as part of the application and they are identified in 350-81-032(5). The applicant has submitted all necessary and applicable information per this rule.

Conclusions of Law: Development review application C14-09 is consistent with this rule requirement.

**350-81-034 Pre-Application Conference**

Findings of Fact: An applicant may request a pre-application conference prior to submitting an application for development review. This is discretionary, not mandated and at the request of the applicant. Staff has not knowingly refused the applicant the right to request such a conference.

Finding: Development review application C14-09 is consistent with this rule requirement.

**350-81-036 Acceptance of Application**

Findings of Fact: A Columbia River Gorge Commission planner, on behalf of the Executive Director, has reviewed development review application, C14-09, has determined it is complete and has accepted the application (350-81-036(1)). Development review application, C14-09, does not propose any uses that are explicitly prohibited by this ordinance (350-81-036(2)). The land use ordinance sets a goal (not a mandated requirement) for the Executive Director to accept the application as complete within 14 days of receipt or notify the applicant of any deficiencies (350-81-036(3)).

Conclusions of Law: Development review application C14-09 is consistent with this rule requirement.

**350-81-038 Notice of Development Review**

Findings of Fact: Staff, on behalf of the Executive Director, issued a notice of a proposed development review on February 11, 2015. It was not within 7 days of the accepted application (350-81-038)(1). The notice did contain the name of the applicant, general and specific location of the subject property, a brief description of the proposed action and a deadline for filing comments on the proposed action (350-81-038(1)(a)(b)(c)(e)). It did not include a deadline for issuing a decision (350-81-038)(1)(d). The notice did state the application and supporting documents are available for inspection at the Commission's office during normal working hours. The notice was mailed to the Forest Service, the applicable state, the four Indian tribal nations (Yakama, Umatilla, Warm Springs and Nez Perce), the applicable city or county planning office (Klickitat County Planning Department), owners within a radius as determined by 350-81-630 (determined to be 200 feet; four different land owners as provided by the applicant); and other agencies and interested parties which request a notice or the Executive Director determines should be notified (One interested party, Friends of the Columbia Gorge, has a standing request to be notified of all development review applications.) (350-81-038(4)(a)(b)(c)). A copy of the notice was posted on the Commission's website (350-81-038(5)).

Conclusions of Law: Development review application C14-09 is consistent with this rule requirement.

**350-81-040 Comment Period**

Findings of Fact: Interested parties were given 21 days from the date the notice was sent to submit written comments to the Executive Director relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-81. The notice was sent February 11, 2015 and the public comment deadline was established to be March 4, 2015. Written comments were received by:

- Amber Johnson, Washington State Department of Fish & Wildlife on March 3, 2015.
- Richard Till, Friends of the Columbia Gorge on March 4, 2015.

The Commission's Principal Planner, on behalf of the Executive Director, determined that a wildlife management plan nor a rare plant protection and rehabilitation plan was required for development review application, C14-09 (350-81-040(1)). Commission staff considered the following in making this determination:

- i) Initial review of data in-house indicate the proposed review use may be within a 1000 feet of a sensitive wildlife area or site (pursuant to Rule 350-81-580(5)). Amber Johnson of Washington State Department of Fish & Wildlife commented on March 3, 2015 that there were no concerns arising at the moment for the project.
- ii) Initial review of data in-house indicate the proposed review use is not within a 1000 feet of a rare plant and its buffer zone (pursuant to Rule 350-81-590(5)). Additionally, Keyna Bugner of Washington Natural Areas Program surveyed the project area on February 19, 2015. No rare plants were observed within the project area.
- iii) The Friends of the Columbia submitted comments (pp 4-7) outlining Commission Rule requirements for sensitive wildlife resources and sensitive plan species.

Marge Dryden, Heritage Resources Program Manager, USFS acting as a resource expert for the Columbia River Gorge Commission, reviewed the proposed undertaking and area of potential effect as stated on the development application, made a determination on March 2, 2015 that a cultural resources survey

(reconnaissance or historic) was not required (350-81-040(2)). The proposed project has been reviewed as a “federal undertaking” under Section 106 of the National Historic Preservation Act. The Yakama Nation Cultural Resources Program was contracted to perform a reconnaissance survey in 2013. The survey methodology was designed to be consistent with the National Scenic Area Management Plan for small scale undertakings. A review letter from Washington Department of Archaeology and Historic Preservation dated March 5, 2014 concurred with the report’s determination of No Historic Properties Affected. (350-81-040(2) & (3)). Ms. Dryden also concurred with the determination.  
Conclusions of Law: Development review application C14-09 is consistent with this rule requirement.

**350-81-044 Expiration of Approvals**

Findings of Fact: Development review application, C14-09, is not the subject of a prior approval issued pursuant to the Management Plan.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-046 Changes or Alterations to an Approved Action**

Findings of Fact: Development review application, C14-09, is not a change or alteration to a development action approved by the Executive Director.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**EXPEDITED DEVELOPMENT REVIEW PROCESS**

**350-81-050 Development Eligible for Expedited Review**

Findings of Fact: Development review application, C14-09, proposes to install a livestock watering facility and fencing as a conservation proposal being implemented by the Natural Resources Conservation Service (NRCS). This does not meet any of the development identified as a use that may be considered for expedited review (350-81-050(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-052 Resource and Treaty Rights Protection Guidelines**

Findings of Fact: Development review application, C14-09, proposes to install a livestock watering facility and fencing as a conservation proposal being implemented by the Natural Resources Conservation Service (NRCS). This does not meet any of the development identified as a use that may be considered for expedited review (350-81-050(1)). This rule requirement applies only to those proposed developments reviewed using the expedited review process.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-054 Procedures for Expedited Review Process**

Findings of Fact: Development review application, C14-09, proposes to install a livestock watering facility and fencing as a conservation proposal being implemented by the Natural Resources Conservation Service (NRCS). This does not meet any of the development identified as a use that may be considered for expedited review (350-81-050(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

**EMERGENCY/DISASTER RESPONSE ACTIONS**

**350-81-060 Emergency/Disaster Response Actions**

Findings of Fact: Development review application, C14-09, is not an application being filed as an action in response to an emergency/disaster, as defined in Columbia River Gorge Commission Rule 350-81-020(54). (350-81-060(1)(a))

Conclusions of Law: This rule requirement is not applicable to this development review application.

## GENERAL POLICIES AND GUIDELINES

### **350-81-070 Exempt Land Uses and Activities**

Findings of Fact: Development review application, C14-09, does not propose any use which is considered to be exempt from review (350-81-070(1) and Section 17, Columbia River Gorge National Scenic Area Act).

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-072 Prohibited Land Uses and Activities**

Findings of Fact: Development review application, C14-09, does not propose any use that is prohibited per this rule requirement (350-81-072(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-074 Uses Allowed Outright**

Findings of Fact: Development review application, C14-09, does not propose any uses which may be considered as use(s) allowed outright (350-81-074(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-076 Agricultural Buffer Zones in the General Management Area**

Findings of Fact: Development review application, C14-09, does not propose any new buildings in the GMA (350-81-076(1)).

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-078 Variances**

Findings of Fact: Development review application, C14-09, will not create an overlap or conflict with the setbacks or buffers already established to protect scenic, natural, cultural, recreation, agricultural or forestry resources.

Conclusions of Law – This rule requirement is not applicable to this development review application.

### **350-81-080 Applying New Less-Stringent Regulations to Development Approved Under Prior Scenic Area Regulations**

Findings of Fact: This development review application, C14-09, does not alter conditions of approval for an existing use or structure approved under prior Scenic Area regulations.

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-082 Existing Uses and Discontinued Uses**

Findings of Fact: This development review application, C14-09, is on a portion of the Columbia Hills State Park. Existing uses or structures may continue as long as it is used in the same manner and for the same purpose (350-81-082(1)(a)). The current and proposed land use is cattle grazing. The development review application does not include replacement of existing structures either damaged or destroyed by disaster, or not (350-81-082(2)(3)); any changes to existing uses and structures (350-81-082(4)); or the re-establishment of any discontinued existing uses and structures (350-81-082(5)(6)).

Conclusions of Law: The development application, C14-09, is consistent with Rule 350-81-082(1)(a).

### **350-81-084 Indian Tribal Treaty Rights and Consultation**

Findings of Fact: These rule requirements address Tribal Government Notice, Tribal Government Consultation, Conclusion of the Treaty Rights Protection Process and Treaty Rights and Consultation in the Special Management Area.

These requirements are triggered when a new use is located in, or providing recreation river access to, the Columbia River or its fish bearing tributaries. The proposed use is not located in either of these locations.

Conclusions of Law: This rule requirement is not applicable to this development review application.

### **350-81-086 Buffers from Existing Recreation Sites**

Findings of Fact: The subject property in development review application, C14-09, is located in the Columbia Hills State Park. The proposed location, however, is not a part of the established recreation area, and its off-site impacts are not expected to detract from the use and enjoyment of any established recreation sites.

Conclusions of Law: No buffer is required between the proposed water line, watering trough or fence and the established recreation areas of the park.

## USES AND STRUCTURES ALLOWED IN VARIOUS LAND USE DESIGNATIONS

<p><b>350-81-090 Agricultural Buildings</b></p> <p>Findings of Fact: This development review application, C14-09, does not include any agricultural buildings.</p> <p>Conclusions of Law: Rule 350-81-090 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-092 Temporary Use-Hardship Dwelling</b></p> <p>Findings of Fact: This development review application, C14-09, does <u>not</u> include a hardship dwelling use.</p> <p>Conclusions of Law: Rule 350-81-092 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-094 Sewer and Water Services</b></p> <p>Findings of Fact: Sewer lines are not being extended from an Urban Area to serve this use (350-81-094(1)). No potable water is being proposed with this application. The purpose for this application is to install a livestock watering facility and fencing.</p> <p>Conclusions of Law: Rule 350-81-094(1) is not applicable to this development review application, C14-09. The development review application, C14-09, is consistent with Rule 350-81-094(2).</p>
<p><b>350-81-096 Docks and Boathouses</b></p> <p>Findings of Fact: There are no new private docks or boathouses or public docks requested as part of this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-096 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-098 Home Occupations and Cottage Industries</b></p> <p>Findings of Fact: There are no home occupations nor cottage industries proposed in this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-098 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-100 Bed and Breakfast Inns</b></p> <p>Findings of Fact: No bed and breakfast inn is proposed in this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-100 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-102 Small-Scale Fishing Support and Fish Processing Operations</b></p> <p>Findings of Fact: There are no small-scale fishing support nor fish processing operations proposed in this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-102 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-104 Resource Enhancement Projects</b></p> <p>Findings of Fact: No resource enhancement project is proposed in this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-104 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-106 Disposal Sites for Spoil Materials from Public Road Maintenance Activities</b></p> <p>Findings of Fact: There are no disposal sites for spoil materials from public road maintenance activities proposed in this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-106 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-108 Commercial Events</b></p> <p>Findings of Fact: There are no commercial events proposed in this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-108 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-110 Columbia River Bridge Replacement</b></p> <p>Findings of Fact: No bridge replacements are proposed in this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-110 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-112 Signs</b></p> <p>Findings of Fact: There are no signs proposed in this development review application, C14-09.</p> <p>Conclusions of Law: Rule 350-81-112 is <u>not</u> applicable to this development review application, C14-09.</p>
<p><b>350-81-114 Special Uses in Historic Buildings</b></p> <p>Findings of Fact: There are no historic buildings on site or part of this development review application, C14-</p>



09.  
Conclusions of Law: Rule 350-81-114 is not applicable to this development review application, C14-09.

09.  
Conclusions of Law: Rule 350-81-114 is not applicable to this development review application, C14-09.

## LAND DIVISIONS AND LOT LINE ADJUSTMENTS

<p><b>350-81-120 Consolidation of Lots</b></p> <p>Findings of Fact: This development review application does not contain or propose any consolidation of lots.</p> <p>Conclusions of Law: Rule 350-81-120 is not applicable to this development review application, C14-09.</p>
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<p><b>350-81-120 Consolidation of Lots</b></p> <p>Findings of Fact: This development review application does not contain or propose any consolidation of lots.</p> <p>Conclusions of Law: Rule 350-81-120 is not applicable to this development review application, C14-09.</p>
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<p><b>350-81-120 Consolidation of Lots</b></p> <p>Findings of Fact: This development review application does not contain or propose any consolidation of lots.</p> <p>Conclusions of Law: Rule 350-81-120 is not applicable to this development review application, C14-09.</p>
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<p><b>350-81-124 Land Divisions and Cluster Development</b></p> <p>Findings of Fact: This development review application does not contain or propose any land divisions or cluster development.</p> <p>Conclusions of Law: Rule 350-81-124 is not applicable to this development review application, C14-09.</p>
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<p><b>350-81-124 Land Divisions and Cluster Development</b></p> <p>Findings of Fact: This development review application does not contain or propose any land divisions or cluster development.</p> <p>Conclusions of Law: Rule 350-81-124 is not applicable to this development review application, C14-09.</p>
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<p><b>350-81-124 Land Divisions and Cluster Development</b></p> <p>Findings of Fact: This development review application does not contain or propose any land divisions or cluster development.</p> <p>Conclusions of Law: Rule 350-81-124 is not applicable to this development review application, C14-09.</p>
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**350-81-126 Lot Line Adjustments**  
Findings of Fact: This development review application does not contain or propose any lot line adjustments.  
Conclusions of Law: Rule 350-81-126 is not applicable to this development review application, C14-09.

**350-81-126 Lot Line Adjustments**  
Findings of Fact: This development review application does not contain or propose any lot line adjustments.  
Conclusions of Law: Rule 350-81-126 is not applicable to this development review application, C14-09.

**350-81-126 Lot Line Adjustments**  
Findings of Fact: This development review application does not contain or propose any lot line adjustments.  
Conclusions of Law: Rule 350-81-126 is not applicable to this development review application, C14-09.

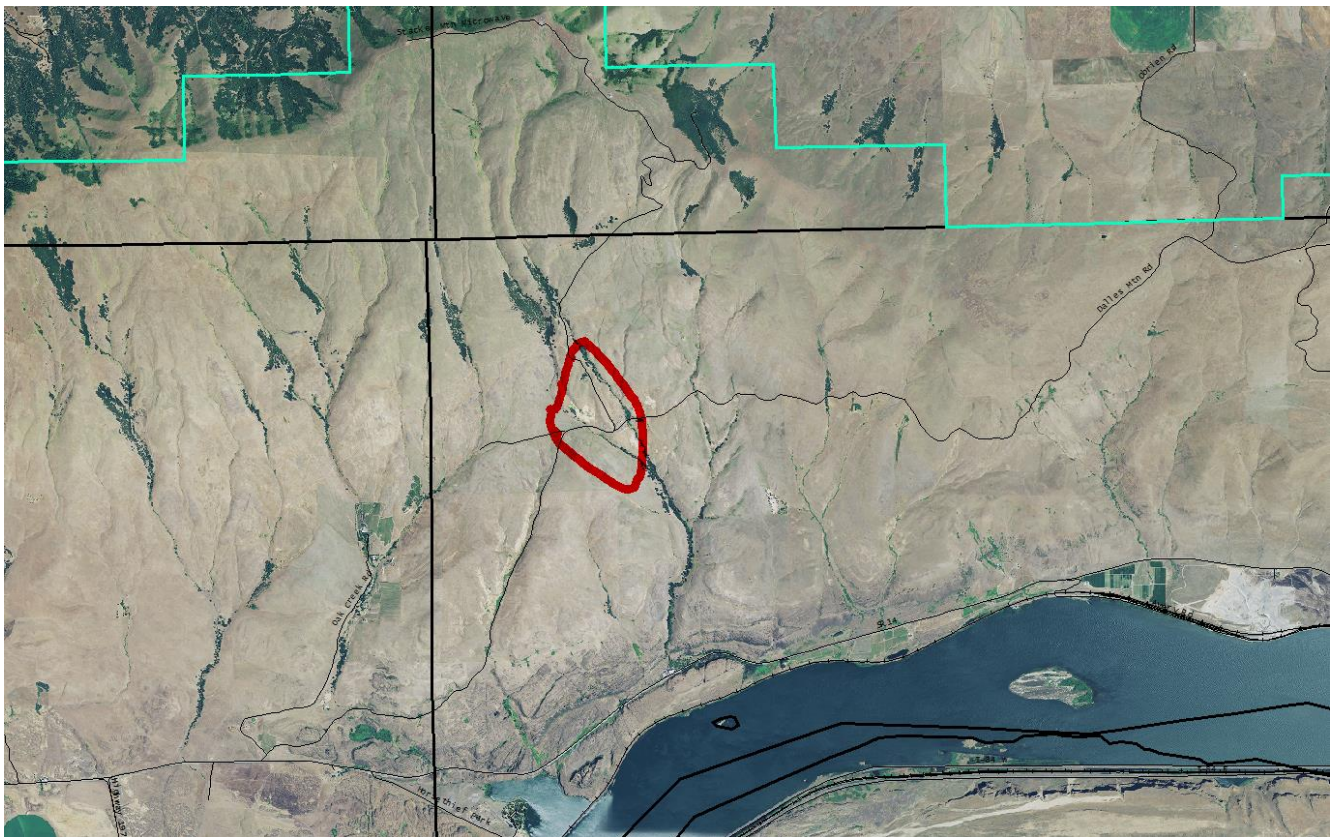


Figure 2-C14-09 (Sizemore) Generalized Location.

## LAND USE DESIGNATIONS

Conclusions of Law: The land use designation for the subject property is General Management Area, Large Scale Agriculture. Columbia River Gorge Commission Administrative Rules 350-81-170 through 350-81-240 apply to the Land Use Designation-Agriculture Land Designation and must be considered as part of this development application. Consideration, application and findings are described below:

Land Use Designations – General Management Area (applicable Administrative Rule Criteria are listed and bolded below):

<u><b>Agriculture</b></u>	<u><b>Forest Land</b></u>	<u><b>Open Space</b></u>	<u><b>Residential Land</b></u>	<u><b>Rural Center</b></u>	<u><b>Commercial Land</b></u>	<u><b>Recreation</b></u>
<b>350-81-170 Agricultural Land Designations</b>	350-81-250 Forest Land Designations	350-81-330 Open Space Designation	350-81-350 Residential Land Designations	350-81-400 Rural Centers	350-81-430 Commercial Land Designations	350-81-470 Recreation Land Designations
<b>350-81-180 Uses Allowed Outright</b>	350-81-260 Uses Allowed Outright	350-81-335 Uses Allowed Outright	350-81-360 Uses Allowed Outright	350-81-410 Uses Allowed Outright	351-81-440 Uses Allowed Outright	350-81-480 Uses Allowed Outright
<b>30-81-182 Uses Allowed Through the Expedited Development Review</b>	350-81-262 Uses Allowed Through the Expedited Development Review	350-81-338 Uses Allowed Through the Expedited Development Review	350-81-365 Uses Allowed Through the Expedited Development Review	350-81-415 Uses Allowed Through the Expedited Development Review	350-81-445 Uses Allowed through the Expedited Development Review	350-81-485 Uses Allowed through the Expedited Development Review
<b>350-81-182 Review Uses</b>	350-81-270 Review Uses	350-81-340 Review Uses	350-81-370 Review Uses	350-81-420 Review Uses		350-81-490 Review Uses
<b>350-81-200 Review Uses with Additional Approval Criteria – Large Scale or Small Scale Agriculture</b>	350-81-280 Review Uses with Additional Approval Criteria – Commercial Forest Land, or Large or Small Woodland Designations		350-81-380 Review Uses with Additional Approval Criteria		350-81-450 Review Uses with Additional Approval Criteria	
<b>350-81-210 Approval Criteria for Life Estates- Large Scale or Small-Scale Agriculture Designations</b>	350-81-290 Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land		350-81-390 Approval Criteria for Specified Review Uses on Lands Designated Residential		350-81-460 Approval Criteria for Review Uses on Lands Designated Commercial	350-81-500 Approval Criteria for Non-Recreation Uses in GMA Public Recreation Designations

	or Large or Small Woodland					
<b>350-81-220 Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture</b>	350-81-300 Approval Criteria for Fire Protection in GMA Forest Designations					350-81-510 Approval Criteria for Non-Recreation Uses in GMA-Commercial Recreation Designations
<b>350-81-230 Uses Allowed Outright for Lands Designated Agriculture – Special</b>	350-81-310 Approval Criteria for Siting of Dwellings on Forest Land in the GMA					
<b>350-81-231 Uses Allowed through the Expedited Development Review Process – Agriculture – Special</b>	350-81-320 Approval Criteria for Life Estates in Commercial Forest Land Or Small or Large Woodland					
<b>350-81-232 Review Uses for Lands Designated Agriculture – Special</b>						
<b>350-81-234 Approval Criteria for Review Uses on Lands Designated Agriculture - Special</b>						
<b>350-81-236 Uses Prohibited on</b>						

<b>Lands Designated Agriculture – Special</b>						
<b>350-81-240 Range Conservation Plans</b>						

<u><b>Agriculture</b></u>
<b>350-81-170 Agricultural Land Designations</b>
<p><b>350-81-180 Uses Allowed Outright</b> Findings of Fact: Installation of a livestock watering facility and fencing is <u>not</u> considered a use allowed outright.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>30-81-182 Uses Allowed Through the Expedited Development Review</b> Findings of Fact: Livestock watering facility and fencing is <u>not</u> considered a use allowed through the expedited development review process.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-190 Review Uses</b> Rule: Commission Rule 350-81-190(1)(b) permits “<i>Agricultural structures, except buildings, in conjunction with agricultural use</i>” to occur on lands in the General Management Areas designated Large-Scale Agriculture subject to compliance with scenic, cultural, natural and recreation resources guidelines. Findings of Fact: The agricultural structures included in this application include installation of a new 5,262 ft long, 2-in maximum diameter livestock water pipeline that will tie into an existing spring fed pipeline. This pipeline will provide water to two 1,200 gallons water troughs. A 1,464 ft long cross fence will also be installed in order to split the pasture in half to improve grazing distribution. Ground disturbing activities for pipeline construction will consist of excavating a 3-ft deep by 3-ft wide trench with a backhoe and hand tools. It is estimated that additional ground disturbance will occur within a 20-ft wide corridor from either side of the trench. The troughs will be installed using a bulldozer and hand tools. An approximate 100-ft diameter by 1-ft deep area will be disturbed during construction of each of the trough. The project proponents plan on placing rocks on the ground surface around each trough to armor the surrounding ground. Ground disturbance from fence construction will consist of hand dug posts set to a depth of three feet and metal "T" posts set to a depth of 18 inches. The total project area with all these three undertakings is approximately 3.3 acres.</p> <p>Conclusions of Law: The proposed agricultural structures (livestock pipeline and watering facility) and fences are allowed review uses pursuant to the guidelines in Commission Rule 350-81-190, subject to guidelines found in Commission Rule 350-80-520 through 350-80-620 that protect scenic, cultural, recreation and natural resources. The development application, C14-09, is consistent with this rule requirement.</p>
<p><b>350-81-200 Review Uses with Additional Approval Criteria – Large Scale or Small Scale Agriculture</b> Findings of Fact: The development review application does <u>not</u> propose any uses that are listed or considered as review uses with additional approval criteria.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>

<p><b>350-81-210 Approval Criteria for Life Estates-Large Scale or Small-Scale Agriculture Designations</b></p> <p>Findings of Fact: The development review application does <u>not</u> propose any uses that are listed or considered as a life estate.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-220 Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture</b></p> <p>Findings of Fact: The development review application does <u>not</u> propose any uses that are specified review uses on lands designated large-scale or small-scale agriculture.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-230 Uses Allowed Outright for Lands Designated Agriculture – Special</b></p> <p>Findings of Fact: The land use plan category for this development review application is <u>not</u> Agriculture-Special.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-231 Uses Allowed through the Expedited Development Review Process – Agriculture – Special</b></p> <p>Findings of Fact: The land use plan category for this development review application is <u>not</u> Agriculture-Special.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-232 Review Uses for Lands Designated Agriculture – Special</b></p> <p>Findings of Fact: The land use plan category for this development review application is <u>not</u> Agriculture-Special.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-234 Approval Criteria for Review Uses on Lands Designated Agriculture - Special</b></p> <p>Findings of Fact: The land use plan category for this development review application is <u>not</u> Agriculture-Special.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-236 Uses Prohibited on Lands Designated Agriculture – Special</b></p> <p>Findings of Fact: The land use plan category for this development review application is <u>not</u> Agriculture-Special.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-240 Range Conservation Plans</b></p> <p>Findings of Fact: Range conservation plans are required for any proposed livestock grazing in lands designated Agriculture-Special or GMA-Open Space for the Balch Lake Wetlands but not for lands designated Agriculture-Large Scale, which is the plan designation for the subject property.</p> <p>Conclusions of Law: This rule requirement is <u>not</u> applicable to this development review application.</p>
<p><b>350-81-250 Forest Land Designations</b></p> <p>Findings of Fact: The development review application does <u>not</u> contain any properties with a Forest Land Designation.</p> <p>Conclusions of Law: Rule requirements 350-81-250 up to, and including 350-81-320, which pertain to Forest Land Designations are <u>not</u> applicable to this development review application.</p>
<p><b>350-81-330 Open Space Designations</b></p> <p>Findings of Fact: The development review application does <u>not</u> contain any properties with an Open Space Land Designation.</p> <p>Conclusions of Law: Rule requirements 350-81-330 up to, and including 350-81-340, which pertain to Open</p>

Space Land Designations are <u>not</u> applicable to this development review application.
<p><b>350-81-350 Residential Land Designations</b></p> <p>Findings of Fact: The development review application does <u>not</u> contain any properties with a Residential Land Designation.</p> <p>Conclusions of Law: Rule requirements 350-81-350 up to, and including 350-81-390, which pertain to Residential Land Designations are <u>not</u> applicable to this development review application.</p>
<p><b>350-81-400 Rural Center Land Designations</b></p> <p>Findings of Fact: The development review application does <u>not</u> contain any properties with a Rural Center Land Designation.</p> <p>Conclusions of Law: Rule requirements 350-81-400 up to, and including 350-81-420, which pertain to Rural Center Land Designations are <u>not</u> applicable to this development review application.</p>
<p><b>350-81-430 Commercial Land Designations</b></p> <p>Findings of Fact: The development review application does <u>not</u> contain any properties with a Commercial Land Designation.</p> <p>Conclusions of Law: Rule requirements 350-81-430 up to, and including 350-81-460, which pertain to Commercial Land Designations are <u>not</u> applicable to this development review application.</p>
<p><b>350-81-470 Recreation Land Designations</b></p> <p>Findings of Fact: The development review application does <u>not</u> contain any properties with a Recreation Land Designation.</p> <p>Conclusions of Law: Rule requirements 350-81-470 up to, and including 350-81-510, which pertain to Recreation Land Designations are <u>not</u> applicable to this development review application.</p>



*Figure 3-Large Scale Agriculture land use designation.*



## RESOURCE PROTECTION GUIDELINES-SCENIC

### 350-81-520 General Management Area Scenic Review Criteria

The following scenic review guidelines shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

(1) All review uses:

- (a) New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

Findings of Fact: No new buildings, road construction or grading activities are proposed at this time.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (b) New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

Findings of Fact: No new buildings are proposed at this time.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in this chapter.

Findings of Fact: No planted vegetation is needed, required or provided in this application.

Conclusions of Law: This rule provision is not applicable to this petition.

- (d) A site plan and land use application shall be submitted for all new buildings, except for buildings smaller than 60 square feet in area and less than or equal to 10 feet in height, as measured at the roof peak. The site plan and application shall include all information required in the site plan guidelines in "Review Uses" 350-81-032(5). Supplemental requirements for developments proposed on lands visible from key viewing areas are included in the key viewing areas guidelines in this chapter.

Findings of Fact: The proposed development is greater than 60 square feet in area, and a site plan with elevation has been provided as part of this development review application.

Conclusions of Law: This development review application is consistent with this rule provision.

- (e) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

Findings of Fact: This rule requirement is a directive for staff as the reviewing party. The applicant has been advised and has provided information on the site plan in which to make a determination of compatibility with the landscape setting. The guidelines for determining that compatibility are contained in Rule 350-81-520(3) which is contained further along in this report.

Conclusions of Law: This development review application is consistent with this rule provision.

- (f) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable. At a minimum, such reclamation plans shall include:

- (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-mining existing grades

and post-mining 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-mining and post-mining 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 re-vegetation consistent with the vegetation patterns of the subject landscape setting, indicating the 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.

Findings of Fact: This development review application does not propose any new production and/or development of mineral resources nor any expansion of existing quarries.

Conclusions of Law: These rule requirements are not applicable to this development review application.

- (g) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to submit written comments on the proposal. State agency comments shall address the following:
  - (A) Whether the proposed mining is subject to state reclamation permit requirements;
  - (B) If subject to state jurisdiction, whether an application has been received for a state reclamation permit and, if so, the current status of the application; and
  - (C) For uses subject to state jurisdiction, any issues or concerns regarding consistency with state reclamation requirements, or any suggested modifications to comply with state reclamation requirements. The Executive Director may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction.

Findings of Fact: This development review application does not propose any new production and/or development of mineral resources nor any expansion of existing quarries.

Conclusions of Law: These rule requirements are not applicable to this development review application.

## (2) Key Viewing Areas

- (a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

Findings of Fact: Portions of the project are located on land that may be topographically visible in the background from two key viewing areas: the Columbia River and Interstate 84.

Conclusions of Law: These rule requirements are applicable to the proposal.

- (b) Each development shall be visually subordinate to its setting as seen from key viewing areas.

Findings of Fact: Visually subordinate development is a scenic standard in the Columbia River Gorge National Scenic Area. Scenic standards describe how well a development blends with the landscape.

As defined in Rule 350-81. Visually subordinate: A description of 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, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually



dominant in relation to their surroundings.

Additionally, visually subordinate development is visible but not what you see first or remember best about the landscape. Visual subordination for the purposes of this analysis is a function of:

- Structure location and orientation;
- Structure size, color, height, shape and exterior materials;
- Plantings to help screen or shade new development; and
- Grading necessary to accommodate structures and circulation on the site.

Findings of Fact: The majority of the livestock pipeline and its appurtenance will be buried underground. In addition to the existing 3-inch above ground steel pipeline, there are two short sections of 1-inch steel pipeline that will also be above ground. The proposed livestock fencing and the two heavy equipment tires to be used as the water troughs will be installed per NRCS standards and specifications for practices #382 and #614. The proposed above ground structures are small in scale and are located at a higher elevation from Interstate 84 and the Columbia River. The elevation difference is more than 1,000 feet. Plantings to help screen or shade new development would not be necessary. The land will be excavated as a trench for the pipeline and for the location where the water trough will be sited. The excavated trench for the pipeline will be filled back to its original grade and re-planted with native vegetation. The livestock fencing, water troughs and the few short sections of the above ground livestock pipeline would be able to blend within the landscape and reach visual subordination.

Conclusions of Law: The development application C14-09, is consistent with this rule requirement.

- (c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

Rule 350-81 defines cumulative effects as the combined effects of two or more activities. The effect may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

Findings of Fact: The nature of the proposed above ground structures are small and will not add to the cumulative impacts of the area's existing visual development.

Conclusion of Law: No cumulative effects are expected, the development application C14-09, is consistent with this rule requirement.

- (d) The extent and type of conditions applied to a proposed development to achieve visual subordination shall be proportionate to its potential visual impacts as seen from key viewing areas.

- (A) Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:

- i. The amount of area of the building site exposed to key viewing areas.
- ii. The degree of existing vegetation providing screening.
- iii. The distance from the building site to the key viewing areas from which it is visible.
- iv. The number of key viewing areas from which it is visible.
- v. 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 are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

- i. Siting (location of development on the subject property, building orientation, and

- other elements).
- ii. Retention of existing vegetation.
- iii. Design (color, reflectivity, size, shape, height, architectural and design details and other elements).
- iv. New landscaping.

Findings of Fact: Portions of the project are located on land that may be topographically visible in the background from two key viewing areas: the Columbia River and Interstate 84. No buildings are proposed with this project. The majority of the livestock pipeline will be underground. Due to intervening topography, a majority of the proposed livestock fence would not be visible from key viewing areas. The proposed cattle grazing activity would help reestablish native plant species by cutting back and turning the soil. Any above ground project element is intended to be consistent with the design of existing development. The project has little potential to create visual impacts in the landscape and is unlikely to be visually noticeable by a casual observer. As proposed, only portions of the project may be visible from key viewing areas and the elements are unlikely to be visually noticeable. The area has been using for ranching for decades. There is no existing screening vegetation, therefore no retention of screening vegetation is necessary for scenic resource protection. As proposed, the majority of the livestock waterline will be buried underground, the fence posts will consist of T-posts and base posts and the dark color water troughs. The materials are either of natural earth tones that will blend with the landscape or will be subordinate to the landscape, consistent with this rule. Therefore the use of these materials will not affect the fence's ability to be visually subordinate when viewed from key viewing areas.

Conclusions of Law: The development application C14-09, is consistent with this rule requirement.

- (e) New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.

Findings of Fact: The majority of the livestock pipeline will be underground. Due to intervening topography, a majority of the proposed livestock fence would not be visible from key viewing areas. The location of the project improvements were selected after field verification with NRCS staff, with the objective to install a watering facility and fencing to improve plant health and vigor. There are no buffers for wetlands, riparian corridors, sensitive plants or sensitive wildlife sites that preclude it being sited in this location. The proposed locations does not conflict with cultural resource guidelines.

Conclusions of Law: This development review application, C14-09, is consistent this this rule requirement.

- (f) New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.

Findings of Fact: The majority of the livestock pipeline will be underground. Due to intervening topography, a majority of the proposed livestock fence would not be visible from key viewing areas. Conclusions of Law: This development review application, C14-09, is consistent this this rule requirement.

- (g) Existing tree cover screening proposed development from key viewing areas shall be retained as specified in the Landscape Settings Design Guidelines in 350-81-520(3).

Findings of Fact: No trees are being removed as part of this development review application.

Conclusions of Law: This development application, C14-09, is consistent with this rule requirement.

- (h) The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall

be the minimum necessary to allow the use and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.

Findings of Fact: No buildings are proposed with this project.

Conclusions of Law: This rule requirement is not applicable to this development review application C14-09.

- (i) An alteration to a building built before November 17, 1986, that already protrudes above the skyline of a bluff, cliff, or ridge as seen from a key viewing area, may itself protrude above the skyline if:
  - (A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration, and
  - (B) There is no practicable alternative means of altering the building without increasing the protrusion.

Findings of Fact: The proposed development in application C14-09 is new development, not changes to existing development.

Conclusions of Law: This administrative rule requirement is not applicable to this development review application.

- (j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:
  - (A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-81-520 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

Findings of Fact: No new landscaping is proposed as part of this development review application.

Applications of other guidelines (explained in detail in preceding sections of this report) are sufficient to make the development visually subordinate from the key viewing areas.

Conclusions of Law: This development review application, C14-09, is consistent with this rule requirement.

- (B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, 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 make the development visually subordinate within five years or less from the commencement of construction.

Findings of Fact: No new landscaping is required as part of this proposed development to achieve visual subordination.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (C) Unless as specified otherwise by provisions in 350-81-520, 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.

Findings of Fact: No new landscaping is required as part of this proposed development to achieve visual subordination.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (D) The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-81-520(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

Findings of Fact: No new landscaping is required as part of this proposed development to achieve visual subordination.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (k) Conditions regarding new landscaping or retention of existing vegetation for new developments on lands designated GMA Forest shall meet both scenic guidelines and fuel break requirements in 350-81-300(1)(a).

Findings of Fact: The land use plan category is GMA Large Scale Agriculture, not GMA Forest.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (l) Unless expressly exempted by other provisions in 350-81-520, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.

Findings of Fact: The fence posts and tire troughs will be weathered, dark earth tone and black in color.

Conclusions of Law: This development review application, C14-09, is consistent with this rule requirement

- (m) The exterior of buildings on lands seen from key viewing areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all key viewing areas by existing topographic features. The Scenic Resources Implementation Handbook will include a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets recommended thresholds in the "Visibility and Reflectivity Matrices" in the Implementation Handbook (once they are created). Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

Findings of Fact: No buildings are proposed with this project.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (n) In addition to the site plan requirements in 350-81-032(5), applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

Findings of Fact: No buildings are proposed with this project.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (o) For proposed mining and associated activities on lands visible from key viewing areas, in addition to submittal of plans and information pursuant to 350-81-520(1)(f) section of this chapter, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable key viewing areas.

Findings of Fact: The development review application does not propose any uses that are mining or

associated activities.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (p) Exterior lighting shall be directed downward and sited, hooded, and shielded such that it is not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non reflective, opaque materials.

Findings of Fact: No exterior lighting is proposed with this project.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (q) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of dark earth-tone colors found at the specific site or in the surrounding landscape. The specific colors or a list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.

Findings of Fact: The development review application does not propose any additions to existing buildings.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (r) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from key viewing areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.

Findings of Fact: This development review application does not include rehabilitation or modification to existing significant historic structures.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (s) New main lines on lands visible from key viewing areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.

Findings of Fact: This development review application does not include new main lines.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (t) New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas that require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

Findings of Fact: This development review application does not include any new communication facilities.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (u) New communications facilities may protrude above a skyline visible from a key viewing area only upon demonstration that:

- (A) The facility is necessary for public service,
- (B) The break in the skyline is seen only in the background, and
- (C) The break in the skyline is the minimum necessary to provide the service.

Findings of Fact: This development review application does not include any new communication facilities.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (v) Overpasses, safety and directional signs, and other road and highway facilities may protrude above a skyline visible from a key viewing area only upon a demonstration that:

- (A) The facility is necessary for public service, and

- (B) The break in the skyline is the minimum necessary to provide the service.

Findings of Fact: This development review application does not include overpasses, safety and directional signs or any other road or highway facilities.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (w) *There is no (w) numbered criteria in the code.*

- (x) Except for water dependent development and for water related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to this guideline may be authorized.

Findings of Fact: The proposed development in this application is located more than 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (y) New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building site shall be used.

Findings of Fact: No buildings are proposed with this project.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (z) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.

Findings of Fact: No driveways and buildings are proposed with this project.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (aa) All proposed structural development involving more than 200 cubic yards of grading on sites visible from key viewing areas shall include submittal of a grading plan. This plan shall be reviewed by the local government for compliance with key viewing area policies. The grading plan shall include the following:

- (A) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:

- i. Existing and proposed final grades.
    - ii. Location of all areas to be graded, with cut banks and fill slopes delineated.
    - iii. Estimated dimensions of graded areas.

- (B) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

- i. Its purpose.
    - ii. An estimate of the total volume of material to be moved.
    - iii. The height of all cut banks and fill slopes.
    - iv. Provisions to be used for compactions, drainage, and stabilization of graded

areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended.)

- v. A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings.
- vi. A description of any other interim or permanent erosion control measures to be used.

Findings of Fact: Grading is defined as “Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.” (350-81-020(76)). The purpose of a grading plan is to address post-development conditions when a land contour has been permanently altered. It helps to ensure scenic, natural and drainage characteristics of the property are protected. This development proposal includes excavation and filling of those excavated areas back to original contour and replanting with native vegetation, for a net improvement to the impacted areas. A grading plan wasn’t needed to accomplish this objective. The application states that the site may be visible from the Columbia River and Interstate 84. Staff visited the site and walked through it. At several points, staff stopped and looked to see if any of the key viewing areas could be seen (Columbia River, Historic Columbia River Highway, Interstate 84 and WA SR14). See also Figure 4 on page 31. Based on this, and to the best of staff’s knowledge, the project site is not visible from any of the key viewing areas.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (bb) 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 upon a demonstration that:
  - (A) The site plan requirements for such proposals pursuant to 350-81-520 have been met.
  - (B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any key viewing areas.
  - (C) A reclamation plan to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520(1)(f) and (g).
  - (D) A written report on a determination of visual subordination has been completed, with findings addressing the extent of visibility of proposed mining activities from key viewing areas, including:
    - i. A list of key viewing areas from which exposed mining surfaces (and associated facilities/activities) would be visible.
    - ii. An estimate of the surface area of exposed mining surfaces that would be visible from those key viewing areas.
    - iii. The distance from those key viewing areas and the linear distance along those key viewing areas from which proposed mining surfaces are visible.
    - iv. The slope and aspect of mining surfaces relative to those portions of key viewing areas from which they are visible.
    - v. The degree to which potentially visible mining surfaces are screened from key viewing areas by existing vegetation, including winter screening considerations.
    - vi. The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

Findings of Fact: The development proposed in this application, C14-09, does not include expansion of existing quarries and new production and/or development of mineral resources.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (cc) Unless addressed by 350-81-520(2)(bb), 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.
  - (C) A reclamation plan to restore the area to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520(1)(f) and (g).

Findings of Fact: The development proposed in this application, C14-09, does not include new production and/or development of mineral resources.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (dd) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

Findings of Fact: The development proposed in this application, C14-09, does not include expansion of existing quarries nor the development of new quarries.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (ee) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarrying activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

Findings of Fact: The development proposed in this application, C14-09, does not include new quarries.

Conclusions of Law: This rule requirement is not applicable to this development review application.

### (3) Landscape Settings

All review uses within the following landscape settings shall comply with the following applicable guidelines:

- a. Pastoral
  - (A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.
  - (B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:
    - i. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.



- ii. Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.
- iii. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas-fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).
- iv. At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

(C) Compatible recreation uses include resource-based recreation of a very low-intensity or low-intensity nature (as defined by 350-81-610) occurring infrequently in the landscape.

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

b. Coniferous Woodland

(A) Structure height shall remain below the forest canopy level.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

- i. Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.
- ii. At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas-fir, grand fir, western red cedar, western hemlock, big leaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas).
- iii. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, outdoor recreation uses should be low-intensity, and include trails, small picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur. They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

c. Oak-Pine Woodland

(A) Structure height shall remain below the tree canopy level in wooded portions of this setting.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

- i. At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.
- ii. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

For substantially wooded portions:

- iii. Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.

For treeless portions or portions with scattered tree cover:

- iv. Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.
  - v. Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.
  - vi. Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.
- (C) Resource-based recreation uses of varying intensities may be compatible with this setting although most are of low-intensity nature (such as trails or small scenic outlooks). More intensive recreation uses may be compatible where allowed by 350-81-610, although they are generally rare in this setting. As with Woodland settings, intensive recreation uses in Oak-Pine Woodlands may be compatible if widely scattered and not in large concentration

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

d. Grassland

- (A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible. Exceptions to this guideline are permitted where necessary for farming operations.
- (B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:
  - i. Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.
  - ii. Lower structures that emphasize horizontal lines and blend with this sweeping landscape should be encouraged rather than very tall structures.
  - iii. Planting of trees for screening shall not be extensive, in character with the openness of this setting. Where used, screening vegetation shall either tie in with nearby riparian vegetation in seasonal drainages or emulate windrows. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include Oregon white oak, Lombardy poplar, black locust, black cottonwood (wet locations), Russian olive and ponderosa pine.
- (C) Resource-based recreation uses of a very low-intensity or low-intensity nature that occur infrequently are compatible with this setting, and include hiking, hunting and wildlife viewing.

Findings of Fact: The livestock watering facility and fencing is considered as a part of the ranching operations. No new buildings or tall structures are proposed. The portions of the area that may be visible from key viewing areas are topographically screened. No new trees will be planted for screening, and criteria in guideline (iii) do not apply.

Conclusions of Law: As proposed, the development is consistent with the guidelines for the protection of the 'Grassland' landscape setting.

e. Rural Residential

- (A) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.
- (B) In portions of this setting visible from key viewing areas, and not exempt from visual subordination guidelines (see 350-81-520(3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:
  - i. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.
  - ii. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.
  - iii. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.
- (C) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as scenic overlooks).

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

f. Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland

- (A) New development in this setting shall meet the design guidelines described for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.
- (B) In the event of a possible conflict between the two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.
- (C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

g. Residential

- (A) In portions of this setting visible from key viewing areas and not exempt from visual subordination guidelines (see 350-81-520(3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:
  - i. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.
  - ii. The exteriors of structures shall be non-reflective unless fully screened from key viewing areas with existing vegetation and/or topography.
  - iii. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.
  - iv. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(B) Compatible recreation uses are limited to community park facilities.

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

h. Village

- (A) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 1/2 stories or less.
- (B) For new commercial, institutional (churches, schools, government buildings), or multifamily residential uses on parcels fronting a scenic travel corridor (Washington State Route 14 or the Historic Columbia River Highway) and expansion of existing development for such use parking shall be limited to rear or side yards of buildings to the maximum extent practicable.
- (C) New vehicular access points to the scenic travel corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.
- (D) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly shared landscaped open areas, etc.
- (E) New commercial, institutional or multifamily residential uses fronting a scenic travel corridor shall comply with the following landscape requirements:
  - i. Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet wide between the new use and the scenic travel corridor roadway.
  - ii. The landscape strip required in 350-81-520(3)(h)(E)(i) shall include shrubs, vegetative ground cover, and, at minimum, one tree. Trees shall be spaced as appropriate to the species and not to exceed 25 feet apart on the average.
- (F) The use of building materials that reinforce the Village setting's character, such as wood, logs, or stone, and that reflect community desires, should be encouraged.
- (G) Architectural styles that are characteristic of the area (such as 1 1/2-story dormer roof styles in Corbett) and that reflect community desires should be encouraged. Entry signs should be consistent with such architectural styles.
- (H) Design features that create a "pedestrian-friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc., should be encouraged.
- (I) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.
- (J) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.
- (K) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

i. River Bottomlands

- (A) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

- i. Except as is necessary for site development or safety purposes, existing tree cover screening the development from key viewing areas shall be retained.
  - ii. At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas-fir, western red cedar and western hemlock (west Gorge), and various native willow species.
  - iii. At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.
- (B) Compatible recreation uses depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible.

In other River Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be compatible, provided that:

- i. their designs emphasize retention and/or enhancement of native riparian communities,
- ii. structures and parking areas are visually subordinate
- iii. they are separated from other areas of concentrated recreation usage by stretches of natural-appearing shoreline and adjacent uplands.

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

- j. Gorge Walls, Canyons, and Wildlands
  - (A) New development and expansion of existing development shall be screened so it is not seen from key viewing areas, to the maximum extent practicable.
  - (B) All trees planted to screen permitted development and uses from key viewing areas shall be native to the area.
  - (C) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum removal necessary to accommodate facilities other-wise permitted in the underlying land use designation or for safety purposes.
  - (D) All buildings shall be limited in height to a maximum of 1 1/2 stories.
  - (E) The exteriors of structures shall be non-reflective.
  - (F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors, unless public safety concerns or federal or state highway standards require otherwise.
  - (G) Compatible recreation uses are limited to very low or low-intensity resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such compatible uses (such as trails) are generally associated with minimal facility development, if any.

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

- k. Developed Settings and Visual Subordinance Policies

GMA policies to protect key viewing area viewsheds require that all new development on lands seen from key viewing areas be visually subordinate to its landscape setting, except for "specified developed settings that are not visually sensitive."

Three landscape settings are considered developed settings within this context: Rural Residential, Residential, and Village. Of all GMA lands in these three settings, six particular areas that are not visually sensitive have been identified. New development in these settings shall be compatible with the setting, but not necessarily visually subordinate. New developments in these settings are exempt from the color and siting guidelines in the Key Viewing Areas section of this chapter. These areas are:

- (A) Corbett Rural Center (Village)
- (B) Skamania Rural Center (Village)
- (C) West of Hood River Urban Area, east of Country Club Road (Rural Residential)
- (D) Murray's Addition subdivision, The Dalles (Residential)
- (E) Two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Residential)
- (F) Portion of Underwood Heights along Cooper Avenue, south of Cook-Underwood Road (Rural Residential)

Findings of Fact: The landscape setting for the subject property is 'Grassland'.

Conclusions of Law: The provisions of this landscape setting are not applicable to this development review petition.

#### (4) Scenic Travel Corridors

All review uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

- a. For the purposes of implementing this section, the foreground of a scenic travel corridor shall include those lands within 1/4 mile of the edge of pavement of the scenic travel corridor roadway.
- (b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway. A variance to this setback requirement may be granted pursuant to 350-81-078(2). All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway, to the maximum extent practicable.
- (c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a scenic travel corridor roadway, except in a Rural Center designation (village landscape setting), shall comply with 350-81-520(4)(b) above, to the maximum extent practicable.
- (d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:
  - (A) An evaluation of potential visual impacts of the proposed project as seen from any key viewing area.
  - (B) An inventory of any rare plants, sensitive wildlife habitat, wetlands, or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable Management Plan guidelines to protect the resources.
- (e) When evaluating possible locations for undergrounding of signal wires or powerlines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the *Columbia River Gorge National Scenic Area Corridor Visual Inventory* (April 1990).

- (f) New production and/or development of mineral resources proposed within 1/4 mile of the edge of pavement of a scenic travel corridor may be allowed upon a demonstration that full visual screening of the site from the scenic travel corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a scenic travel corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within timeframes specified in 350-81-520(2)(ee).
- (g) Expansion of existing quarries may be allowed pursuant to 350-81-520(2)(bb). Compliance with visual subordination requirements shall be achieved within timeframes specified in 350-81-520(2)(dd).

Findings of Fact: The proposal is not within the Scenic Travel Corridors.

Conclusions of Law: These rule provisions is not applicable to this development review application.

**350-81-530 Special Management Area Scenic Review Criteria**

Findings of Fact: This development review application is for property wholly contained in the General Management Area. There are no lands in this application that are located in the Special Management Area.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.



*Figure 4-The view south towards the Columbia River (not visible).*



### **350-81-540 General Management Area Cultural Resource Review Criteria**

#### **(1) General Provisions for Implementing the Cultural Resources Protection Process.**

- (a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

Findings of Fact: Marge Dryden, an Archaeologist and Heritage Program Manager for the US Forest Service serves as the resource expert for the Gorge Commission. Marge works with the Columbia River Gorge National Scenic Area office of the US Forest Service and has served in this role since January 2003. Marge is considered a resource expert and has provided the Gorge Commission these services for several years. Marge determined that a cultural resources reconnaissance survey was not required because a previous survey had been done.

The proposed project has been reviewed as a “federal undertaking” under Section 106 of the National Historic Preservation Act. This development review application, C14-09, is consistent with this rule requirement. The previous survey was conducted by Ian Gray, M.S., Yakama Nation Cultural Resources Program Archaeologist and Brycene Neaman, Yakama Nation Cultural Resources Program Cultural Specialist in 2013. They surveyed the project area and submitted a cultural resources survey titled Cultural Resources Survey for the Jim Sizemore Livestock Watering Facility Project EQIP Contract #740546130SH. The survey methodology was designed to be consistent with the National Scenic Area Management Plan. A review letter from DAHP dated March 5, 2014 concurred with the report’s determination of No Historic Properties Affected. (350-81-040(2) & (3)).

Conclusions of Law: The process used for this development review application is consistent with this rule requirement.

- (b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

Findings of Fact: The Gorge Commission’s resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

#### **(c) Reconnaissance and Historic Surveys and Survey Reports.**

##### **(A) Reconnaissance survey requirements and exceptions.**

- (i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-81-540(1)(c)(A)(ii) below.

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

- (I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.
- (II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.
- (III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

- (IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

- (V) Proposed uses that would occur on sites that have been adequately surveyed in the past.

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

- (VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

- Residential development that involves two or more new dwellings for the same project applicant.

- Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
- Public transportation facilities that are outside improved rights-of-way.
- Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.
- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

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

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

- (B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

- (C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

For 350-81-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

- (D) Reconnaissance Surveys for Small-Scale Uses.

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

- (i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.
- (ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

- (E) Reconnaissance Survey Reports for Small-Scale Uses

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

- (i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.
- (ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.
- (iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(F) Reconnaissance Surveys for Large-Scale Uses

- (i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.
- (ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:
  - (I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.
  - (II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.
  - (III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.
  - (IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

- (i) A description of the proposed use, including drawings and maps.
- (ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.
- (iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.
- (iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
- (v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
- (vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

- (vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(H) Historic Surveys and Reports

- (i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.
- (ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.
- (iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

- (d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past. As such, no evaluation of significance, assessment of effect or mitigation plan was required.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

- (e) Cultural resources are significant if one of the following criteria is satisfied:
  - (A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

- (B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

Findings of Fact: No cultural resources have been identified as part of the process for this development review application, C14-09. As such, there are no cultural resources deemed significant in this development review application.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

- (f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

Findings of Fact: The Gorge Commission does not have a standing Cultural Advisory Committee. The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past. As such, no evaluation of significance, assessment of effect or mitigation plan was required.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

- (g) Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan.

Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past. As such, no evaluation of significance, assessment of effect or mitigation plan was required.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

- (A) When written comments are submitted to the Executive Director within the comment period provided in 350-81-040, the project 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. 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.

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.

- (B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research 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.

(b) Notice of Survey Results

- (A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.
- (B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

Findings of Fact: Commission Rule 350-81-540(2) (a) (A) allows interested parties to consult with the applicant regarding cultural resources. No written comments regarding cultural resources on the subject parcel were received during the comment period.

The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past.

Conclusions of Law: This development review application, C14-09, is consistent with part (a) of this rule requirement, and part (b) of this rule requirement is not applicable to this development review application, C14-09.

(c) Conclusion of the Cultural Resource Protection Process

- (A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-81-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.



Findings of Fact: Based on the findings presented by Marge Dryden, Archaeologist and Heritage Program Manager, USFS and cultural resource expert for the Gorge Commission, the Executive Director concludes that this development review application, C14-09, and the uses proposed are consistent with Rule 350-81-540.

Conclusions of Law: This development review application, C14-09, is consistent with this rule requirement.

- (B) The cultural resource protection process may conclude when one of the following conditions exists:
  - (i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.
  - (ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2(b)(B) above.
  - (iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

- (iv) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

- (a) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

- (b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of

the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

Findings of Fact: Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past. This is consistent with part (B)(i) above. The cultural resources protection process may conclude.

Conclusions of Law: This development review application, C14-09, is consistent with this rule requirement.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

- (A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.
- (B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.
- (C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

- (D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.
  - (E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.
- (b) Notice of Evaluation Results
  - (A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.
  - (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.
- (c) Cultural Resources are Culturally Significant
  - (A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.
  - (B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.
- (d) Conclusion of the Cultural Resource Protection Process
  - (A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past. As such, no evaluation of significance, assessment of effect or mitigation plan was required. The cultural resource protection process may conclude.

Conclusions of Law: This development review application, C14-09, is consistent with this rule requirement.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.5) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.11.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800. 5].

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800. 5]. Adverse effects on cultural resources include, but are not limited to:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 CFR 800.5.

- (B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.
- (C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:
  - (i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.
  - (ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results

- (A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.
- (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

- (A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.
- (B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.
- (C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

Findings of Fact: Findings of Fact: The Gorge Commission's resource expert, Marge Dryden reviewed the proposed development review application, its potential effect against National Scenic Area records and

inventories and determined that a cultural resources reconnaissance survey was not required because it would occur on a site that has been adequately surveyed in the past. As such, no evaluation of significance, assessment of effect or mitigation plan was required.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

- (A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.
- (B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

- (C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.11, including, but not limited to:
  - (i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.
  - (ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.
  - (iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.
  - (iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.
  - (v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results

- (A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.
- (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

- (A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.
- (B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.
- (C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

Findings of Fact: The cultural resources expert for the Gorge Commission, Marge Dryden, Archaeologist and Heritage Program Manager, USFS has concluded with the report's determination of No Historic Properties Affected. To the best of staff's knowledge at this time, cultural resources would not be affected by the new use proposed in this development review application, and an evaluation of significance nor an assessment of effect nor a mitigation plan is not applicable. Though an evaluation of significance nor an assessment of effect nor a mitigation plan is not required at this time, it does not preclude them being required later if cultural resources are discovered on site. A condition in the Director's Decision will be included that will require that any construction activity be stopped if cultural resources are discovered.

Conclusions of Law: This development review application, C14-09, is consistent with this rule requirement.

(6) Cultural Resources Discovered After Construction Begins

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

- (a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- (b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native

Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

- (c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [350-80-540(1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [350-80-540(3)(a)].

Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

- (d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

Findings of Fact: This rule requirement is in effect after the permit is issued and construction has begun. A condition will be included in the Director's Decision that will require all construction activity be stopped immediately if cultural resources are found on-site, within 100 feet of the development during construction. Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-09 at this time.

(7) Discovery of Human Remains

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

- (a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.
- (c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.
- (e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In



Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [350-81-540(5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [350-81-540(5)(c)] are met and the mitigation plan is executed.

Findings of Fact: To the best of staff's knowledge at this time, cultural resources, including human remains, would not be affected by the new use proposed in this development review application. A condition in the Director's Decision will be included that will require that any construction activity be stopped if human remains are discovered.

Conclusions of Law: A condition will be included in the Director's Decision that will require all construction activity be stopped immediately if human remains are found on-site.

**350-81-550 Special Management Area Cultural Resource Review Criteria**

Findings of Fact: This development review application is for property wholly contained in the General Management Area. There are no lands in this application that are located in the Special Management Area.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

### **350-81-560 General Management Area Wetland Review Criteria**

1. Wetlands Boundaries and Site Plans for Review Uses in Wetlands
  - a. If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.
    - (A) 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. Wetlands boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).
    - (B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.
    - (C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation.
  - b. In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:
    - (A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;
    - (B) the exact boundary of the wetland and the wetlands buffer zone; and
    - (C) a description of actions that would alter or destroy the wetland.
  - c. Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within wetlands and their buffer zones.

Findings of Fact: There are no wetlands identified on the subject property as shown in data provided in the National Wetlands Inventory. The applicant is responsible for determining the exact boundary of a wetland if the subject property is within a wetland buffer zone even if there are no wetlands on the subject property. The largest wetland buffer zone width defined in Rule 350-81 is in Rule 350-81-560(7)(c)(C). That width is 150 feet for herbaceous communities. There are no wetlands identified within 150 feet of the subject property as shown in data provided in the National Wetlands Inventory. Overall, there are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-09.

2. Commission Rule 350-81-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

Findings of Fact: The subject property is not located in the main stem of the Columbia River.

Conclusions of Law: This rule requirement is not applicable to this development petition, C14-09.

3. The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-81-560(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:
  - a. The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:
    - (A) Increase the size of an existing structure by more than 100 percent,
    - (B) Result in a loss of wetlands acreage or functions, and
    - (C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.
  - b. The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.
  - c. The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-09.

4. Uses not listed in 350-81-560(2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-81-560(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-09.

5. Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:
  - a. Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;
  - b. All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;
  - c. The structure will be constructed using best management practices;
  - d. Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and
  - e. The structure complies with all applicable federal, state, and county laws.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-09.

6. Applications for all other Review Uses in wetlands shall demonstrate that:

- a. The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following: 200
  - (A) 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;
  - (B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and
  - (C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

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.

- b. The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:
  - (A) The extent of public need for the proposed use.
  - (B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.
  - (C) The functions and size of the wetland that may be affected.
  - (D) The economic value of the proposed use to the general area.
  - (E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.
- c. Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.
- d. Groundwater and surface-water quality will not be degraded by the proposed use.
- e. Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.
- f. The proposed use complies with all applicable federal, state, and county laws.
- g. Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.
- h. Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

The following wetlands restoration, creation, and enhancement guidelines shall apply:

- (A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.
- (B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.
- (C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.
- (D) The size of replacement 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):
  - i. Restoration: 2:1
  - ii. Creation: 3:1
  - iii. Enhancement: 4:1
- (E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.
- (F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.
- (G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.
- (H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.
- (I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-09.

#### 7. Wetlands Buffer Zones

- a. The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.
- b. The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.
  - (A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

- (B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.
- (C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.
- c. Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:
  - (A) Forest communities: 75 feet
  - (B) Shrub communities: 100 feet
  - (C) Herbaceous communities: 150 feet
- d. Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

Findings of Fact: There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development application, C14-09.

#### 8. Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

- a. Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.
- b. Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.
- c. Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.
- d. Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:
  - (A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.
  - (B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.
  - (C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.
- e. A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.
- f. A project applicant shall demonstrate sufficient fiscal, technical, and administrative

competence to successfully execute a wetlands compensation plan.

Findings of Fact: The Gorge Commission's natural resource inventories do not show any wetlands near the project area. There are no wetlands on the subject property or within the greatest width of what may be considered a wetland buffer zone by Rule 350-81.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

### **350-81-570 General Management Area Stream, Pond, Lake and Riparian Area Review Criteria**

1. Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas
  - a. If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.
  - b. In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:
    - (A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or ascale providing greater detail;
    - (B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and
    - (C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.
  - c. Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within streams, ponds, lakes, riparian areas and their buffer zones.
2. Commission Rule 350-81-570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.
3. The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant 350-81-570(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:
  - a. The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:
    - (A) Increase the size of an existing structure by more than 100 percent,
    - (B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or
    - (C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.
  - b. The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.
  - c. The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.
4. Uses not listed in 350-81-074, 350-81-570(2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-81-570(6) and reviewed under

the applicable provisions of 350-81-520 through 350-81-620.

5. Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:

- (a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;
  - (b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;
  - (c) The structure will be constructed using best management practices;
  - (d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and
  - (e) The structure complies with all applicable federal, state, and local laws.
- (6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:
- (a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-81-560(6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.
  - (b) The proposed use is in the public interest as determined by 350-81-560(6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.
  - (c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

- (A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.
  - (B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.
  - (C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.
  - (D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.
  - (E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.
  - (F) Temporary and permanent control measures should 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.
  - (d) Groundwater and surface-water quality will not be degraded by the proposed use.
  - (e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.
  - (f) The proposed use complies with all applicable federal, state, and county laws.
  - (g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.
- Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and



wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement guidelines shall apply:

- (A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.
- (B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.
- (C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.
- (D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.
- (E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.
- (F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.
- (G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.
- (H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.
- (I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

#### (7) Stream, Pond, and Lake Buffer Zones

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

- (A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet
- (B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet
- (C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-81-560(7)(b), substituting the term pond or lake as appropriate.
- (b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.
- (c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

#### (8) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

- (a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.
- (b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.
- (c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour

intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

**Findings of Fact:** The proposed livestock waterline will cross one intermittent stream, Eightmile Creek, near Dalles Mtn Rd. Commission Rule 350-81-570(7)(a)(B) requires a 50-foot buffer zone on each side of intermittent streams. Buffer zones are generally measured landward from the ordinary high water mark on each bank of the creek. The livestock watering facility is one designed in cooperation with NRCS. The corridor needed to lay the pipeline in the stream buffer area will be the minimum needed to complete the placement. All disturbed areas within the stream buffer will be regraded and replanted with native vegetation. All work in the stream and the buffer zone will be completed during the dry season. The function and value of the non-fish bearing stream would not be affected by the proposal. Reconfiguring the proposed livestock waterline to avoid the stream and its buffer would result in more impact.

The project is designed to minimize impact by routing the stream crossing under an existing County right-of-way, Dalles Mtn Rd. The proposed route for the livestock watering facility is of the least impact. The area where the waterline will cross under Dalles Mtn Rd is within the County right-of-way, and is adjacent to an existing culvert. Only minimal land disturbing activity will occur. The basic purpose of the proposed project cannot be reasonably accomplished in any other site, consistent with Commission Rule 350-81-570(6)(a).

The subject property is designated General Management Area Large Scale Agriculture. The intent of this designation is to protect agricultural land for agricultural uses. The proposed livestock fencing would enable the proponent to use the property for an agricultural use, consistent with its designation. It is in the public's interest to allow agricultural uses on agricultural land, thus permitting an economic use consistent with the resource protection provided by the Management Plan.

**Conclusions of Law:** The proposal would be consistent with Commission Rule 350-81-570.

### **350-81-580 General Management Area Sensitive Wildlife Review Criteria**

#### **(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife**

1. Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

- (A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

Bald eagle habitat  
Deer and elk winter range  
Elk habitat  
Mountain goat habitat  
Peregrine falcon habitat  
Pika colony area  
Pileated woodpecker habitat  
Pine marten habitat  
Shallow water fish habitat (Columbia R.)  
Special streams  
Special habitat area  
Spotted owl habitat  
Sturgeon spawning area  
Tributary fish habitat  
Turkey habitat  
Waterfowl area  
Western pond turtle habitat

- (B) "Sensitive wildlife sites" means sites that are used by animal species that are
- (i) listed as endangered or threatened pursuant to federal or state endangered species acts,
  - (ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,
  - (iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or
  - (iii) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, mountain goat, and prairie falcon).

Updated lists of species included in sensitive wildlife sites can be found on the websites for the Washington Department of Fish and Wildlife (Species of Concern list) and the Wildlife Division of Oregon Department of Fish and Wildlife. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

- 2. In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
- 3. Determination of potential effects to significant natural resources shall include

consideration of cumulative effects of proposed developments within 1000 feet of sensitive wildlife areas and sites.

Findings of Fact: The following sensitive wildlife habitat sites may potentially be within 1000 ft of the proposed development:

- Big game habitat, all directions (There is no 'big game' listed as a sensitive wildlife species in the administrative rules. It is assumed to be deer and/or elk.) (CRGC Habitat Plan data layer)
- Oregon white oak, in and around the spring head on the north side of the proposed development, and about 750 ft to the west (USFS data)
- Klickitat Oak Woodlands about 750 ft to the west of the spring head (WDFW Priority Species Habitat 2015)

Commission Rule 350-81-580(4) requires the Gorge Commission to submit site plans to the Washington State Department of Fish and Wildlife (WDFW) when a new development or land use is proposed within a sensitive wildlife area. WDFW reviews the site plan and determines if the proposed use would compromise the integrity of the wildlife area or site. Information obtained from the Washington Department of Fish and Wildlife indicates the Klickitat River Winter Range is located more than two and a half miles from the project area. The proposal will not result in significant reduction of surface water sources. There will be no increase in the number of livestock that have historically been there. The overflow pipeline was designed to divert the excess water back to the creek.

Conclusions of Law: WDFW commented on the proposal on March 3, 2015 and stated that no concerns arise at the moment for the project. The proposed use would not compromise the integrity of the wildlife area. Pursuant to Commission Rule 350-81-580(4)(c), the wildlife protection process may conclude.

#### **350-81-590 General Management Area Rare Plant Review Criteria**

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

- (a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are
- (A) endemic to the Columbia River Gorge and vicinity,
  - (B) listed as endangered or threatened pursuant to federal or state endangered species acts, or
  - (C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

- (b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

- (c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of rare plants.

Findings of Fact: The following data layers were consulted to determine if there were any sensitive plants. (Note: The term 'rare' plant is used in the rule requirement title, but there is no definition in this section or the Rule 350-81 for 'rare' plant. All the references and the definition are 'sensitive plants'.)

- Washington Nature Heritage Program, January 2015
- Jolley 1996 Sensitive Plant Inventory

The following rare plant/sensitive plant sites may potentially be within 1000 ft of the proposed development:

- *Ranunculus triternatus* (Obscure buttercup) about 650 ft west of the spring head. (Washington Natural Heritage Program 2015)

A development proposal located within 1000 feet of a sensitive plant species must include a site plan at a scale of 1 inch equals 100 feet (1:1200) or greater detail. The site plan for this development application is 1:1200, which is consistent with this requirement.

Conclusions of Law: This development application, C14-09, is consistent with this rule requirement.

(2) Field Survey

A field survey to identify sensitive plants shall be required for:

- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

Findings of Fact: Keyna Bugner, Washington Dept of Natural Resources, Natural Heritage Program, conducted a survey of the project area for rare plants. She focused on the area north Dalles Mountain Road and did not find any rare plants, particularly *Ranunculus triternatus*. The area south of Dalles Mountain Road is not suitable for *Ranunculus triternatus*. She noted that *Damasonium californicum* is located around a pond near the ranch but that is approximately 1700 ft due east of the proposed water pipeline crossing Dalles Mountain Road. That is outside the 1000 ft sensitive plant buffer defined in this rule. There are no rare/sensitive plants that must be shown on the site plan.

Conclusions of Law: This development application, C14-09, is consistent with this rule requirement.

- (3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-81-590(4), and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

Findings of Fact: There are no identified sensitive plants within 1000 feet of the development proposed in this application.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:
- (a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.  
  
If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.
  - (b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.
  - (c) New uses shall be prohibited within sensitive plant species buffer zones.
  - (d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-81-078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-81-590(5).
  - (e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.  
Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Findings of Fact: There are no identified sensitive plants within 1000 feet of the development proposed in this application.

Conclusions of Law: This rule requirement is not applicable to this development review application.

- (5) Protection and Rehabilitation Plans

Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance.

Protection and rehabilitation plans shall meet the following guidelines:

- (a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.
- (b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.
- (c) 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.

- (d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.
- (e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.
- (f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.
- (g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:
  - (A) Describe the biology of sensitive plant species that will be affected by a proposed use.
  - (B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.
  - (C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.
  - (D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.
  - (E)

Findings of Fact: There are no identified sensitive plants within 1000 feet of the development proposed in this application.

Conclusions of Law: This rule requirement is not applicable to this development review application.

(6) Sensitive Plant Buffer Zones

- (a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.
- (b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.
- (c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:
  - (A) Identifies the precise location of the sensitive plants,
  - (B) Describes the biology of the sensitive plants, and
  - (C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

- (d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director.  
The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.  
  
Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Findings of Fact: There are no identified sensitive plants within 1000 feet of the development proposed in this application.

Conclusions of Law: This rule requirement is not applicable to this development review application.

**350-81-600 Special Management Areas Natural Resource Review Criteria**

Findings of Fact: This development review application is for property wholly contained in the General Management Area. There are no lands in this application that are located in the Special Management Area.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.



**350-81-610 General Management Areas Recreation Resource Review Criteria**

The following uses are allowable, subject to compliance with 350-81-610(5) and (6).

(1) Recreation Intensity Class 1 (Very Low Intensity)

- (a) Parking areas for a maximum of 10 cars for any allowed uses in Recreation Intensity Class 1.
- (b) Trails for hiking, equestrian, and mountain biking use.
- (c) Pathways for pedestrian and bicycling use.
- (d) Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating equestrian use).
- (e) Scenic viewpoints and overlooks.
- (f) Wildlife/botanical viewing and nature study areas.
- (g) River access areas.
- (h) Simple interpretive signs and/or displays, not to exceed a total of 50 square feet.
- (i) Entry name signs, not to exceed 10 square feet per sign.
- (j) Boat docks, piers, or wharfs.
- (k) Picnic areas.
- (l) Restrooms/comfort facilities.

(2) Recreation Intensity Class 2 (Low Intensity)

- (a) All uses permitted in Recreation Intensity Class 1.
- (b) Parking areas for a maximum of 25 cars, including spaces for campground units, to serve any allowed uses in Recreation Intensity Class 2.
- (c) Simple interpretive signs and displays, not to exceed a total of 100 square feet.
- (d) Entry name signs, not to exceed 20 square feet per sign.
- (e) Boat ramps, not to exceed two lanes.
- (f) Campgrounds for 20 units or less, tent sites only.

(3) Recreation Intensity Class 3 (Moderate Intensity)

- (a) All uses permitted in Recreation Intensity Classes 1 and 2.
- (b) Parking areas for a maximum of 75 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 3.
- (c) Interpretive signs, displays and/or facilities.
- (d) Visitor information and environmental education signs, displays, or facilities.
- (e) Entry name signs, not to exceed 32 square feet per sign.
- (f) Boat ramps, not to exceed three lanes.
- (g) Concessions stands, pursuant to applicable policies in Chapter 4, Part 1 of the Management Plan.
- (h) Campgrounds for 50 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 3 campgrounds may also include one group campsite area, in addition to the allowed individual campground units or parking area maximums allowed as described herein.

(4) Recreation Intensity Class 4 (High Intensity)

- (a) All uses permitted in Recreation Intensity Classes 1, 2, and 3.
- (b) Parking areas for a maximum of 250 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 4.
- (c) Horseback riding stables and associated facilities.
- (d) Entry name signs, not to exceed 40 square feet per sign.
- (e) Boat ramps.
- (f) Campgrounds for 175 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 4 campgrounds may also include up to three group campsite areas, in addition to allowed individual campsite units or parking area maximums allowed as described herein.

(5) Approval Criteria for Recreation Uses

All proposed recreation projects outside of Public or Commercial Recreation designations shall comply with the appropriate scenic, cultural, natural and recreation resource guidelines (350-81-520 through 350-81-620), and shall satisfy the following:

- (a) Compliance with 350-81-520 through 350-81-610.
- (b) Cumulative effects of proposed recreation projects on landscape settings shall be based on the "compatible recreation use" guideline for the landscape setting in which the use is located.
- (c) For proposed recreation projects in or adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland:
  - (A) The use would not seriously interfere with accepted forest or agricultural practices on surrounding lands devoted to forest or farm uses. Provision of on-site buffers may be used to partially or fully comply with this criterion, depending upon project design and/or site conditions.
  - (B) A declaration has been signed by the project applicant or owner and recorded with county deeds and records specifying that the applicant or owner is aware that operators are entitled to carry on accepted forest or farm practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland.
- (d) For proposed projects including facilities for outdoor fires for cooking or other purposes, or for proposed campgrounds, compliance with the following:
  - (A) The project applicant shall demonstrate that a sufficient quantity of water necessary for fire suppression (as determined pursuant to applicable fire codes or the county fire marshal) is readily available to the proposed facility, either through connection to a community water system or on-site wells, storage tanks, sumps, ponds or similar storage devices. If connection to a community water system is proposed, the project applicant shall demonstrate that the water system has adequate capacity to meet the facility's emergency fire suppression needs without adversely affecting the remainder of the water system with respect to fire suppression capabilities.
  - (B) To provide access for firefighting equipment, access drives shall be constructed to a minimum of 12 feet in width and a maximum grade of 12 percent. Access drives shall be maintained to a level that is passable to firefighting equipment.

- (e) Trail or trailhead projects shall comply with applicable trails policies in the Management Plan.
- (f) For proposed projects providing boating or windsurfing access to the Columbia River or its tributaries: compliance with applicable "River Access and Protection of Treaty Rights" objectives in the Management Plan.
- (g) For proposed projects on public lands or proposed projects providing access to the Columbia River or its tributaries: compliance with guidelines for protection of tribal treaty rights in 350-81-084.
- (h) For proposed projects that include interpretation of natural or cultural resources: A demonstration that the interpretive facilities will not adversely affect natural or cultural resources and that appropriate and necessary resource protection measures shall be employed.
- (i) For proposed Recreation Intensity Class 4 projects (except for projects predominantly devoted to boat access): A demonstration that the project accommodates provision of mass transportation access to the site. The number and size of the mass transportation facilities shall reflect the physical capacity of the site. This requirement may be waived upon a demonstration that provision of such facilities would result in overuse of the site, either degrading the quality of the recreation experience or adversely affecting other resources at the site.

(6) Facility Design Guidelines for All Recreation Projects

- (a) Recreation facilities that are not resource-based in nature may be included at sites providing resource-based recreation uses consistent with the guidelines contained herein, as long as such facilities comprise no more than one-third of the total land area dedicated to recreation uses and/or facilities. Required landscaped buffers may be included in calculations of total land area dedicated to recreation uses and/or facilities.
- (b) The facility design guidelines contained herein are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another.  
To be considered a separate facility from other developments or improvements within the same recreation intensity class, recreation developments or improvements must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).
- (c) Parking areas, access roads, and campsites shall be sited and designed to fit into the existing natural contours as much as possible, both to minimize ground-disturbing grading activities and utilize topography to screen parking areas and associated structures. Parking areas, access roads, and campsites shall be sited and set back sufficiently from bluffs so as to be visually subordinate as seen from key viewing areas.
- (d) Existing vegetation, particularly mature trees, shall be maintained to the maximum extent practicable, and utilized to screen parking areas and campsites from key viewing areas and satisfy requirements for perimeter and interior landscaped buffers.
- (e) Parking areas providing more than 50 spaces shall be divided into discrete "islands" separated by unpaved, landscaped buffer areas.
- (f) Lineal frontage of parking areas and campsite loops to scenic travel corridors shall be minimized to the greatest extent practicable.
- (g) Ingress/egress points shall be consolidated to the maximum extent practicable, providing for adequate emergency access pursuant to applicable fire and safety codes.

- (h) Signage shall be limited to that necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.
- (i) Exterior lighting shall be shielded, designed and sited in a manner which prevents such lighting from projecting off-site or being highly visible from key viewing areas.
- (j) Innovative designs and materials that reduce visual impacts (such as "turf blocks" instead of conventional asphalt paving) shall be encouraged through incentives such as additional allowable parking spaces and reduced required minimum interior or perimeter landscaped buffers. Upon a determination that potential visual impacts have been substantially reduced by use of such designs and materials, the Executive Director may allow either reductions in required minimum interior or perimeter landscape buffers up to 50 percent of what would otherwise be required, or additional parking spaces not to exceed 10 percent of what would otherwise be permitted.
- (k) A majority of trees, shrubs, and other plants in landscaped areas shall be species native or naturalized to the landscape setting in which they occur (landscape setting design guidelines specify lists of appropriate species).
- (l) All structures shall be designed so that height, exterior colors, reflectivity, mass, and siting result in the structures blending with and not noticeably contrasting with their setting.
- (m) Landscape buffers around the perimeter of parking areas accommodating more than 10 vehicles shall be provided. Minimum required widths are 5 feet for 20 vehicles or fewer, 20 feet for 50 vehicles or fewer, 30 feet for 100 vehicles or fewer, and 40 feet for 250 vehicles or fewer.
- (n) Interior landscaped buffers breaking up continuous areas of parking shall be provided for any parking areas with more than 50 spaces. The minimum width of interior landscaped buffers between each parking lot of 50 spaces or less shall be 20 feet.
- (o) Within required perimeter and interior landscaped buffer areas, a minimum of one tree of at least 6 feet in height shall be planted for every 10 lineal feet as averaged for the entire perimeter width. A minimum of 25 percent of planted species in perimeter buffers shall be coniferous to provide screening during the winter. Project applicants are encouraged to place such trees in random groupings approximating natural conditions. In addition to the required trees, landscaping shall include appropriate shrubs, groundcover, and other plant materials.
- (p) Minimum required perimeter landscaped buffer widths for parking areas or campgrounds may be reduced by as much as 50 percent, at the discretion of the Executive Director, if existing vegetation stands and/or existing topography are utilized such that the development is not visible from any key viewing area.
- (q) Grading or soil compaction within the drip line of existing mature trees shall be avoided to the maximum extent practicable, to reduce risk of root damage and associated tree mortality.
- (r) All parking areas and campsites shall be set back from scenic travel corridors, and the Columbia River and its major tributaries at least 100 feet. Required perimeter landscaped buffers may be included when calculating such setbacks. Setbacks from rivers shall be measured from the ordinary high water mark. Setbacks from scenic travel corridors shall be measured from the edge of road pavements.
- (s) Project applicants shall utilize measures and equipment necessary for the proper maintenance and survival of all vegetation utilized to meet the landscape guidelines contained herein, and shall be responsible for such maintenance and survival.

- (t) All parking areas shall be set back from property boundaries by at least 50 feet. All campsites and associated facilities shall be set back from property boundaries by at least 100 feet.
- (u) All proposed projects at levels consistent with Recreation Intensity Class 4 on lands classified Recreation Intensity Class 4 (except for proposals predominantly devoted to boat access) shall comply with 350-81-610(5)(i) in this chapter regarding provision of mass transportation access.

Findings of Fact: None of the uses listed as recreation resources in this section of Rule 350-81 are part of development review application, C14-09.

Conclusions of Law: This rule requirement is not applicable to this development review petition, C14-09.

### **350-81-620 Special Management Area Recreation Resource Review Criteria**

Findings of Fact: This development review application is for property wholly contained in the General Management Area. There are no lands in this application that are located in the Special Management Area.

Conclusions of Law: This rule requirement is not applicable to this development review application, C14-09.

### **350-81-630 Notice of Application Requirements**

Findings of Fact: This is not an expedited review use. It is a full review use. Step 1 of 350-81-630 requires notice of application to: Tribes, USFS, County, State.

Conclusions of Laws: Notice of application was sent on February 11, 2015 to representatives on record for: the 4 Treaty Tribes (Yakama, Warm Springs, Nez Perce, Umatilla); the USFS National Scenic Area Office; Klickitat County and State Fish and Wildlife and State Natural Heritage Program. This development review application, C14-09, is consistent with Step 1, 350-81-630.

Findings of Fact: Step 2 of 350-81-630 requires that landowners within 500 feet be sent notice of application for applications that meet one or more of the following conditions:

- The application is a request for single family dwellings in the GMA Residential Land Use Designation adjacent to GMA Agriculture or Forest Land Use Designations.
- The application is a request for commercial events and special uses in historic buildings adjacent to GMA agriculture or Forest Land Use Designations.
- The application requests non-farm single family dwellings in the GMA Large-Scale Agriculture Land Use Designation.
- The subject property of the application is located within GMA Forest Land Use Designations and is a request for one or more of the following uses: utility facilities, railroads, home occupations, fruit & produce stands, wineries, wine sales/tasting rooms, agricultural product processing and packaging, mineral resources, geothermal resources, aquaculture, boarding of horses, temporary asphalt/batch plants, expansion of non-profit camps/retreats/conference centers, B&Bs, non-profit learning/research facilities, fish processing operations, road spoils disposal sites.

Conclusions of Laws:

- The subject property for this development review application is not a request for a single family dwelling in the GMA Large-Scale Agriculture Land Use Designation; and
- This application is not a request for commercial events and special uses in historic buildings adjacent to GMA agriculture or Forest Land Use Designations; and
- This application is not a request for a non-farm single family dwelling in the GMA Large-Scale Agriculture Land Use Designation; and
- The subject property is not located on lands within a GMA Forest Land Use Designation nor is it a request for any one or more of the uses listed above pertaining to this rule requirements; and as such

- This rule requirement is not applicable to this development review petition, C14-09.

Findings of Fact: Step 2 of 350-81-630 requires that notice of application for all other Full and Expedited Review Uses must be sent to landowners within 200 feet.

Conclusions of Law: This development review application meets the qualifications in Step 2, 350-81-630 to be considered one of the 'other full and expedited review uses'. Notice of application was sent on February 11, 2015 to all properties of record identified by the applicant in their application within 200 feet of the subject property of this development review application, C14-09.

Findings of Fact: Step 3 requires that notice of application be sent to:

- The State Department of Wildlife for all Full and Expedited Review Uses within 1000 feet of a sensitive wildlife area or site;
- The State Natural Heritage Program for all Full and Expedited Review Uses within 1000 feet of a rare plant; and
- The State Natural Heritage Program for all Full and Expedited Review Uses with Agriculture-Special Land Use Designation.

Sensitive wildlife area was identified within 1000 feet of the subject site, per GIS data housed by the Columbia River Gorge Commission. Notice of application was sent to both Washington State Department of Wildlife and Washington State Natural Heritage Program on February 11, 2015.

Conclusions of Law: This development review application meets the qualifications in Step 3, 350-81-630.

**Comments Received During the Application Review:**

(Please note that comments received before the application review started or after it was completed have not been included.)

Washington Dept of Natural Resources, Natural Areas Program, Keyna Bugner. Rare plant comments. Request for cleaning machinery and equipment to prevent spread of weed. (Staff-a condition was added into the Director's Decision to address this.)

US Dept of Agriculture, Natural Resources Conservation Services, Kellie Green. Remains of existing trough or feeding station; poor shape; not eligible for Nation Register designation, lack of integrity.

Washington Dept of Fish & Wildlife, Amber Johnson. No concerns about this project.

Friends of the Columbia Gorge, Richard Till. (Concerns summarized. Note, general code citations without a corresponding comment/concern were included in the original letter. Staff did not understand what the concern was in those cases and staff was not able to address those portions of the overall letter received.)

- 1) Application - Concerns regarding lack of information on species of trees and other vegetation, vegetation being removed or planted, depth of grading and ditching and a grading plan were not included with the application. *The vegetation found on the subject property is mostly typical of a temperate grassland environment – mostly grasses that could include ryegrass and purple needlegrass, wild oats and foxtail; wildflowers such as balsam root and lupine; and few shrubs and trees (mostly in wet stream areas). There are many invasive weed species onsite. Controlled grazing is a proven practice to restore native plants health and vigor, which is the purpose for the NRCS grant funding this project. A 3 ft deep by 3 ft wide trench will be excavated for the pipeline and filled back in, regraded to the original contour. A grading plan is required when the site is visible from key viewing areas. The specific parts of the site are not visible from the key viewing areas.*
- 2) Allowed Uses - Concerns the existing use criteria regarding proof the use/structure qualifies as an existing use has not been met; various Large Scale Agriculture land use plan designation criteria were summarized/cited from the code but no specific concern was raised; that this project is not a 'resource enhancement project'; and that accessory structures in conjunction with a legal dwelling are an allowed use and utility facilities and recreational development are allowed subject to additional criteria. *It was not submitted specifically as a resource enhancement project. It is a use that supports agriculture.(350-81-190(1)(b))*
- 3) Scenic Resources-Concerns that buildings and roads must be clustered together in Grasslands landscape setting. *No buildings or roads are proposed. Not applicable.*
- 4) Concern about visibility of key viewing areas. *Field check-not visible from KVAs.*
- 5) Concerns the application does not meet requirements for water resource buffer zone protection. No practicable alternatives test and public interest test provided. *Practicable alternatives test is defined by 350-81-560(6)(a) and public interest by 350-81-560(6)(b). Three criteria are defined and can be met. Pipeline crosses 1 intermittent stream at 1 point only. Hydrographic maps indicate there is no alternative geographic location that would not cross at least 1 stream. This is the least invasive route. There are no constraints that could be relieved that would negate the requirement to put the pipeline in this path. The public interest – USDA is supporting this application and providing a grant, in part, because re-introduction of cattle will support re-introduction of native plant life onto the State Park lands. The ecological net benefit is positive when compared to what are considered minor impacts that can be mitigated for laying a small pipeline near one intermittent stream .*
- 6) Concern of project impact on sensitive wildlife resources. *Submitted to WDFW. No adverse impact concerns raised.*

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| 7) Concerns about the projects impact on cumulative adverse impacts to cultural resources. The cultural resource protection process requires that development proposals avoid impact to cultural resources or mitigation to negate adverse impact. The process precludes cumulative effect. |
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cc:      Confederated Tribes and Bands of the Yakama Indian Nation  
         Confederated Tribes of the Umatilla Indian Reservation  
         Confederated Tribes of Warm Springs Reservation  
         Nez Perce Tribe  
         Klickitat County Planning  
         Klickitat County Building  
         Friends of the Columbia Gorge  
         Amber Johnson, Washington Department of Fish and Wildlife

END OF STAFF REPORT