
NOTICE OF NSA DECISION

Case File: T2-2021-14480

Permit: National Scenic Area Site Review

Applicant: Oregon Department of Transportation (ODOT) **Owner:** State of Oregon

Location: Address: ODOT Right-of-Way adjacent to 2N7E31 -00300
Alternate Account #: R957310070 Property ID #: R323664

Zoning: Gorge Special Open Space (GSO)

Overlays: Geologic Hazard (GH)

Key Viewing Areas: Beacon Rock, Cape Horn, Columbia River, Historic Columbia River Highway, Interstate-84, Pacific Crest, State Route-14, Wyeth Bench Road

Landscape Setting: Coniferous Woodlands

Recreation Intensity: Recreation Class 1

Proposal Summary: National Scenic Area Site Review for geotechnical exploration in preparation for a future replacement of McCord Creek Bridge

Decision: **Approved with Conditions**

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is **Friday, September 2, 2022, at 4:00 pm.**

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application are available for review by contacting Izze Liu, Staff Planner via email at isabella.liu@multco.us. Copies of all documents are available at the rate of \$0.40/per page.

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Columbia River Gorge Commission until all local appeals are exhausted.

Issued By:

Izze Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Friday, August 19, 2022

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Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet the applicable approval criteria below:

Multnomah County Code (MCC): General Provisions: MCC 38.0015 Definitions, MCC 38.0030 Existing Uses and Discontinued Uses

Administration and Procedures: MCC 38.0560 Code Compliance and Applications

GSO Zone: MCC 38.2625 Review Uses, MCC 38.2660 Dimensional Requirements, MCC 38.2690 Access

NSA Site Review: MCC 38.7045 SMA Scenic Review Criteria, MCC 38.7050 SMA Cultural Resource Review Criteria, MCC 38.7075 SMA Natural Resource Review Criteria, MCC 38.7085 SMA Recreation Resource Review Criteria

Geologic Hazard: MCC 38.5505 Permits Required, MCC 38.5515 Geologic Hazards Permit Application Information Required, MCC 38.5520 Geologic Hazards Permit Standards

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

Chapter 38: Columbia River Gorge National Scenic Area

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in brackets.

1. Permit Expiration – This land use permit shall expire as follows:

- a. Two (2) years after the date of the final decision, when the use or development has not been established according to all specifications and conditions of approval in the land use approval. [MCC 38.0690(A)]

Note: Expiration of the permit is automatic. Failure to give notice of expiration shall not affect the expiration of this approval. The property owner may request one (1) 12-month extension to the timeframe within which this permit is valid, as provided under MCC 38.0700, as applicable. The request for a permit extension must be submitted **prior to** the expiration of the approval period. [MCC 38.0700]

2. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. [MCC 38.0660(B)]
3. Ongoing Conditions:
 - a. Access routes are limited to a 15-foot wide corridor.
 - b. All ground disturbances will be reshaped to their original shape and seeded with the gorge approved seed mix listed in Exhibit A.13, page 3.
 - c. ODOT shall employ erosion control measures such as placement of wattles and bio bags where necessary, work crews will follow standard ODOT erosion control BMP's as described in the Oregon Standard Specifications for Construction.
 - d. ODOT shall place crane mats in the stream to cross it. This minimizes impacts to the stream substrate and surrounding banks.
 - e. If drilling occurs between July 15 and August 15th, mats will be left in the creek to minimize downstream and bed impacts associated with mat installation. If drilling occurs between August 15th and August 30th, as recommended, ODOT will consult with ODFW to assess weather and site conditions to determine if mats must be removed. Upon completion of the work, the mats shall be removed from the creek area and any disturbed ground reseeded to prevent erosion.
 - f. ODOT shall follow ODFW guidance and recommendations to protect aquatic resources.
 - g. All equipment shall have biodegradable hydraulic fluid installed and be steam cleaned before crossing the stream.
 - h. Fill shall be composed of earth materials only. [MCC 38.5520(B)]
 - i. Temporary vegetation and/or mulching shall be used to protect exposed critical areas while work is occurring on the project. [MCC 38.5520(H)]
 - j. Any required structural erosion control and drainage measures shall be installed within 10 days of the work being completed. The permanent plantings shall be installed within five (5) years of the work being completed. If additional time is needed, ODOT shall request an extension of the time period to the Planning Director and explain why the plantings cannot be completed and propose a new planting deadline. The Planning Director may modify all or part of this deadline at her sole discretion. [MCC 38.5520(J)]
 - k. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented

from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. [MCC 38.5520(R)]

- l. The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division. [MCC 38.5520(T)]
 - m. Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way. [MCC 38.5520(U)]
 - n. No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill. [MCC 38.5520(V)]
4. 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 local government and the SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are pre-contact or otherwise associated with Native Americans.
- A. In the event of the discovery of cultural resources, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery pursuant to MCC 38.7050 (G) (3).
 - B. If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:
 - (a) Stop all work in the vicinity of the discovery.
 - (b) The applicant shall immediately notify the U.S. Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.
 - (c) The U.S. Forest Service shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.
 - (d) A cultural resource professional shall evaluate the potential significance of the discovery pursuant to MCC 38.7050 (G) (3) and report the results to the U.S. Forest Service which shall have 30 days to comment on the report.

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

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

Findings of Fact

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

1.0 Project Description:

Staff: The applicant requests a National Scenic Area Site Review for geotechnical exploration in preparation for a future replacement of McCord Creek Bridge. The geotechnical exploration project requires temporary access across McCord Creek to transport equipment to the boring locations. All geotechnical boring sites will be located above the ordinary high water (OHW) mark of McCord Creek. A maximum of 11 geotechnical borings will be required.

2.0 Property Description & History:

Staff: The subject property is zoned Gorge Special Open Space (GSO) and located within the following key viewing areas: Beacon Rock, Cape Horn, Columbia River, Historic Columbia River Highway, Interstate-84, Pacific Crest, State Route-14, Wyeth Bench Road.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 38.0530 as Exhibited in C.1, C.5, and C.6. Staff received one agency comment during the 14-day comment period. Staff summarizes the comments below.

1. U.S. Forest Service (Exhibit D.1)

Chris Donnermeyer, Heritage Program Manager, submitted the following comment:

I have reviewed the proposed undertaking and area of potential effect as stated on the development review application, against the National Scenic Area records and inventories. These inventories include the cultural resource site inventory maintained by the State Historic Preservation Office. Based upon the information provided in these inventories and the requirements of the Gorge Commission’s Land Use Ordinances, it is recommended that:

A Cultural Resource Reconnaissance Survey is: Required – Conducted by ODOT – NSA Heritage Review Letter enclosed

A Historic Survey is: Required – Conducted by ODOT – NSA Heritage Review Letter enclosed

4.0 Administrative Procedures Criteria:

4.1 § 38.0560 CODE COMPLIANCE AND APPLICATIONS.

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

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

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

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

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

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

This standard was originally codified in the chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the administration and procedures part of the Columbia River Gorge National Scenic Area Code this standard is remains applicable to the application review process and not to the post-permit-approval enforcement process.

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

For purposes of the current application, staff is not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *This criterion is met.*

5.0 Gorge Special Open Space (GSO) Criteria:

5.1 MCC 38.2025 Review Uses

(D) The following uses may be allowed on lands designated GSO, pursuant to MCC 38.0530(B), when consistent with an open space plan approved by the U.S. Forest Service and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(1) Changes in existing uses including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.

Staff: The McCord Creek Bridge was established by ODOT in 1962. ODOT has determined that the existing bridge is structurally deficient and needs to be replaced in the future (Exhibit A.14). The proposed geotechnical exploration is proposed in preparation for the future replacement of the existing bridge.

6.0 National Scenic Area (NSA) Site Review Criteria:

6.1 MCC 38.7040 SMA Scenic Review Criteria

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

(A) All Review Uses and Conditional Uses visible from KVAs. This section shall apply to proposed development on sites topographically visible from KVAs:

(1) New developments and land uses shall be evaluated to ensure that the scenic standard is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from Key Viewing Areas.

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

REQUIRED SMA SCENIC STANDARDS		
LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Coniferous Woodland, Oak-Pine Woodland	Forest, Agriculture, Residential, Public Recreation	VISUALLY SUBORDINATE

(3) In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development.

Staff: The proposed geotechnical exploration area falls within the Coniferous Woodland Landscape Setting. The applicable KVAs are Beacon Rock, the Columbia River, the Historic Columbia River Highway, Interstate-84, and State Route-14. The applicant states that the subsurface geotechnical exploration boreholes are temporary in nature and will not be visible from any of the KVAs (Exhibit A.14). *These criteria are met.*

(4) Proposed developments or land use shall be sited to achieve the applicable scenic standards. Development shall be designed to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.

Staff: Due to the subterranean nature of the project, the temporary boreholes will not be visible from the KVAs. The project does not involve the development of any structures. The boreholes will be 5 inches in diameter and reach a total depth of 100 feet. ODOT will conduct the geotechnical exploration approximately 4 to 5 weeks in duration. Access to the boring sites will be from existing right-of-way and from temporary access routes. The temporary access routes to the exploration locations will require a minimum level of grading to create a 15-foot wide pathway for the equipment. The disturbance related to the temporary access route involves the flattening of native vegetation and removal of select tree limbs (Exhibit A.14). The temporary access routes will be remediated after the work is complete. *This criterion is met.*

* * *

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

(2) Coniferous Woodlands and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous and Oak/Pine Woodland landscape.

Staff: The overall visual character of the natural appearance of the Coniferous Woodland landscape will be retained as the proposed project does not involve the development of new structures. As stated in previous findings, the subsurface boreholes are temporary in nature and will not be visible from any of the KVAs (Exhibit A.2). *These criteria are met.*

(C) SMA Requirements for KVA Foregrounds and Scenic Routes

(1) All new developments and land uses immediately adjacent to the Historic Columbia River Highway, Interstate 84, and Larch Mountain Road shall be in conformance with state or county scenic route standards.

Staff: The proposed use is not immediately adjacent to the Historic Columbia River Highway, Interstate-84 or Larch Mountain Road. *This criterion is not applicable.*

(2) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to MCC 38.7040(A).

* * *

Staff: The proposed development is not located within the immediate foreground of the KVAs. *These criteria do not apply.*

(3) Right-of-way vegetation shall be managed to minimize visual impact of clearing and other vegetation removal as seen from Key Viewing Areas. Roadside vegetation management should enhance views out from the highway (vista clearing, planting, etc.).

Staff: The applicant is not proposing to remove or disturb any vegetation adjacent to the right-of-way. *This criterion is met.*

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

Staff: The proposal does not include a road maintenance warehouse or stockpile areas. *This criterion is not applicable.*

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

Staff: The applicant is not proposing any development along Interstate-84 or the Historic Columbia River Highway. *This criterion is not applicable.*

(D) SMA Requirements for areas not seen from KVAs

Unless expressly exempted by other provisions in MCC 38.7040, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the Scenic Resources Implementation Handbook.

Staff: The applicant is not proposing any new structures as part of the geotechnical exploration. *This criterion is not applicable.*

6.2 MCC 38.7050 SMA Cultural Resource Review Criteria

(A) The cultural resource review criteria shall be deemed satisfied, except MCC 38.7050 (H), if the U.S. Forest Service or Planning Director does not require a cultural resource survey and no comment is received during the comment period provided in MCC 38.0530 (B).

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

(1) Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

(2) All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

Staff: Chris Donnermeyer, Columbia River Gorge Scenic Area Heritage Resources Program Manager, submitted a Cultural Resource Survey Determination stating that a Cultural Resource Reconnaissance Survey is required. According to the survey determination, a Reconnaissance Survey is required because the proposed project would occur on a site that has been determined to be located within a high probability zone and the work will occur within 500 feet of a known archaeological site. The applicant prepared a cultural resource survey report that was prepared by staff from the Archaeological and Historic Services (AHS). Mr. Donnermeyer reviewed the cultural resource survey report entitled “Cultural Resources Survey of the ODOT I-84 (Exhibit D.1). *These criteria are met.*

(C) The procedures of MCC 38.7045 shall be utilized for all proposed developments or land uses other than those on all Federal lands, federally assisted projects and forest practices.

Staff: The proposed project is funded with federal dollars. *This criterion is not applicable.*

(D) All cultural resource information shall remain confidential, according to the Act, Section 6(a)(1)(A). Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC 470 hh and 36 CFR 296.18.

(E) Principal investigators shall meet the professional standards published in 36 CFR part 61.

Staff: The applicant states that all cultural resource surveys, evaluations, assessments, and mitigation plans have been or will be performed by professional archaeologist and historians who meet the Secretary of the Interior’s professional qualification standards in 36 CFR 61, appendix A (Exhibit A.14). *These criteria are met.*

(F) The U.S. Forest Service will provide for doing (1) through (5) of subsection (G) below for forest practices and National Forest system lands.

(G) If the U.S. Forest Service or Planning Director determines that a cultural resource survey is required for a new development or land use on all Federal lands, federally assisted projects and forest practices, it shall consist of the following:

(1) Literature Review and Consultation

- (a) An assessment of the presence of any cultural resources, listed on the National Register of Historic Places at the national, state or county level, on or within the area of potential direct and indirect impacts.**
- (b) A search of state and county government, National Scenic Area/U.S. Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural resources, including consultation with the State Historic Preservation Office (SHPO) and tribal governments.**
- (c) Consultation with cultural resource professionals knowledgeable about the area.**
- (d) If the U.S. Forest Service determines that there no recorded or known cultural resource, after consultation with the tribal governments on or within the immediate vicinity of a new development or land use, the cultural resource review shall be complete.**
- (e) If the U.S. Forest Service determines that there is the presence of a recorded or known cultural resources, including those reported in consultation with the tribal governments on or within the immediate vicinity of a new development or land use, a field inventory by a cultural resource professional shall be required.**

(2) Field Inventory

- (a) Tribal representatives shall be invited to participate in the field inventory.**
- (b) The field inventory shall consist of one or the other of the following standards, as determined by the cultural resource professional:**

1. Complete survey: the systematic examination of the ground surface through a controlled procedure, such as walking an area in evenly-spaced transects. A complete survey may also require techniques such as clearing of vegetation, angering or shovel probing of subsurface soils for the presence of buried cultural resources.

2. Sample survey: the sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for large or difficult to survey parcels, and is generally accomplished by a stratified random or non-stratified random sampling strategy. A parcel is either stratified by variables such as vegetation, topography or elevation, or by non-environmental factors such as a survey grid.

Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.

- (c) A field inventory report is required, and shall include the following:**
 - 1. A narrative integrating the literature review of subsection (1) above with the field inventory of subsection (2) (b) above.**
 - 2. A description of the field inventory methodology utilized under subsection (2) (b) above, describing the type and extent of field inventory, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.**
 - 3. A statement of the presence or absence of cultural resources within the area of the new development or land in use.**

4. When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.

(d) Report format shall follow that specified by the Oregon State Historic Preservation Office.

(e) The field inventory report shall be presented to the U.S. Forest Service for review.

(f) If the field inventory determines that there are no cultural resources within the area of the new development or land use, the cultural resource review shall be complete.

(3) Evaluations of Significance

(a) When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource relative to the criteria of the National Register of Historic Places (36 CFR 60.4).

(b) Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.

(c) Evaluations of the significance of traditional cultural properties should follow National Register Bulletin 38, *Guidelines for the Evaluation and Documentation of Traditional Cultural Properties*, within local and regional contexts.

(d) Recommendations for eligibility of individual cultural resources under National Register Criteria A through D (36 CFR 60.4) shall be completed for each identified resource. The U.S. Forest Service shall review evaluations for adequacy.

(e) Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.

(f) If the U.S. Forest Service determines that the inventoried cultural resources are not significant, the cultural resource review shall be complete.

(g) If the determines that the inventoried cultural resources are significant, an assessment of effect shall be required .

(4) Assessment of Effect

(a) For each significant (*i.e.*, National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.5 *Assessing Effects*. Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for subsections (b) through (d) below. The U.S. Forest Service shall review each determination for adequacy and appropriate action.

(b) If the proposed development or change in use will have "No Adverse Effect" (36 CFR 800.4) to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Standards" of 36 CFR 800.11. If the proposed development or change in use will have an effect, then the Resolution of Adverse Effects must be applied (36 CFR 800.5).

(c) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 CFR 800.5 to a cultural resource, the type and extent of "Adverse Effect" upon the qualities of the property that make it eligible to the National Register shall be documented 36 CFR 800.6 "Resolution of Adverse Effects." This documentation shall follow the process outlined under 36 CFR 800.11 "Failure to Resolve Adverse Effects."

(d) If the "effect" appears to be beneficial (*i.e.*, an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the significant cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.11 *Documentation Standards*.

(5) Mitigation

(a) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects pursuant to 36 CFR 800.6 "Resolution of Adverse Effects." These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

(b) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be affected, and documentation of their concerns, shall be included for all mitigation proposals.

(c) The U.S. Forest Service shall review all mitigation proposals for adequacy.

Staff: A cultural resources survey was prepared by Julia Furlong, James Jenks, and Sean Stcherbinine, who are all with Archaeological and Historic Services (AHS) at Eastern Washington University (Exhibit D.1). The applicant states that tribal consultation emails were sent to the Grande Ronde, Nez Perce, Umatilla, Siletz, Warm Springs and Yakama Tribes requesting comments related to potential impacts (Exhibit A.14). Staff also sent a separate notice to the Tribal Governments to provide an opportunity for comments (Exhibit C.6).

In response to the cultural resources survey, the USDA Forest Service provided a letter that confirms that the Area of Potential Effect (APE) were negative for cultural resources. The letter also confirms that no portion of the Historic Columbia River Highway or contributing features would be affected by the proposed project, therefore, mitigation measures are not required (Exhibit D.1). *These criteria are met.*

(H) Discovery During Construction

All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Planning Director in the event of the inadvertent discovery of cultural resources during construction or development.

(1) In the event of the discovery of cultural resources, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery pursuant to MCC 38.7050 (G) (3).

(2) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:

(a) Stop all work in the vicinity of the discovery.

(b) The applicant shall immediately notify the U.S. Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.

(c) The U.S. Forest Service shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.

(d) A cultural resource professional shall evaluate the potential significance of the discovery pursuant to MCC 38.7050 (G) (3) and report the results to the U.S. Forest Service which shall have 30 days to comment on the report.

(3) If the U.S. Forest Service determines that the cultural resource is not significant or does not respond within the 30 day response period, the cultural resource review process shall be complete and work may continue.

(4) If the U.S. Forest Service determines that the cultural resource is significant, the cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to MCC 38.7050 (G) (4) and (5)

Staff: As conditioned, these criteria are met.

6.3 MCC 38.7075 SMA Natural Resource Review Criteria

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

(A) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in MCC 38.7075(A)(2)(a) and (2)(b). These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined in MCC 38.7075(A)(2)(a) and (2)(b).

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

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

(a) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.

Staff: The applicant provided a Water Resources memo which identified two perennial streams, two intermittent streams, and a wetland within the project area. McCord Creek is the largest perennial stream that varies from about 20 to 40 feet wide. The total stream impacts will be limited to 420 square feet (0.01 acres) of temporary impacts to McCord Creek. There are also temporary wetland impacts of 0.018 acres, and a temporary impact of 0.199 acres within the stream and wetland buffers. Six to seven borings are proposed within the stream and/or wetland buffers (Exhibit A.14).

(b) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.

Staff: The Water resources memo identified two intermittent, non-fish bearing streams within the project area. The proposed project will temporarily impact 0.017 acres within the buffer zone of intermittent non-fish bearing streams (Exhibit A.14).

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

Staff: In order to gather geotechnical information for the future replacement of the McCord Creek Bridge, temporary boreholes are required within the buffer zones. In the Water Resources memo, the applicant states that avoidance and minimization measures will be used but the area that will need to be disturbed will be reseeded with native plants (Exhibit A.14). *This criterion is met.*

(C) The applicant shall be responsible for identifying all water resources and their appropriate buffers.

Staff: The applicant identified the water resources and appropriate buffers within the project area as part of the Water Resources memo (Exhibit A.18). *This criterion is met.*

(D) Wetlands Boundaries shall be delineated using the following:

(1) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U. S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.

(2) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.

(3) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the '1987 Corps of Engineers Wetland Delineation Manual (on-line Edition)'.

(4) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.

Staff: The stream and wetland boundaries within the project area were identified by ODOT's technical staff that has experience in wetland and other waterway identification (Exhibit A.18). The boundaries that were identified by ODOT staff were consistent with the wetland and stream boundaries provided in *Wetland Delineation for the Warrendale to Moffett Creek HRCH Trail Alignment* (Pacific Habitat Services, December 2010) that was approved by the Oregon Department of State Lands. One small wetland was identified within the project area. One of the temporary access roads crosses both the wetlands and the buffer creating a direct impact of 0.018 acres, and a buffer impact of 0.128 acres (Exhibits A.14 and A.18). *These criteria are met.*

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

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

Staff: As stated in a previous finding, the project area contains two perennial streams, one of which is fish bearing, and two intermittent streams. All boring locations will be located above the ordinary high

water mark. The location of these boundaries were included in the Water Resources memo (Exhibit A.18). *These criteria are met.*

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

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

Staff: The applicant states that the buffer disturbances have been minimized to the maximum extent possible for the proposed geotechnical exploration project. The impacts are temporary and associated with developing access routes to the boring locations which are not accessible from existing roads or trails (Exhibit A.14).

For the boreholes by the McCord Creek Bridge, four borings will be located adjacent to an existing road but within a stream buffer. A fifth boring is proposed in the stream buffer and will be accessed by a temporary ramp from the maintenance access road down to the ordinary high water mark, and then walked across crane mats placed in McCord Creek. According to the applicant, the proposed access route is the only practicable way to move a mini excavator and drill rig to this specific boring location. The impacts to McCord Creek will be mitigated and minimized by using crane mats, requiring the ramp to be built outside of the ordinary high water mark, and by following additional ODFW recommendations. The three crane mats will be comprised of untreated rough cut lumber assembled in 4 foot by 20 foot by 1 foot sections to cross the stream. The applicant also states that the equipment will use biodegradable hydraulic fluid and be steam cleaned before crossing the stream (Exhibit A.14). Using the practical alternatives test, the applicant has determined that walking the equipment across McCord Creek would be the best option for the project because this option would use construction best practices to minimize impacts to the creek and natural resources within and adjacent to McCord Creek, does not require significant land closure or full eastbound closure on I-84, and allows ODOT to gather the necessary data in a timely and efficient manner (Exhibit A.14).

The cliff drilling sites will be accessed by routes through water resource buffers. The applicant states that the preferred route to access the boring locations on the cliff impacts a small portion of wetlands to reduce a larger buffer impact and reduce tree removal. The preferred route will result in temporary impacts to 0.018 acres wetlands and 0.128 acres of the buffer. An alternative route would have avoided wetland impacts but would increase temporary buffer impacts by 0.086 to 0.214 acres. The cliff access route has two boring sites within the wetland buffer. *This criterion is met.*

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

(a) A documented public safety hazard exists or a restoration/ enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question.

(b) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project.

(c) The proposed project minimizes the impacts to the wetland.

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

Staff: The proposed geotechnical exploration is in preparation for a future replacement of McCord Creek Bridge. The applicant has determined that the existing bridge is structurally deficient and needs to be

replaced in the future (Exhibit A.14). As demonstrated in prior findings, the temporary impacts to the wetlands are necessary because there were no practicable alternatives for the proposed geotechnical exploration project.

The applicant states that the wetlands will not be permanently drained or filled as part of the geotechnical exploration. To create the temporary access road to the cliff drilling sites, up to 130 cubic yards of temporary fill is proposed to level the access route. The applicant states that most of the temporary fill will occur in buffers and the fill material will be removed once the access route is no longer needed. Approximately 10 to 20 cubic yards of temporary fill may potentially occur in wetlands.

To offset the unavoidable impacts, the applicant is proposing to replant areas disturbed by the drilling when mitigating for the main bridge replacement project. The applicant recognizes that some of the temporary geotechnical drilling impacts could become permanent for the future bridge replacement project and those mitigation measures will be included in the application for that specific project. The areas that are temporarily impacted by the geotechnical drilling but not permanently impacted by the future bridge replacement project will be restored with noxious weed removal and planting of native vegetation (Exhibit A.14). *These criteria are met.*

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

(I) The local government shall submit site plans (of proposed uses or development proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the U.S. Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife for wildlife issues and by the Oregon Natural Heritage Program for plant issues).

(J) The U.S. Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:

(1) Identify/verify the precise location of the wildlife and/or plant area or site.

(2) Determine if a field survey will be required.

(3) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season. Cumulative effects that are adverse shall be prohibited.

(4) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(a) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening

topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

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

(c) The local government shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the U.S. Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the local government will make a final decision on whether the reduced buffer zones is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the local government shall justify how it reached an opposing conclusion.

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

(1) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner 1991).

(2) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(3) Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

(4) Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.

(5) In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.

(6) The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife 2000).

(7) The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.

(8) The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.

(9) Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed in the Priority Habitats Table. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

	PRIORITY HABITATS TABLE
Priority Habitats	Criteria
Aspen stands	High fish and wildlife species diversity, limited availability, high vulnerability to habitat alteration.
Caves	Significant wildlife breeding habitat, limited availability, dependent species.
Old-growth forest	High fish and wildlife density, species diversity, breeding habitat, seasonal ranges, and limited and declining availability, high vulnerability.
Oregon white oak woodlands	Comparatively high fish and wildlife density, species diversity, declining availability, high vulnerability
Prairies and steppe	Comparatively high fish and wildlife density, species diversity, important breeding habitat, declining and limited availability, high vulnerability.
Riparian	High fish and wildlife density, species diversity, breeding habitat, movement corridor, high vulnerability, dependent species.
Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.
Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.

Talus	Limited availability, unique and dependent species, high vulnerability.
Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.

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

(M) If the above measures fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

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

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

(P) Soil productivity shall be protected using the following guidelines:

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

(Q) An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes. A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

(1) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites.

(2) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites..

(3) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

Staff: A Biological Resources memo was prepared by Dan Keller and Ben White who are both Region 1 Biologists with ODOT (Exhibit A.17). ODOT's biologists identified the following species within 1,000 feet of the project area.

In McCord Creek, Chinook Salmon (*Oncorhynchus tshawytscha*), Coho Salmon (*Oncorhynchus kisutch*), Steelhead (*Oncorhynchus mykiss*), and Cutthroat trout (*Oncorhynchus clarkia*) were identified.

In the general project area, Oregon sullivantia (*Sullivantia oregana*), Howells bentgrass (*Agrostis howellii*), Columbia Gorge Daisy (*Erigeron oreganus*), Howell's daisy (*Erigeron howellii*), Oregon Bolandra (*Bolandra oregana*), Bearded Hawkweed (*Hieracium longiberbe*), Larch Mountain Salamander (*Plethodon larselli*), Pika (*Ochotona daurica*), Diffuse stickseed (*hackelia diffusa diffusa*), Cliff primrose (*Douglasia laevigata*), and Columbia Kitten tails (*synthris stellatis*) were identified.

In the Columbia River, 350 feet north of the project site, Chum salmon (*Oncorhynchus nerka*), Pacific lamprey (*Entosphenus tridentatus*), green sturgeon (*Acipenser medirostris*), and Eulachon (*Thaleichthys pacificus*) were identified.

After conducting a desktop review and field study of the project area, the biologists have confirmed that the proposed project will avoid direct impacts to rare species, cliffs, and talus habitats. Minor and temporary impacts will occur to McCord Creek when crossing it to access the east bank.

Approximately 0.01 acres of the McCord Creek aquatic habitat will be temporarily impacted by site access. Through coordination with Oregon Department of Fish & Wildlife District Biologist, Ben Walczak, the applicant has determined that the impacts could mostly be avoided for all aquatic species by following the recommended Best Management Practices which include construction timing. The temporary impacts will be identified as a NLAA (Not Likely to Adversely Affect) with the National Marine Fisheries Service under ODOT's Federal Highway Administration Programmatic.

Buffer impacts will be comprised of temporary vegetation impacts that will not permanently alter the habitat functions or quality. The east cliff access will impact a total of 0.227 acres which includes the impacts to the stream, wetland, talus and cliff buffers. The memo states that this community is a primary successional community that was established since the Eagle Creek Fire in 2017 and it is anticipated that these species will recolonize the temporarily impacted area within one growing season. The proposed cut associated with the access route will be reshaped to its original form and planted with the permanent Gorge Seeding mix.

The east riparian access will impact a total of 0.075 acres which includes stream and cliff buffers. The total consolidated buffer impacts for the entire project is 0.302 acres.

As part of this application, the Biological Resources memo was submitted to the relevant agencies as part of the Agency Review notice (Exhibit C.1). *These criteria are met.*

(R) The Mitigation Plan shall be prepared when:

(1) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).

(2) There is no practicable alternative as determined by MCC 38.7075 (Q).

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

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

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

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

(W) Mitigation plans shall include maps, photographs, and text. The text shall:

(1) Describe the biology and/or function of the sensitive resources (e.g. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.

(2) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.

(3) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long-term use and integrity of the wildlife/plant area or site).

(4) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.

(5) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans,

the local government, appropriate state agencies, and U.S. Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.

(X) At a minimum, a project applicant shall provide to the local government a progress report every 3-years that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

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

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

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

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

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

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

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

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

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

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

(c) Fish passage shall be protected from obstruction.

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

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

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

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

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

(i) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed.

Restoration: 2: 1

Creation: 3: 1

Enhancement: 4: 1

(7) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The U.S. Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the local government to help evaluate such reports and any subsequent activities associated with compliance.

(8) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in MCC 38.7075 (Z) (6) (i). These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.

Staff: As the impacts are temporary, the biologists have concluded that the project would not need additional mitigation outside of minimization and avoidance measures (Exhibit A.17). The applicant is proposing the following minimization and avoidance measures:

1. Access routes were field located with a Biologist to avoid impacts to surrounding resources to the greatest extent practicable.
2. Erosion control measures such as placement of wattles and bio bags will be employed where necessary, work crews will follow standard ODOT erosion control BMP's as described in the Oregon Standard Specifications for Construction.
3. A small access cut was chosen to mount the slope. The access route will temporarily impact a seep wetland, but will greatly reduce the vegetation and ground disturbing activities on the slope. In addition, this route avoids impacts to talus habitat and its associated protected species.
4. A small track rig will be utilized to drill the east cliff sites. This will allow for the avoidance of existing trees onsite and reduce the potential for soil compaction. Due to rocky nature of soils, compaction is a low risk.
5. A metal plate will placed over southern wetland crossing.
6. A sled rig will reduce the potential for ground disturbances
7. The project area of potential effect (APE) is restricted to the smallest area feasible. Access will be limited to a 15ft wide corridor.
8. All ground disturbances will be reshaped to their original shape and seeded with a gorge approved seed mix.
9. ODOT will employ erosion control measures such as placement of wattles and bio bags where necessary, work crews will follow standard ODOT erosion control BMP's as described in the Oregon Standard Specifications for Construction.
10. ODOT reduced access to the minimum possible to retrieve the needed geotechnical information.
11. ODOT will place crane mats in the stream to cross it. This minimizes impacts to the stream substrate and surrounding banks.
12. If drilling occurs between July 15 and August 15th, mats will be left in the creek to minimize downstream and bed impacts associated with mat installation. If drilling occurs between August 15th and August 30th, as recommended, ODOT will consult with ODFW to assess weather and site conditions to determine if mats must be removed.
13. ODOT will follow ODFW guidance and recommendations to protect aquatic resources.
14. All equipment will have biodegradable hydraulic fluid installed and be steam cleaned before crossing the stream.

As conditioned, these criteria are met.

6.4 MCC 38.7085 SMA Recreation Resource Review Criteria

(A) The following shall apply to all new developments and land uses:

(1) New developments and land uses shall be natural resource-based and not displace existing recreational use.

Staff: Staff finds the proposed geotechnical exploration work is consistent with the existing use on the subject property and the applicant is not proposing any recreational uses. *These criteria are not applicable.*

(B) SMA Recreation Intensity Class Standards. The recreation intensity classes are designed to protect recreation resources by limiting land development and land uses.

(1) Intensity Class 1

Emphasis is to provide opportunities for semi-primitive recreation opportunities.

(a) Uses permitted are those in which people participate in outdoor activities to realize experiences such as solitude, tension reduction, and nature appreciation.

(b) Maximum site design capacity shall not exceed 35 people at one time on the site. Maximum design capacity for parking areas shall be 10 vehicles.

(c) The following uses may be permitted:

- 1. Trails and trailheads.**
- 2. Parking areas.**
- 3. Dispersed campsites accessible only by a trail.**
- 4. Viewpoints and overlooks.**
- 5. Picnic areas.**
- 6. Signs.**
- 7. Interpretive exhibits and displays.**
- 8. Rest-rooms.**

Staff: The subject property is located within the Recreation Intensity Class 1, however the applicant is not proposing any recreation based uses. *These criteria are met.*

7.0 Geologic Hazard Criteria:

7.1 MCC 38.5520 Geologic Hazard Permit Standards

(A) A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(B) Fill shall be composed of earth materials only.

Staff: The applicant is proposing 200 cubic yards of fill (Exhibit A.7). *As conditioned, this criterion is met.*

(C) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal: 1 Vertical), unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development.

Staff: The proposed cut and fill slopes will not exceed 33 percent grade (Exhibit A.10). This criterion is met.

(D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property boundary of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

Staff: The applicant provided a geotechnical reconnaissance and stability preliminary study conducted by Max Gummer, registered professional engineer. According to the engineer, the proposed earthwork

will not cause potential stability problems for the subject and/or adjacent properties (Exhibit A.7). The applicant is proposing temporary fills 5 to 7 feet tall at the northwest terminus of the access road. Fill will be removed after the conclusion of the geotechnical exploration. The project also includes minor cuts less than 1 feet along the access road for equipment access. *This criterion is met.*

(E) Fills shall not encroach on any water body unless an Oregon licensed Professional Engineer certifies that the altered portion of the water body will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.

Staff: The proposed fill will not encroach on any body of water (Exhibit A.7). *This criterion is met.*

(F) Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.

Staff: As stated in an earlier finding, the applicant provided a Biological Resources memo that identified minimization and avoidance measures to ensure the projected impacts to surrounding vegetation are controlled under best management practices.

(G) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.

Staff: The applicant is not proposing any development that would create surface runoff. *This criterion is not applicable.*

(H) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

Staff: *As conditioned, this criterion is met.*

(I) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

(1) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

(2) The buffer required in (I)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340-041-0345(4).

Staff: As demonstrated in the findings above, the proposed geotechnical exploration requires disturbance within the stream and wetland buffers. The applicant has provided a Water Resources and Biological Resources memo that identifies the minimization and avoidance measures used during the project. Stormwater control measures were not required as the proposed project does not involve the development or replacement of impervious surfaces exceeding 500 square feet. *These criteria are met.*

(J) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.

Staff: *As conditioned, this criterion is met.*

(K) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.

(L) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.

(M) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.

(N) All drainage measures shall be designed to avoid erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.

(O) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.

Staff: The proposed geotechnical exploration is temporary in nature and does not involve the development or replacement of impervious surfaces that exceed 500 square feet. The engineer has confirmed that the proposed ground disturbing work will not cause potential stability problems for the subject and/or adjacent properties and did not require additional provisions for run off or drainage measures (Exhibit A.7). *This criterion is met.*

(P) Erosion and sediment control measures must be utilized such that no visible or measurable erosion shall occur on-site and no visible or measurable sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:

(1) Energy absorbing devices to reduce runoff water velocity;

(2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

(3) Dispersal of water runoff from developed areas over large undisturbed areas.

Staff: The applicant is proposing to employ erosion control measures such as placement of wattles and bio bags where necessary. The applicant also states that the work crews will follow standard ODOT erosion control BMP's as described in the Oregon Standard Specifications for Construction. All ground disturbances will be reshaped to their original shape and seeded with a gorge approved seed mix (A.17). *These criteria are met.*

(Q) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies; or by other sediment reduction measures.

Staff: The applicant is not proposing to dispose of spoil material or stockpile topsoil near any water bodies (Exhibit A.7). *This criterion is met.*

(R) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

Staff: *As conditioned, this criterion is met.*

(S) Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual. To the extent that there is a conflict between the Manual and the requirements of the National Scenic Area (NSA) Permit, the requirements in the NSA will apply; and

Staff: The applicant is not proposing any ground disturbing activities within a water body. *This criterion does not apply.*

(T) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division.

Staff: The applicant is proposing 200 cubic yards of fill. A transportation impact is defined in Multnomah County Road Rules 3.000 as any new construction or alteration which increases the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour. *As conditioned, this criterion is met.*

(U) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.

Staff: *As conditioned, this criterion is met.*

(V) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill.

Staff: *As conditioned, this criterion is met.*

8.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the National Scenic Area Site Review to conduct geotechnical exploration in the GSO zone. This approval is subject to the conditions of approval established in this report.

9.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

‘D’ Comments Received

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2021-14480 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Application Form	03.22.2021
A.2	34	Narrative	03.22.2021
A.3	2	Site Plan	03.22.2021
A.4	1	Access Road Elevation	03.22.2021
A.5	12	Biological Resources Memo	03.22.2021
A.6	6	Water Resources Memo	03.22.2021
A.7	6	Geologic Hazards Form	03.22.2021
A.8	61	Revised Application	06.18.2021
A.9	4	Planting Plan	06.10.2021
A.10	1	Access Road Elevations Revise 6-18-2021	06.08.2021
A.11	12	Biological Resources Memo Revised 6-18-2021	06.08.2021

A.12	6	Water Resources Memo Revised 6-18-2021	06.08.2021
A.13	5	Planting Plan Revised 6-18-2021	06.08.2021
A.14	35	Narrative Revised 5-27-2022	05.27.2022
A.15	3	Site Plan Revised 5-27-2022	05.27.2022
A.16	1	Access Road Elevations Revised 5-27-2022	05.27.2022
A.17	18	Biological Resources Memo Revised 5-27-2022	05.27.2022
A.18	16	Water Resources Memo Revised 5-27-2022	05.27.2022
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 2N7E31 -00300 (Alt Acct# R957310070)	03.22.2021
‘C’	#	Administration & Procedures	Date
C.1	1	Agency Review	08.04.2021
C.2	1	Incomplete Letter	04.21.2021
C.3	1	Applicant’s Acceptance of 180 Day Clock	04.21.2021
C.4	1	Complete Letter (Day 1)	07.17.2021
C.5	4	Opportunity to Comment and mailing list	11.04.2021
C.6	49	Letter to Tribal Government	10.13.2021
C.7	29	Administrative Decision and mailing list	08.19.2022
‘D’	#	Comments Received	Date
D.1	48	USFS Comment	09.02.2021