

NOTICE OF NSA DECISION

Case File: T2-2021-15109

Permit: National Scenic Area Site Review

Applicant: Noppawan Smith

Owner: Noppawan Smith

Location: **Address:** 39072 E. Knieriem Road, Corbett
Alternate Account #: R944360410

Map, Tax Lot: 1N4E36AC -00800
Property ID #: R322835

Zoning: Gorge General Agriculture – 20 (GGA-20); Gorge General Residential – 10 (GGR-10)

Overlays: None

Key Viewing Areas: None

Landscape Setting: Rural Residential in Pastoral

Proposal Summary: National Scenic Area Site Review for the replacement of an existing dwelling and conversion of an existing 1,175 sq. ft. agricultural building to an Accessory Structure.

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 **Tuesday, November 01, 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 is available for review by contacting Chris Liu via email at chris.liu@multco.us. Copies of all documents are available at the rate of \$0.40/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:

Chris Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Tuesday, October 18, 2022

Instrument Number for Recording
Purposes: #2010-006643



Applicable Approval Criteria:

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

General Provisions: MCC 38.0560 Code Compliance and Applications, MCC 38.0015 Definitions – Parcel, MCC 38.0030 Existing Uses and Discontinued Uses, MCC 38.0045 Review and Conditional Use Applications, MCC 38.0060 Agricultural Buffer Zones, MCC 38.0110 Tribal Treaty Rights and Consultation

Gorge General Agriculture – 20 (GGA-20) Criteria: MCC 38.2225(A)(10) Review Uses, Single Family Dwelling, MCC 38.2225(A)(4) Review Uses, Accessory Structures, MCC 38.2260(C)& (D) – Dimensional Requirements, MCC 38.2285 Off-Street Parking and Loading, MCC 38.2290 Access

Gorge General Residential – 10 (GGR-10) Criteria: MCC 38.3025(A)(3) – Review Uses, Accessory Buildings, MCC 38.3060(C) & (D) Dimensional Requirements.

National Scenic Area (NSA) Site Review Criteria: MCC 38.7035 GMA Scenic Review, MCC 38.7045 GMA Cultural Resource Review, MCC 38.7053 GMA Water Resources Review Criteria Water Resources: Wetlands, Streams, Ponds, Lakes, And Riparian Areas, MCC 38.7065 GMA Wildlife Review, MCC 38.7070 GMA Rare Plant Review Criteria, MCC 38.7080 GMA Recreation Resource Review Criteria

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

Chapter 38: Columbia River Gorge National Scenic Area

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. Replacement Dwelling: Within two (2) years of the date of this final decision when construction has not commenced.
 - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
 - ii. For purposes of Condition 1.a.i, notification of commencement of construction shall be given to Multnomah County Land Use Planning Division via email at LUP-submittals@multco.us a minimum of seven (7) days prior to date of construction commencement. The email shall reference this land use case, T2-2021-15109.
 - b. Within two (2) years of the date of commencement of construction when the structure has not been completed.
 - i. For the purposes of Condition 1.b, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
 - c. For purposes of Condition 1.b.i, the property owner shall provide building permit status in support of completion of exterior surfaces of the structure and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to land.use.planning@multco.us. [MCC 38.0690(B)]
 2. Conversion of Agricultural Building to Accessory Building: Within two (2) years of the date of the final decision the property owner or their representative shall obtain all necessary building permits for the conversion of the building. All required modifications to the building for these building permits shall be completed and the permits final within four years of the date of the final decision. [MCC 38.0690(A) & (D)]
- Note:** The property owner may request to extend 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.
3. 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)]
 4. **Prior to land use sign-off for zoning plan review**, the property owners or their representative shall:
 - a. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of

Acknowledgement has been provided to assist you. The signed document shall be sent to Chris Liu via email at chris.liu@multco.us. [MCC 38.0660(A) & (B)]

- b. Obtain the appropriate Ground Disturbance permit for the project pursuant to MCC 39.6200 *et al.* [MCC 38.7035 (A)(1)]
 - c. Record pages 1 through 8 and Exhibit A.10 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 38.0670]
5. **At the time of zoning plan review**, the property owner or their representative shall:
- a. Demonstrate that the height of both the 1,175-square-foot and the 120-square-foot accessory buildings are 24 feet or less. [MCC 38.2225(A)(5)(b) and 38.3025(A)(3)(b)]
 - b. Modify the site plan to show the required Agricultural Buffer Zones earth berms and/or plantings as per the requirements of MCC 38.0060(B) and(C).
 - c. Clarify on the site plan the proposed location for the existing 120-square-foot shed. The 120 sq. ft. shed shall be located northeast of the replacement dwelling as shown on Exhibit A.10 and outside of the 100-ft stream buffer zone for Knieriem Creek. [MCC 38.7035(C)(1)(a) & MCC 38.7060]
6. **Prior to construction**, obtain a building permit(s) and ensure that the development complies with the standards of the applicable building code.
7. **During construction:**
- a. The Erosion and Sediment control measures shall follow best management practices and any restrictions noted in the Erosion and Sediment Control permit issued for the project.
 - b. The property owner or their representative shall complete the plantings for the required Agricultural Buffer Zones for any area that does not have a continuous vegetative screen within 1 year of commencement of construction. Any required vegetation shall be at least 6 feet high when planted and reach a minimum of 15 feet in height. No berms shall be constructed or used within the 100-ft buffer zone for Knieriem Creek [MCC 38.0060(D)]
 - c. **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 SHIPO. 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.
 - i. **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.
 - ii. **Notification.** The project applicant shall notify the local government and the Gorge Commission within 24 hours of the discovery. If the cultural resources are pre-contact or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments with 24 hours. The CRGNSA Heritage Program Manager, Chris Donnermeyer, should also be notified at (541) 308-1711, christopher.donnermeyer@usda.gov

- iii. Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHIPO. (See Oregon Revised Statute [ORS] 273.705, ORS 358.905 to 358.955, and Revised Code of Washington [RCW] 27.23). 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 the “Reconnaissance Survey Reports- Large Scale Uses” sections within the Management Plan for the Columbia River Gorge National Scenic Area, Chapter 2.

Based on the survey and evaluation report and any written comments, the local government 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.

- iv. 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 within the Management Plan for the Columbia River Gorge National Scenic Area, Chapter 2. Construction activities may recommence when the conditions in the mitigation plan have been executed.

d. **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.

- i. Halt of Activities. All survey, excavation and construction activities shall cease. The human remains shall not be disturbed any further.
- ii. Notification. Local law enforcement officials, the local government, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.
- iii. Inspection. The coroner, or appropriate official, shall inspect the remains at the project site and determine if they are pre-contact/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- iv. Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.
- v. Treatment. In Oregon, pre-contact/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in RCW 27.44 and 68.05 shall generally be implanted if the remains are re-contact/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 the “Mitigation Plans: Mitigation Plan Criteria and Information Needs” section within the Management Plan for the Columbia River Gorge National Scenic Area, Chapter 2.

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set for in the “Mitigation Plans: Conclusion of the Cultural Resource Protection Process” section within the Management Plan for the Columbia River Gorge National Scenic Area, Chapter 2 are met and the mitigation plan is executed.

8. **Within 90 days of the issuance of the Certificate of Occupancy**, remove or demolish the existing manufactured home completely from the property. If necessary, the property owner or their representative shall obtain a demolition permit for its removal/demolition from the City of Gresham. Within 5 days of removal, the property owner shall contact land.use.planning@multco.us to request a field inspection to verify its removal. [MCC 38.0690(A) & (D)]
9. **As an on-going condition**, the property owner or their representative shall:
 - a. Maintain the required Agricultural Buffer Zones for the life of the replacement dwelling . [MCC 38.0060(A)]
 - i. Maintain the plantings of the continuous vegetative screen. [MCC 38.0060 (C)]
 - ii. Maintain the required Agricultural Buffer Zones, berming and/or plantings in good condition. [MCC 38.0060(D)]
 - b. No ground disturbance, building or tree removal shall occur within the 100-foot buffer zone from the bank full flow boundary of Knieriem Creek. [MCC 38.7060(E)]
 - c. Monitor new plantings and replace plants in-kind as needed to ensure survival. [MCC 38.7035(A)(4)]
 - d. Maintain the stormwater drainage control system(s) as depicted in the Stormwater Certificate and Report included as Exhibit A.7. [MCC 39.6235]
 - e. Tree removal shall be limited to the 13,078 sq. ft. of area delineated on the site plan for the replacement dwelling. All tree canopies shown on the site plan shall remain except for the cleared area around the dwelling as shown on Exhibit A.10. [MCC 38.7035(C)(1)(b)1. & (3)(a)]

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off by land use planning, the applicant shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, “Prior to land use sign-off for zoning plan review...” Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at row.permits@multco.us, or schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or call 503-988-3582 for an appointment to review your plans and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation via e-mail septic@portlandoregon.gov or by phone at 503-823-6892 for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or

proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.

4. Visit <https://www.multco.us/landuse/how-apply> for current instructions regarding the submission of building plans for review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department. At the time of this review, Land Use Planning may collect additional fees.

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 proposes to construct a new framed 2,076-square-foot two-story residence to replace an existing manufactured home. The applicant will remove or demolish the manufactured home once the replacement dwelling is completed. The applicant proposes to convert an existing 1,175-square-foot accessory building from agricultural use to accessory storage. The applicant will retain and relocate an existing 120-square-foot shed. The existing driveway from E. Knieriem Road will not be altered. Site work includes grading the new residence site and selective tree removal. Tree removal is limited to 13,078 sq. ft. in the area of the proposed physical improvements.

2.0 Property Description:

Staff: This application is for 39072 E. Knieriem Road, Corbett (“subject property”). The subject property is located within the Columbia River Gorge National Scenic Area in unincorporated east Multnomah County. The subject property is approximately 5.21 acres in size and is zoned Gorge General Agriculture (GGA-20) and Gorge General Residential (GGR-10). The existing manufactured home and proposed replacement dwelling are in the GGA-20 zone. The existing 1,175-square-foot accessory building and the 120-square-foot accessory shed are in the GGR-10 zone. Knieriem Creek runs along the north property line. The subject property has an existing driveway with access from E. Knieriem 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 (Exhibit C.5). Staff received the following public comments during the 14-day comment period.

3.1 Steven D. McCoy, Staff Attorney, Friends of the Columbia Gorge provided a letter via e-mail (Exhibit D.1)

Staff: Steven D. McCoy submitted an e-mail and letter on June 02, 2022 on behalf of the Friends of the Columbia Gorge which contained comments intended to identify application requirements, procedural requirements, resource protection standards, and provide recommendations to the County and the public regarding legal requirements.

4.0 Administrative Procedures Criteria:

4.1 MCC 38.0560 Code Compliance and Applications.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and 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.**

* * *

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.

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.

This decision authorizes the relocation of the 120-square-foot shed, provided the applicant demonstrates the height of the shed is 24 ft. or less. This decision also authorizes the conversion of the existing agricultural building (outbuilding) to an accessory use for household and yard storage, subject to conditions. Provided the applicant demonstrates the height of the building is 24 ft. or less and obtains a building permit for the conversion, the outbuilding would be in compliance with applicable code requirements. *Criterion met.*

5.0 General Provisions:

5.1 MCC 38.0015 Definitions – Parcel

Parcel:

(a) Any unit of land legally created by a short division, partition, or subdivision, that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, or sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all

planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the U.S. Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because it: 1. Is a unit of land created solely to establish a separate tax account; 2. Lies in different counties; 3. Lies in different sections or government lots; 4. Lies in different zoning designations; or 5. Is dissected by a public or private road.

Staff: On January 24, 1996, Multnomah County approved a lot line adjustment involving the subject property via land use case no. NSA 25-95. A copy of the adjusted legal description approved by the County on September 20, 1996 is included as Exhibit B.5. A copy of the subsequent deed to complete the approved lot line adjustment that was recorded on October 25, 1996 as instrument no. 96161828, is included as Exhibit B.6.

The applicant provided a current deed with legal description for the subject property recorded as instrument no. 2010-006643 (Exhibit A.3). As evidenced by the current deed, the subject property remains in the last known authorized configuration. Therefore, the subject property remains a single legal parcel. *Criteria met.*

5.2 MCC 38.0030 Existing Uses and Discontinued Uses

(A) Right to Continue Existing Uses and Structures: Any existing use or structure may continue so long as it is used in the same manner and for the same purpose, except as otherwise provided.

Staff: The applicant proposes to remove or demolish the existing manufactured home once the 2,076-square-foot framed replacement dwelling is completed. The applicant proposes to change the use of the existing 1,175-square-foot accessory building from agricultural use to accessory storage. The applicant will also retain an existing 120-square-foot shed, but move it to a different location on the property.

(B) Replacement of Existing Structures Not Damaged or Destroyed by Disaster: Except as provided in (C) below, an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

Staff: The applicant proposes to replace the existing manufactured home, which is not damaged or destroyed by disaster, with a 2,076-square-foot framed residence. The applicant has submitted a complete land use application, deemed complete on April 26, 2022 (Exhibit C.4). *These standards are applicable.*

(1) The replacement structure shall have the same use as the original structure.

Staff: The proposed replacement dwelling will have the same use, a primary residence, as the manufactured home which the applicant proposes to replace. *This standard is met.*

(2) The replacement structure may have a different size or location than the original structure. An existing manufactured home may be replaced with a framed residence and an existing framed residence may be replaced with a manufactured home.

Staff: The applicant proposes to replace the existing manufactured home with a 2,076-square-foot framed residence. *This standard is met.*

(3) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources provisions; the treaty rights provisions; and the land use designations provisions involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

Staff: The findings for the applicable provisions are included herein in sections 5.0 through 8.0. *This standard is met.*

(4) The use of the original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

Staff: The applicant submitted this land use application for the replacement dwelling. The applicant proposes to continue to use the existing manufactured home until the proposed replacement dwelling is completed. *This standard is met.*

(C) Replacement of Existing Structures Damaged or Destroyed by Disaster: An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards....

Staff: The applicant does not propose to replace an existing structure damaged or destroyed by disaster. *The standards of MCC 38.0030(C) are not applicable.*

(D) Changes to Existing Uses and Structures: Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to this Management Plan.

Staff: The applicant's proposal to change the use of the existing 1,175-square-foot agricultural building to an accessory building for household and yard storage. The use conversion is reviewed in finding 7.1 below. *This standard is met.*

(1) Expansion of Existing Commercial and Multifamily Residential Uses: In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the Dedicated Site, subject to MCC 38.0045. Expansion beyond the Dedicated Site is prohibited.

(2) Conversion of Existing Industrial Uses in the General Management Area: In the General Management Area, existing industrial uses may convert to less intensive uses, subject to MCC 38.0045. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

(3) Uses involving the exploration, development or production of sand, gravel or crushed rock in the Special Management Areas may continue when...

Staff: The applicant does not propose any expansion of existing commercial and multifamily residential uses; conversion of existing industrial uses; or any exploration, development or production of sand, gravel or crushed rock. *These standards are not applicable.*

(E) Discontinuance of Existing Uses and Structures: Except as provided in (C) and (C)(6) above, any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(1) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(2) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

Staff: The applicant proposes to continue to use the existing manufactured home as the primary residence until the proposed replacement residence is completed. The applicant is required to remove or demolish the existing manufactured home once the new 2,076-square-foot residence is completed. *As conditioned, this standard is met.*

(F) Discontinued Uses and Structures: Reestablishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

Staff: The applicant does not propose to re-establish or replace any use or structure that has been discontinued on the subject property. *This standard is not applicable.*

5.3 MCC 38.0060 Agricultural Buffer Zones

All buildings, as specified, shall satisfy the following setbacks when proposed to be located on a parcel which is adjacent to lands designated GGA– 20 or GGA– 40 and are currently used for agricultural use:

Type of Agriculture	Type of Buffer		
	Open or fenced	Natural or created vegetation barrier	8-foot berm or terrain barrier
Orchards	250'	100'	75'
Row crops/vegetables	300'	100'	75'

Livestock grazing pasture, haying	100'	15'	20'
Grains	200'	75'	50'
Berries, vineyards	150'	50'	30'
Other	100'	50'	30'

Staff: The subject parcel is adjacent to lands designated GGA-20 to the north and east. (The designation to the south is CFU-4 and to the west is GGR-10.) The agricultural buffer zones are applicable on the north and east property lines. The property to the north and east (39424 E. Knieriem Rd) is currently forested for approximately 18 acres and in forest deferral. The property owner is currently growing trees. The Agricultural Buffer zone must comply with the ‘Other’ buffer requirements.

(A) New buildings adjacent to lands designated GGA-20 or GGA-40 that are suitable, but currently not used for agriculture, shall use the open or fenced setback associated with the dominant type of agriculture in the vicinity. If a vegetation barrier, 8-foot berm, or terrain barrier exists, the corresponding setback shall apply. If more than one type of agriculture is dominant, the setback shall be the larger width.

Staff: The proposed replacement dwelling would be sited approximately 130 feet from the north property line and 165 feet from the east property line (Exhibit A.10). The applicant’s narrative dated September 29, 2021, states that the applicant will plant blueberry bushes or fruit trees along the south and east property lines. The agricultural setbacks apply to the north property line, not the south. The revised site plan provided on March 21, 2022 does not show the location of the plantings. As a condition of approval, the property owner must demonstrate compliance with the above agricultural buffer zone requirements. *As conditioned, this standard is met.*

(B) Earth berms may be used to satisfy, in part, the setbacks. The berm shall be a minimum of 8 feet in height, and contoured at 3:1 slopes to appear natural. Shrubs, trees and/or grasses shall be employed on the berm to control erosion and achieve a finished height of 15 feet.

Staff: The applicant’s narrative dated September 29, 2021, states that the applicant will use “sloped/earth berms” for the setbacks. The revised site plan provided on March 21, 2022 does not show the locations and elevations of the proposed berms. As a condition of approval, the applicant must demonstrate compliance with the agricultural buffer requirements and may not construct any berms within the 100-ft buffer zone for Knieriem Creek. *As conditioned, this standard is met.*

(C) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback standards. Trees shall be at least 6 feet high when planted and reach an ultimate height of at least 15 feet. The vegetation screen shall be planted along the appropriate parcel line(s), and be continuous.

Staff: A condition of approval requires the property owner demonstrate compliance with the agricultural buffer zones. *As conditioned, this standard is met.*

(D) The necessary berming or planting must be completed during the first phase of development and maintained in good condition.

Staff: The applicant is required to complete the agricultural buffer zone within one year of start of construction and maintain it in good condition. *As conditioned, this standard is met.*

(E) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.

Staff: The subject property to the north and east is currently growing trees as demonstrated by the fact that the property is in forest deferral. *This standard is not applicable.*

(F) A variance to buffer setbacks may be granted upon a demonstration that the standards of MCC .0065 have been satisfied.

Staff: The applicant is not requesting a variance to the agricultural setbacks. *This standard is not applicable.*

5.4 MCC 38.0110 Tribal Treaty Rights and Consultation

(A) Tribal Treaty Rights and Consultation in the General Management Area (GMA)

(1) Tribal Government Notice and Comment Period.

(a) The Planning Director shall send a notice to the governments of the four Columbia River treaty tribes for all new review uses, requesting comments, recommendations, or concerns relating to the protection of treaty rights, including rights to access, hunt, fish, and gather.

Staff: The Multnomah County Planning Director sent an agency notice to Confederated Tribes of Warm Springs, Confederated Tribes of the Umatilla Indian Reservation, Nez Perce Tribe, and Yakama Indian Nation on October 12, 2021 after the applicant submitted the initial application. After the application was deemed complete, Multnomah County Planning Director sent a second notice (Exhibit C.5). *This standard is met.*

(b) The notice to the tribal governments shall request comments, recommendations, or concerns relating to the protection of treaty rights, including rights to access, hunt, fish, and gather, and shall include a site plan and may include supplemental information and is a proposed treaty rights protection plan.

Staff: The Agency Review Notice, in Exhibit C.1, requested comments, recommendations, or concerns and included a site plan. The Opportunity to Comment (Exhibit C.5) was also sent to the various tribal governments. *This standard is met.*

(c) Proposed new review uses and development located in, providing recreation river access to, or on parcels that adjoin the Columbia River or its fishbearing tributaries shall include the following supplemental information:

* * *

Staff: The subject property is not located in, does not provide recreation river access to, and does not adjoin the Columbia River or its fish-bearing tributaries. The subject property adjoins Knieriem Creek, which is a tributary of Big Creek, part of the Sandy River system, and not a fish-bearing tributary of the Columbia River. *The submittal requirements of MCC 38.0110 (A)(1)(c) are not applicable.*

(d) At the same time that the county sends notice, the county shall offer to meet with or consult with the tribal government prior to making a decision on the proposed development. Offers to meet or consult with a tribal government shall include phone calls or electronic communication to tribal government chairs, chief administrative officers, and natural and cultural resource staff. The county shall make more than one attempt to contact a tribal government.

* * *

Staff: No comments were received from any of the four Columbia River treaty tribes following the Agency Review notice (Exhibit C.1) or the Opportunity to Comment notice (Exhibit C.5). *These standards are met.*

6.0 Gorge General Agriculture – 20 Zone Criteria:

6.1 MCC 38.2225 Review Uses

(A) The following uses may be allowed on lands designated GGA pursuant to the provisions of MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(10) On lands designated GGA– 20, a single family dwelling on any legally created and existing parcel.

Staff: The proposed single-family dwelling that will replace the existing manufactured home is in the GGA-20-designated area of the subject property, and is allowed as a Review Use. The findings for the applicable NSA Site Review standards of MCC 38.7000 through 38.7085 are in Section 8.0. The findings for the legally created and existing parcel are in Section 4.1. *These criteria have been met.*

(4) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in MCC 38.2225 (A)(5) or MCC 38.2225 (A)(6).

Staff: The applicant proposes to relocate an existing 120-square-foot shed to the GGA-20 zoned portion of the subject property, near the proposed replacement dwelling. The applicant also proposes two retaining walls (up to 48” in height) that will be located near [southeast of] the proposed replacement dwelling. The findings for the applicable NSA Site Review standards of MCC 38.7000 through 38.7085 are in Section 8.0. The findings for the legally created and existing parcel are in Section 4.1. *These criteria have been met.*

6.2 MCC 38.2260 – Dimensional Requirements

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Staff: Based on the revised site plan (Exhibit A.10), the approximate setbacks of the proposed replacement dwelling are 250 feet in the front (west), 100 feet (north) and 280 feet (south) on the sides, and 165 feet in the rear (east). The setbacks, as shown, exceed the minimum required dimensions. The 120 sq. ft. shed will be relocated to the GGA-20 zone. It will be located near the replacement dwelling and complies with the above yard requirements (Exhibit A.10). *These standards are met.*

Maximum Structure Height – 35 feet

Staff: The front elevations drawing (Exhibit A.13) provides the height of each floor, which total 25 feet 4 inches, but this does not include the roof peaks. Based on the drawings, the total height of the proposed replacement dwelling will not exceed the 35-foot maximum. The height of the 120-sq. ft. shed is not known. A condition of approval has been included to verify that it does not exceed 24 ft in height. *As conditioned, this standard is met.*

Minimum Front Lot Line Length – 50 feet.

Staff: Based on the revised site plan (Exhibit A.10), the approximate front (west) lot line length is 250 feet, which exceeds the 50-foot required minimum. *This standard is met.*

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

Staff: The Public Road Right-of-Way Use Permit issued on October 7, 2020 by Multnomah County Transportation in Exhibit A.8 shows E. Knieriem Road as a County Rural Local Road. It has sufficient right-of-way width to serve the area. *This standard is not applicable.*

6.3 MCC 38.2285 Off-Street Parking and Loading

Off-street parking and loading shall be provided as required by MCC 38.4100 through 38.4215.

Staff: The parking requirement for a single-family dwelling is two parking spaces in a garage or on the driveway. The existing driveway provides for these two spaces. *This standard has been met.*

6.4 MCC 38.2290 Access

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

Staff: The parcel abuts and has access from E. Knieriem Road. *This standard is met.*

7.0 Gorge General Residential – 10 Zone Criteria:

7.1 MCC 38.3025 – Review Uses

(A) The following uses may be allowed on lands designated GGR pursuant to the provisions of MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(3) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(a) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings

Staff: The applicant proposes to convert the existing 1,175 sq. ft. agricultural building to an accessory building for household and yard storage. The applicant's narrative (Exhibit A.2) indicates that an additional accessory building, a 120 sq. ft. shed exists. The combined square footage for both accessory buildings is 1,295 sq. ft. *This standard is met.*

(b) the height of any individual accessory building shall not exceed 24 feet.

Staff: The height of the 1,175-square-foot accessory building and the 120-square-foot shed are not provided on the applicant's Exhibit A.14 'Outbuilding Elevations and Floor Plans', nor in the narrative (Exhibits A.2 and A.9). The applicant must provide information demonstrating that the height of both accessory buildings are 24 feet or less. *As conditioned, this standard is met.*

7.2 MCC 38.3060 Dimensional Requirements

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Staff: The agricultural building to be converted to an accessory building is an existing structure that complies with the Minimum Yard Dimensions of the GGR-10 zone. The existing 120 sq. ft. shed will be relocated to the GGA-20 zone.

8.0 National Scenic Area (NSA) Site Review Criteria:

8.1 MCC 38.7035 GMA Scenic Review

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

(A) All Review Uses and Conditional Uses:

(1) New development shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

Staff: The applicant included a draft Erosion and Sediment Control Worksheet (Exhibit A.15). Grading will occur in order to construct the new framed residence. The applicant's site plan indicates that only 13,078 sq. ft. of ground will be disturbed. A retaining wall(s) that are a total of 48 inches in height will be constructed to the rear to the dwelling so that grading will be minimized to create a flattened area (Exhibit A.10). The applicant must obtain the appropriate Ground Disturbance permit as required by MCC 39.6200 *et al.* *As conditioned, this criterion can be met.*

(2) New buildings and expansion of existing development shall be compatible with the general scale of similar buildings that exist nearby (e.g. dwellings to dwellings). For purposes of applying this standard, the term nearby generally means buildings within ¼ mile of the parcel on which development is proposed. New buildings that are 1,500 square feet or less are exempt from this requirement. Findings addressing this requirement shall include but are not limited to:

Staff: The proposed new framed residence is 2,076 square feet. The largest home in the ¼ mile area is 3,844 sq. ft. The average home size is 2,411 sq. ft. The proposed dwelling at 2,076 sq. ft. is compatible with the general scale of other dwellings in the area (exhibit A.16). *This standard is met.*

(3) New vehicular access points to the Scenic Travel Corridors shall be limited to the maximum extent practicable, and access consolidation required where feasible.

Staff: The applicant is not proposing any new access points. E. Knieriem Road is not a Scenic Travel Corridor. *This criterion is not applicable.*

(4) Property owners shall be responsible for the property maintenance and survival of any required vegetation.

Staff: The applicant proposes to plant fruit trees and shrubs, which must be maintained to ensure survival. *As conditioned, this criterion is met.*

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

Staff: The applicant has provided the required information in the submitted materials (Exhibit A.2 through A.16) so that the compatibility of the development with the landscape setting can be determined. See landscape setting findings under (C) below.

(6) For all new production and/or development of mineral resources and expansion of existing quarries...

* * *

(7) 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.

* * *

Staff: The applicant is not proposing nor are there are any existing mineral production or quarries on the subject property. *These criteria are not applicable.*

(B) All Review Uses and Conditional Uses topographically visible from Key Viewing Areas

Staff: The subject property is not topographically visible from any Key Viewing Area in the National Scenic Area. *These criteria are not applicable.*

(C) All Review Uses and Conditional Uses within the following landscape settings, regardless of visibility from KVAs:

(1) Pastoral

(a) Accessory structures, outbuildings and accessways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.

Staff: The applicant is not proposing to relocate the 1,175-square-foot accessory building or the existing driveway. They are clustered in the northwest portion of the subject property. The application narrative (Exhibit A.2) and revised site plan (Exhibit A.10) indicate that a 120-square-foot shed west of the manufactured home will be relocated to the northeast of the new replacement dwelling location. The 120-square-foot shed will be clustered with the replacement dwelling (Exhibit A.10). *As conditioned, this criterion can be met.*

(b) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual sub-ordinance for new development and expansion of existing development:

* * *

Staff: The subject property is not topographically visible from any Key Viewing Area. *This criterion is not applicable.*

(c) Compatible recreation uses include resource-based recreation uses of a very low or low-intensity nature, occurring infrequently in the landscape.

Staff: No recreation uses are proposed, only continued residential use in a new structure. *This criterion is not applicable.*

(3) 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.

Staff: The revised site plan shows that a 13,075 sq. ft. clearing area will occur for the construction of the dwelling (Exhibit A.10). No other proposed cleared area has been shown. A condition of approval has been included restricting clearing to this 13,075 sq. ft. area. *As conditioned, this criterion can be met.*

(b) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual sub-ordinance for new development and expansion of existing development....

Staff: The subject property is not topographically visible from any Key Viewing Area for the Columbia River Gorge National Scenic Area. *This criterion is not applicable.*

(c) Compatible recreation uses include should be limited to small community park facilities, but occasional low-intensity resource-based recreation uses ...

Staff: The proposed development is for a replacement dwelling. No recreational uses such as a park are proposed. *This criterion is not applicable.*

(4) Rural Residential in Conifer Woodland or Pastoral

(a) New development in this setting shall meet the design standards for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral or Coniferous Woodland), unless it can be demonstrated that compliance with the standards for the more rural setting is impracticable. Expansion of existing development shall comply with this standard to the maximum extent practicable.

(b) In the event of a conflict between the standards, the standards for the more rural setting (Coniferous Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such standards would not be practicable.

Staff: According to the Columbia River Gorge Commission mapping, the Landscape Setting of the subject property is Rural Residential in Pastoral. The proposed development has demonstrated compliance with both the Pastoral and Rural Residential landscape settings above. *These criteria are met.*

(c) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

Staff: No recreation uses are proposed, only continued residential use in a new structure. *This criterion is not applicable.*

8.2 MCC 38.7045 GMA Cultural Resource Review

(A) Cultural Resource Reconnaissance Surveys

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

* * *

Staff: Chris Donnermeyer, Columbia River Gorge Scenic Area Heritage Resources Program Manager, submitted a Cultural Resource Survey Determination dated October 20, 2021, stating that a cultural reconnaissance survey is not required (Exhibit B.3). *Criteria met.*

(4) 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 compromise features of the surrounding area that are important in defining the historic or architectural character of the buildings or structures that are 50 years old or older.

Staff: Chris Donnermeyer, Columbia River Gorge Scenic Area Heritage Resources Program Manager, submitted a Cultural Resource Survey Determination dated October 20, 2021, stating that a historic survey is not required (Exhibit B.3). *This criterion is met.*

(B) The cultural resource review criteria shall be deemed satisfied, except MCC 38.7045 (L) and (M), if:

(1) The project is exempted by MCC 38.7045 (A) (1), no cultural resources are known to exist in the project area, and no substantiated comment is received during the comment period provided in MCC 38.0530 (B).

Staff: As stated above a cultural resource review not required. The requirements of (L) and (M) are discussed immediately below. *This criterion is met.*

(L) 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 Planning Director and SHPO. 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.

* * *

(M) 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.

* * *

Staff: Conditions of approval require compliance with the above criteria. *As conditioned, these criteria are met.*

8.3 MCC 38.7060 GMA STREAM, LAKE AND RIPARIAN AREA REVIEW CRITERIA

(A) The following uses may be allowed in streams, ponds, lakes and riparian areas, and their buffer zones, when approved pursuant to the provisions of MCC 38.0045, MCC 38.7060 (C), and reviewed under the applicable provisions of MCC 38.7035 through 38.7085:

(1) 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.

* * *

(E) Stream, Pond, and Lake Buffer Zones

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

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

Staff: Knieriem Creek is a perennial watercourse which is protected with a 100-ft stream buffer. The existing agricultural building is located within the 100-ft stream buffer. The building will be converted to an accessory building. No expansion to the building is proposed and no modification of the building will occur that will result in a loss of water quality, etc.

The proposed replacement dwelling is located outside of the 100-ft wide stream buffer. A condition of approval has been included that the 120 sq. ft. shed and all ground disturbance including tree removal remain outside of the buffer zone. *These standards have been met.*

8.4 MCC 38.7065 GMA Wildlife Review

Wildlife Habitat Site Review shall be required for any project within 1,000 feet of sensitive wildlife areas and sensitive wildlife sites (i.e., sites used by sensitive wildlife species).

Staff: No sensitive wildlife areas were identified by the reviewing agencies. *Criteria met.*

8.5 MCC 38.7070 GMA Rare Plant Review Criteria

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

Staff: According to available County maps, no rare plants have been identified as part of this review. *Criteria met.*

8.6 MCC 38.7080 GMA Recreation Resource Review Criteria

Staff: The subject property consists of a single family dwelling, related accessory buildings and structures. No recreation resources are in the immediate area. *Criteria met.*

9.0 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 establish the replacement of an existing dwelling, authorization of the relocation of a small shed and conversion of an existing agricultural building to an accessory structure in the Gorge General Agriculture – 20 (GGA-20) and Gorge General Residential – 10 (GGR-10) zone. This approval is subject to the conditions of approval established in this report.

10.0 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 T2-2021-15109 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	NSA Application Form	10.04.2021
A.2	5	Applicant Narrative	10.04.2021
A.3	9	Copy of Deed recorded as instrument no. 2010-006643	10.04.2021
A.4	1	Site Plan	10.04.2021
A.5	6	Septic Review Certification	10.04.2021
A.6	6	Fire Service Agency Review	10.04.2021
A.7	6	Stormwater Certificate and Report	10.04.2021
A.8	13	Multnomah County Right-of-Way Existing Driveway permit	10.04.2021
A.9	1	Cover Letter – Additional Materials	03.21.2022
A.10	1	Revised Site Plan – p. A1.01	03.21.2022
A.11	1	Revised Site Details – p. A1.02	03.21.2022
A.12	3	Retaining Wall Calculations	03.21.2022
A.13	9	House Building Elevations and Floor Plans	03.21.2022
A.14	1	Outbuilding Elevations and Floor Plan	03.21.2022
A.15	9	Erosion and Sediment Control Worksheet	03.21.2022
A.16	2	Buildings within ¼ mile specifications	03.21.2022
‘B’	#	Staff Exhibits	Date

B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N4E36AC -00800 (Alt Acct# R944360410)	10.04.2021
B.2	1	Division of Assessment, Recording, and Taxation (DART): Tax Map for 1N4E36AC	10.04.2021
B.3	2	USFS Cultural Resources Survey Determination	10.20.2021
B.4	2	SHPO Response Letter	11.09.2021
B.5	1	Copy of approved legal description from case no. NSA 25-95	09.07.2022
B.6	1	Copy of the bargain and sale deed recorded as instrument no. 96161828	09.07.2022
B.7	4	Parcel Record card for R944360410 (1N4E36AC -00800)	09.07.2022
‘C’	#	Administration & Procedures	Date
C.1	32	Agency Review	10.12.2021
C.2	3	Incomplete Letter	10.29.2021
C.3	1	Applicant’s Acceptance of 180 Day Clock	11.05.2021
C.4	1	Complete Letter (Day 1)	04.26.2022
C.5	13	Opportunity to Comment	05.19.2022
C.6	24	Decision	10.18.2022
‘D’	#	Comments Received	Date
D.1	9	Friends of the Columbia Gorge Comments	06.02.2022