

1600 SE 190<sup>th</sup> Avenue, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

## NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-2016-4788

**Location:** Interstate 84 Mile Post 17.8 to 20.2 and Tunnel Point area  
Sections 26A, 29 and 30 of Township 1 North, Range 4 East, Willamette Meridian; and  
Section 25 of Township 1 North, Range 3 East, Willamette Meridian

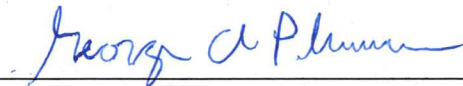
**Applicant:** Oregon Department of Transportation

**Summary:** In I-84 median, install four strand cable barrier from Sandy River Bridge area Mile Post 17.8 to 20.2 in Gorge Special Public Recreation and Gorge Special Open Space. Also replace guardrail with new corten guardrail around Tunnel Point parking area and along the Tunnel Point access ramp Gorge General Open Space.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective August 23, 2016, at 4:00 PM.

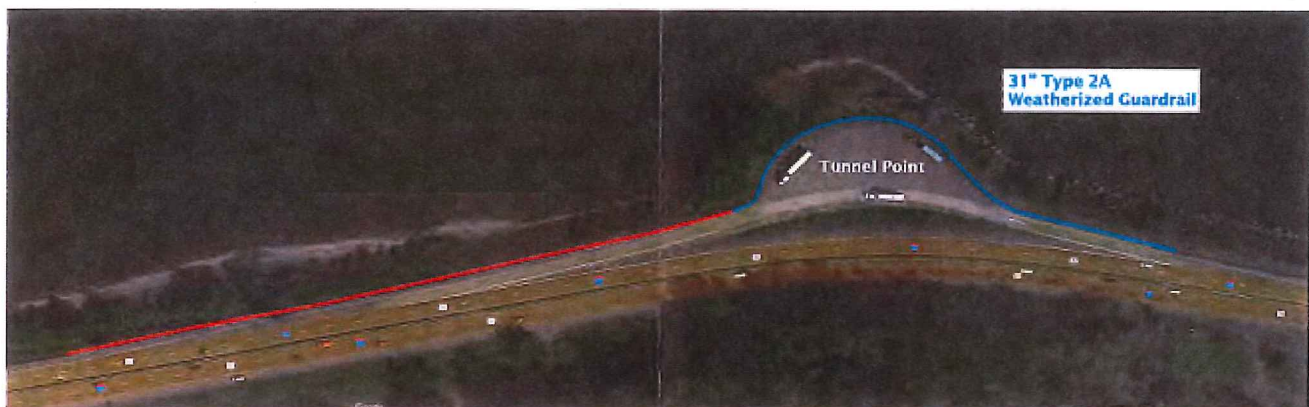
Issued by:



George A. Plummer, Planner

For: Michael Cerbone, AICP  
Planning Director

Date: August 9, 2016







**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 38.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Columbia River Gorge Commission until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is August 22, 2016 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): 38.7035 GMA Scenic Review Criteria; 38.7045 GMA Cultural Resource Review Criteria; 38.7055 through 38.7070 GMA Natural Resource Criteria; and 38.7080 GMA Recreation Resource Review Criteria.

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

### **Scope of Approval**

1. 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.

2. **Pursuant to MCC 38.0690, this land use permit expires two years from the date the decision is final if; the projects have not been initiated, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 38.0700. Such a request must be made prior to the expiration date of the permit.**

## **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. The project shall be implemented as described in the applicant's submittal except the proposed concrete barrier along the Tunnel Point exit component of the application request which the applicant withdrew (Exhibit A.19). Additionally, no contaminated fill shall be used for the proposed projects. [MCC 38.0025 and MCC 38.0580]
2. Discovery During Construction in the Columbia River Gorge National Scenic Area General Management Area (GMA), the Tunnel Point Area installation of replacement guardrail, if any Cultural Resources and/or Archaeological Resources are located or discovered on the property during this project, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts, the following procedures shall be implemented: [MCC 38.7045 (L)]

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.

Should there be a "Discovery During Construction" the following steps shall occur:

- (a) Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
  - (b) Notification – The project applicant shall notify the County Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours. This includes the Yakama Nation, contact Cultural Specialist for the Cultural Resources Program at: (509) 865-5121 extension 4720; FAX number (509) 865-4664. Procedures required in MCC 38.7045 (L) shall be followed.
  - (c) Survey and Evaluation – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (see ORS 273.705 and ORS 358.905 to 358.955). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC 38.7045 (C) (2) and MCC 38.7045 (E).
  - (d) Mitigation Plan – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J). Construction activities may recommence when the conditions in the mitigation plan have been executed. [MCC 38.7045 (L)]
3. Discovery During Construction in the Columbia River Gorge National Scenic Area General Management Area (GMA), the Tunnel Point Area installation of replacement guardrail and new concrete barrier, the following procedures shall be in effect if human remains are discovered during

excavation or construction (human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts):

- (a) Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (b) Notification – Local law enforcement officials, the Multnomah County Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.
- (c) Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (d) Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.
- (e) Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760. [MCC 38.7045 (L)]

- 4 Discovery During Construction in the Columbia River Gorge National Scenic Area Special Management Area (SMA) for installation of the median barrier the following procedures shall be in effect if 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). The immediate notification of the Multnomah County Planning Director is required.
  - (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). [MCC 38.7050(H)]

**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 addressing applicable criteria are identified as ‘**Staff**’. Staff comments may include a conclusionary statement in *italic*.

### **1. PROJECT DESCRIPTION**

**Staff:** Request to install in the I-84 median a four strand cable barrier from east of the Sandy River Bridge area Mile Post 17.8 to 20.2 located within Gorge Special Public Recreation and Gorge Special Open Space. Also replace guardrail with new corten guardrail around Tunnel Point parking area and along the Tunnel Point access ramp Gorge General Open Space.

There are two different components to the proposed alteration of the I-84 infrastructure.

- 1) The guardrail replacement at Tunnel Point viewpoint rest area access ramp (access the rest area) and around the parking area. The replacement guardrail will be “Corten” steel which was developed to eliminate the need for painting, and form a stable rust-like appearance when exposed to the weather.
- 2) Installation of a cable median barrier between the travel lanes to meet current safety standards for highways with separate travel lanes.

The original application proposal included 1000 linear feet of 32" tall concrete shoulder barrier along Tunnel Pt. along exit ramp Gorge General Open Space. The applicant made the request to withdraw the concrete barrier component of the project stating that it did not have the budget for this component. Should ODOT pursue a concrete barrier in this location in the future, ODOT will need to address the I-84 Corridor Strategy, safety issues, and address issues raised by Friends of the Columbia Gorge.

### **2. PROPERTY DESCRIPTION**

**Staff:** The project is located within previously disturbed I-84 right-of-way. The project is an I-84 facilities project replacing existing guardrail and installing new safety barriers to reduce accident fatalities. The I-84 Corridor Strategy standards apply to the proposed replacement guardrail, and the placement of the new cable median barrier.

The project components are located at Tunnel Point located nearly a mile east of the Corbett Hill Road exit for the guardrail replacement and south of the Sandy River Delta area, east of the Sandy River Bridge from Mile Post 17.8 to 20.2. Both areas are relatively flat.

### **3. EXISTING USES, PROHIBITED AND REVIEW USES**

#### **3.1. Existing Uses**

**MCC 38.0030(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.

**MCC 38.0030(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 proposed projects, to replace/install guardrail and install four strand cable median barrier are modification of the existing I-84 Highway infrastructure. The proposal has been reviewed and has been determined to meet the Multnomah County Code NSA Site Review Criteria which were adopted to meet the Management Plan. Thus the proposed project has been reviewed and approved pursuant to this Management Plan. *These criteria are met.*

### **3.2. Prohibited Land Uses and Activities**

**MCC 38.0025: The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:**

**(A) Solid waste disposal sites or sanitary land-fills within the Special Management Area.**

**Staff:** Originally the proposal included using some fill in the median strip for the cable barrier component of the project. The fill was proposed to be from other highway project in a different location. That fill was determined to be contaminated by the Oregon Department of Environmental Quality (DEQ). The applicant removed that part of their proposal from the application. This standard will be met through condition of approval that use of contaminated fill is prohibited in the NSA.

### **3.3. Gorge General Open Space (GGO) Review Uses**

**MCC 38.2625 (A): The following uses may be allowed on lands designated GGO, pursuant to MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:**

\* \* \*

**(3) Repair, maintenance, operation, and improvement of existing structures (such as adding gutters, railings, shutters or solar or photovoltaic panels to the structure),, trails, roads, railroads, utility facilities, and hydro-electric facilities.**

**Staff:** The proposed project includes replacement and installation of new guardrails at Tunnel Point in the GGO Zone District which is modification of the existing I-84 Highway infrastructure and is repair, maintenance and improvement of the existing I-84 Highway infrastructure. The proposal has been reviewed and has been determined to meet the Multnomah County Code NSA Site Review Criteria. *These criteria are met.*

### **3.4. Gorge Special Open Space (GSO) Review Uses**

**MCC 38.2625(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**

**Staff:** The proposed project includes installing four strand cable median barrier in the GSO Zone District which is an expansion of the existing I-84 Highway transportation facility. The proposal has been reviewed and has been determined to meet the Multnomah County Code NSA Site Review Criteria. *These criteria are met.*

### **3.5. Gorge Special Public Recreation (GSPR) Review Uses**

**MCC 38.2825(C):** The following uses are allowed on all lands designated GS– PR pursuant to MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

\* \* \*

#### **(5) Road and railroad construction and reconstruction.**

**Staff:** The project is a road infrastructure construction project. The project has been reviewed with findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied. *These criteria are met.*

## **4. GMA SCENIC REVIEW CRITERIA**

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

**Staff:** The components of the project that are located in the General Management Area (GMA) Gorge General Open Space (GGO) Zone District include guardrail replacement with new corten steel guardrail at Tunnel Point viewpoint rest area entrance ramp and guardrail replacement adjacent to the Tunnel Point parking area..

### **4.1. All Review Uses**

#### **4.1.2. MCC 38.7035(A)(1): New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.**

**Staff:** The project is designed to retain the existing topography and to minimize grading activities to the maximum extent practicable. No grading will be needed to install the replacement guardrail. *This criterion is met.*

#### **4.1.2. MCC 38.7035(A)(2): New buildings shall be compatible with the general scale (height, dimensions and visible mass) of similar buildings that exist nearby (e.g. dwellings to dwellings). Expansion of existing development shall comply with this guideline to the maximum extent practicable. For purposes of applying this standard, the term nearby generally means buildings within ¼ mile of the parcel on which development is proposed.**

**Staff:** Not applicable, because the proposed development is not new buildings. *This criterion is not applicable*

#### **4.1.3. MCC 38.7035(A)(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:** Not applicable, because the proposed development does not include new access points. *This criterion is not applicable*

#### **4.1.4 MCC 38.7035(A)(4): Property owners shall be responsible for the proper maintenance and survival of any required vegetation.**

**Staff:** No vegetation is required for this component of the project. *This criterion is not applicable*

- 4.1.5. MCC 38.7035(A)(5): For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.**

**Staff:** Compatibility is based on information submitted in the site plan. *This criterion is met.*

**4.2. All Review Uses Topographically Visible from Key Viewing Areas:**

- 4.2.1. MCC 38.7035(B)(1): Each development shall be visually subordinate to its setting as seen from Key Viewing Areas.**

**Staff:** The proposed replacement guardrail is visible the following KVAs: I-84, the Columbia River, Crown Point, Hist. Columbia River Hwy, Rooster Rock State Park SR14, and Larch Mountain. The proposed project is located in the immediate foreground of I-84, as part of the I-84 infrastructure, and is located within the I-84 scenic corridor.

The proposed project, replacement guard rails is I-84 infrastructure and is located within the I-84 corridor according to the I-84 Corridor Strategy for the highway within the NSA.

The proposal includes replacement of guardrail with new guardrail using corten steel along the Tunnel Point entrance ramp and adjacent to the Tunnel Point parking area. corten steel, is a group of steel alloys which were developed to eliminate the need for painting, and form a stable brown rust-like appearance when exposed to the weather *This criterion is met.*

- 4.2.2. MCC 38.7035(B)(2): The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its potential visual impacts as seen from Key Viewing Areas. Decisions shall include written findings addressing the factors influencing potential visual impact including but not limited to: the amount of area of the building site exposed to Key Viewing Areas, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Areas it is visible from, the number of Key Viewing Areas it is visible from, and the linear distance along the Key Viewing Areas from which the building site is visible (for linear Key Viewing Areas, such as roads). Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to siting (location of development on the subject property, building orientation, and other elements); retention of existing vegetation; design (color, reflectivity, size, shape, height, architectural and design details and other elements); and new landscaping.**

**Staff:** This decision includes written findings addressing the factors influencing potential visual impact. The extent and type of conditions applied to the proposed development to achieve the scenic standard are proportionate to its potential visual impacts as seen from Key Viewing Areas. The conditions will require that the materials proposed, shall be the materials used for the project. *This criterion is met with conditions.*

- 4.2.3. MCC 38.7035(B)(3): Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.**

**Staff:** The proposed guardrail replacement components of the highway infrastructure will blend into the existing I-84 infrastructure as seen from the highway. These replacement components will



blend in the natural environment as seen from other KVAs (Exhibits A.14). Cumulative effects of proposed project were considered in the scenic review finding. The proposed project will not have any cumulative effects. *This criterion is met.*

- 4.2.4. MCC 38.7035(B)(4): In addition to the site plan requirements in MCC 38.0045 (A) applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).**

**Staff:** The proposed project does not include buildings. No plantings are proposed or required. *This criterion is not applicable.*

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- 4.2.5. MCC 38.7035(B)(6): New development shall be sited on portions of the subject property which minimize visibility from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, sensitive wildlife sites or conflict with the protection of cultural resources. In such situations, development shall comply with this standard to the maximum extent practicable.**

**Staff:** The proposal is not new development; it is replacement of existing highway infrastructure. *This criterion is not applicable.*

- 4.2.6. MCC 38.7035(B)(7): New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.**

**Staff:** The proposal is not new development; it is replacement of existing highway infrastructure. *This criterion is not applicable.*

- 4.2.7. MCC 38.7035(B)(8): Existing tree cover screening proposed development from key viewing areas shall be retained as specified in MCC 38.7035(C).**

**Staff:** No trees are proposed to be removed. *This criterion is met.*

- 4.2.8. MCC 38.7035(B)(9): Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from Key Viewing Areas.**

**Staff:** No driveways or buildings are proposed. *This criterion is not applicable.*

- 4.2.9. MCC 38.7035(B)(10): The exterior of buildings on lands seen from Key Viewing Areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topographic features. The Scenic Resources Implementation Handbook includes a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this code, including those that meet recommended thresholds in the "visibility and Reflectivity Matrices" in the Implementation Handbook. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination. Recommended square footage limitations for such surfaces are provided for guidance in the Implementation Handbook.**

**Staff:** The project does not include any buildings. This *criterion is not applicable*.

- 4.2.10. MCC 38.7035(B)(11): Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas. Shielding and hooding materials shall be composed of nonreflective, opaque materials.**

**Staff:** There is no lighting component with this project. This *criterion is not applicable*.

- 4.2.11. MCC 38.7035(B)(12): Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.**

**Staff:** The proposed replacement guardrail will be “corten steel” presenting a weathered appearance meeting the I-84 Corridor Strategy for guardrails. *This criterion is met.*

\* \* \*

- 4.2.12. MCC 38.7035(B)(14): Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from Key Viewing Areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to such historic structures shall be consistent with National Park Service regulations for historic structures.**

**Staff:** This project does not include historic structures. This *criterion is not applicable*.

- 4.2.13 MCC 38.7035(B)(15): The silhouette of new buildings shall remain below the skyline of a bluff, cliff or ridge as seen from Key Viewing Areas. Variances may be granted if application of this standard would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use, and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the standard have been made.**

**Staff:** There are no buildings proposed with this project. The proposed structures will be below the skyline. This *criterion is not applicable*.

\* \* \*

- 4.2.14. MCC 38.7035(B)(17): The following standards shall apply to new landscaping used to screen development from key viewing areas: ...**

**Staff:** No new landscaping is needed for the project. This *criterion is not applicable*.

- 4.2.15. MCC 38.7035(B)(22): Overpasses, safety and directional signs and other road and highway facilities may protrude above a skyline visible from a Key Viewing Area only upon a demonstration that:**
- (a) The facility is necessary for public service;**
  - (b) The break in the skyline is the minimum necessary to provide the service.**

**Staff:** The proposed structures do not protrude above a skyline visible from a Key Viewing Area. *This criterion is met.*

- 4.2.16. MCC 38.7035(B)(23):** Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to the setback may be authorized.

**Staff:** The proposal is to remove and replace existing guardrails with new guardrails at the same location within the previous disturbed and active right-of-way. This criterion is not applicable because the project is replacement of existing structures within the existing I-84 right-of-way. *This criterion is not applicable.*

- 4.2.17. MCC 38.7035(B)(25):** All proposed structural development involving more than 100 cubic yards of grading on sites visible from Key Viewing Areas shall include submittal of a grading plan. This plan shall be reviewed by the Planning Director for compliance with Key Viewing Area policies. The grading plan shall include the following:

- (a) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail, with con-tour intervals of at least 5 feet, including:
  - 1. Existing and proposed final grades;
  - 2. Location of all areas to be graded, with cut banks and fill slopes delineated; and
  - 3. Estimated dimensions of graded areas.
- (b) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:
  - 1. Its purpose;
  - 2. An estimate of the total volume of material to be moved;
  - 3. The height of all cut banks and fill slopes;
  - 4. Provisions to be used for compaction, drainage, and stabilization of graded areas (preparation of this information by a licensed engineer or engineering geologist is recommended);
  - 5. A description of all plant materials used to revegetate exposed slopes and banks, including type of species, number of plants, size and location, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings; and
  - 6. A description of any other interim or permanent erosion control measures to be utilized.

**Staff:** The applicant submitted grading plan information and narrative addressing grading and erosion as required this criterion (Exhibit A.7 & A.11). A Grading and Erosion Control Permit is required with standards to be met. Additionally ODOT has obtained a National Pollutant Discharge Elimination System Storm Water General Permit 1200-CA issued by the Oregon Department of Environmental Quality (DEQ) for soil disturbance erosion and sediment control, requiring best management practices. *This criterion is met.*

**4.3. MCC 38.7035(C) All Review Uses within the River Bottomlands landscape settings, regardless of visibility from KVAs:**

**MCC 38.7035(C)(7)(a):** In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordination for new development and expansion of existing development:

- 1. Except as is necessary for site development or safety purposes, existing tree cover screening the development from Key Viewing Areas shall be retained.**
- 2. At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include: black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas fir, western red cedar and western hemlock (west Gorge) and various native willow species.**
- 3. At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.**

**Staff:** No trees will be removed and no new landscaping will be required. *These criteria are not applicable.*

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**4.4. All Review Uses within scenic travel corridors**

- 4.4.1. MCC 38.7035(D)(1):** For the purposes of implementing this section, the foreground of a Scenic Travel Corridor shall include those lands within one-quarter mile of the edge of pavement of the Historic Columbia River Highway and I- 84.

**Staff:** The project is part of the I- 84 infrastructure.

\* \* \*

- 4.4.2. MCC 38.7035(D)(4):** All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:
- (a) An evaluation of potential visual impacts of the proposed project as seen from any Key Viewing Area;**
  - (b) An inventory of any rare plants, sensitive wildlife habitat, wetlands or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable standards to protect the resources.**

**Staff:** This project does not include any vegetation management. *This criterion is not applicable.*

**5. SMA SCENIC SITE REVIEW**

- 5.1. MCC 38.7040(A):** All Review Uses and Conditional Uses visible from KVAs. This section shall apply to proposed development on sites topographically visible from KVAs:

**Staff:** The proposed cable median barrier location is topographically visible the following KVAs: I-84, the Columbia River, Crown Point, Hist. Columbia River Hwy, Rooster Rock State Park SR14, and Larch Mountain. The proposed project is located in the immediate foreground of I-84, as part of the I-84 infrastructure, and is located within the I-84 scenic corridor. For I-84 project proposals MCC 38.7040(C)(2) applies and allows the use if the project can not meet the criterion under MCC 38.7040(A).

**5.1.1 MCC 38.7040(A)(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.**

**Staff:** The proposed median is not new development or new land use. It will be part of the I-84 infrastructure, however given it is a new addition to the I-84 infrastructure, it needs to meet the scenic standard. The applicable scenic standard is “visually subordinate” as seen from all the listed KVAs except I-84 given it will be part of the highways infrastructure

The proposed cable barrier is located in the median strip of I-84 between the travel lanes, in the immediate foreground of I-84, as part of the I-84 infrastructure. It is located within the I-84 scenic corridor. For I-84 project proposals MCC 38.7040(C)(2) applies and allows the use if the project can not meet the criterion under MCC 38.7040(A).

The proposed project is designed and sited to meet the applicable “visually subordinate” standard as from the KVAs other than I-84. The project meets this standard from KVAs except I-84 due to the design, the dark brown earthtone color and the distance to the KVA’s (Exhibit A.14). The median barrier will be low-reflective due to the design with small metal surface areas. Screening of the barrier with vegetation is not feasible due to maintenance needs of the fence, landscaping maintenance and not being necessary to achieve the visual subordinate standard. The components of the project include dark earth tone colors. The median barrier will be painted “dapper brown” meeting the provisions adopted in the I-84 corridor strategy (Exhibit A.9). *This criterion is met for all KVAs except for I-84 which is allowed through MCC 38.7040(C)(2).*

**5.1.2. MCC 38.7040(A)(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
River Bottom	Forest, Agriculture, Public Recreation	Visually Subordinate

**Staff:** The site is within the Gorge Special Open Space (GSO) District and Gorge Special Recreational (GSPR) District and within the River Bottomlands Landscape Setting. This application is evaluated using the “Visually Subordinate” scenic standard. *This criterion is met.*

**5.1.3. MCC 38.7040(A)(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:** In order for this project to blend into the natural landscape when seen from distant KVAs, the proposed design and use of the dark brown earthtone color as provided for in the I-84 Corridor Strategy, meets the intent of blending new features with the natural landscape (Exhibit A.4). *This criterion is met for all KVAs except for I-84 which is allowed through MCC 38.7040(C)(2) and the I-84 Corridor Strategy.*

**5.1.4. MCC 38.7040(A)(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:** The project and site location has been identified by ODOT to as additional safety measures in order to prevent vehicles from accidentally crossing the median and colliding with on-coming traffic. This criterion has been met for the KVAs other than I-84. It can not be met for I-84 KVA, however does meet the I-84 Corridor Plan standards which is allowed through MCC 38.7040(C)(2). *This criterion is met for all KVAs other than I-84 which is meet through the Corridor Plan allowed through MCC 38.7040(C)(2).*

**5.1.5. MCC 38.7040(A)(5): The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its degree of visibility from key viewing areas.**

**(a) Decisions shall include written findings addressing the Primary factors influencing the degree of visibility, including but not limited to:**

- 1. The amount of area of the building site exposed to key viewing areas,**
- 2. The degree of existing vegetation providing screening,**
- 3. The distance from the building site to the key viewing areas from which it is visible,**
- 4. The number of key viewing areas from which it is visible, and**
- 5. The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).**

**(b) Conditions may be applied to various elements of proposed developments to ensure they meet the scenic standard for their setting as seen from key viewing areas, including but not limited to:**

- 1. Siting (location of development on the subject property, building orientation, and other elements),**
- 2. Retention of existing vegetation,**
- 3. Design (color, reflectivity, size, shape, height, architectural and design details and other elements), and**
- 4. New landscaping.**

**Staff:** These elements were used for writing the Conditions of Approval. The elements of the I-84 Corridor Strategy were also used when writing conditions per MCC 38.7040(C)(2). *This criterion is met.*

**5.1.6. MCC 38.7040(A)(6): Sites approved for new development to achieve scenic standards shall be consistent with guidelines to protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources.**

**Staff:** The proposed median is not new development. It will be part of the I-84 infrastructure. The site approved to achieve scenic standards is consistent with guidelines to protect the natural resources (see findings under Section 8) and guidelines to protect cultural resources (Section 6). *This criterion is met.*

**5.1.7. MCC 38.7040(A)(7): Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas.**

**Staff:** The proposed median barrier will not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas. *This criterion is met.*

**5.1.8. MCC 38.7040(A)(8): Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that compliance with this standard is not feasible considering the function of the structure.**

**Staff:** The proposed median barrier will be below the average tree canopy height of the natural vegetation adjacent to the structure. *This criterion is met.*

**5.1.9. MCC 38.7040(A)(9): The following guidelines shall apply to new landscaping used to screen development from key viewing areas:**

- (a) New landscaping (including new earth berms) to achieve the required scenic standard from key viewing areas shall be required only when application of all other available guidelines in this chapter is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.**
- (b) If new landscaping is necessary to meet the required standard, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to meet the scenic standard within five years or less from the commencement of construction.**
- (c) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.**
- (d) The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in this chapter, and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).**

**Staff:** No new vegetation is proposed for the project. *Criterion not applicable.*

**5.1.10. MCC 38.7040(A)(10): Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors as dark or darker than the colors in the shadows of the natural features surrounding each landscape setting.**

**Staff:** The proposed structures will be dark brown earthtone color as outlined in the I-84 Corridor Strategy (Exhibit A.2). *This criterion is met.*

**5.1.11. MCC 38.7040(A)(11): The exterior of structures on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. The Scenic Resources Implementation Handbook will include a recommended list of exterior materials. These recommended materials and other materials may be deemed consistent with this**

guideline, including those where the specific application meets approval thresholds in the “Visibility and Reflectivity Matrices” in the Implementation Handbook. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure meeting the scenic standard. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

**Staff:** The proposed median barrier will have low-reflectivity due to the proposed design. *This criterion is met.*

- 5.1.12. MCC 38.7040(A)(12):** Any exterior lighting shall be sited, limited in intensity, shielded or hooded in a manner that prevents lights from being highly visible from Key Viewing Areas and from noticeably contrasting with the surrounding landscape setting except for road lighting necessary for safety purposes.

**Staff:** No lighting is proposed. *Criterion is met.*

- 5.1.13. MCC 38.7040(A)(13):** Seasonal lighting displays shall be permitted on a temporary basis, not to exceed three months duration.

**Staff:** No seasonal lighting is proposed. *Criterion is met.*

**5.2. SMA River Bottomlands Landscape Settings**

**MCC 38.7040(B)(3):** River bottomland shall retain the overall visual character of a floodplain and associated islands.

**(a)** Buildings should have an overall horizontal appearance in areas with little tree cover.

**(b)** Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.

**Staff:** The proposed median barrier will retain the overall visual character required in the floodplain and associated islands. No buildings are proposed. No plantings are needed or required. *This criterion is met.*

**5.3. SMA Requirements for KVA Foregrounds and Scenic Routes**

- 5.2.1. MCC 38.7040(C)(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 development is in compliance with the I-84 Corridor Strategy thus it is in conformance with state scenic route standards. *This criterion is met.*

- 5.3.2. MCC 38.7040(C)(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).

**(a)** The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the

requirements of 38.7040(A) and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.

(b) Findings must evaluate the following:

1. The limiting factors to meeting the required scenic standard and/or applicable provisions of 38.7040(A),
2. Reduction in project size;
3. Options for alternative sites for all or part of the project, considering parcel configuration and on-site topographic or vegetative screening;
4. Options for design changes including changing the design shape, configuration, color, height, or texture in order to meet the scenic standard.

(c) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as seen from the foreground of key viewing areas:

1. Form and Line-Design of the development shall minimize changes to the form of the natural landscape. Development shall borrow form and line from the landscape setting and blend with the form and line of the landscape setting. Design of the development shall avoid contrasting form and line that unnecessarily call attention to the development.
2. Color-Color shall be found in the project's surrounding landscape setting. Colors shall be chosen and repeated as needed to provide unity to the whole design.
3. Texture-Textures borrowed from the landscape setting shall be emphasized in the design of structures. Landscape textures are generally rough, irregular, and complex rather than smooth, regular, and uniform.
4. Design-Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious whole, using repetition of elements and blending of elements as necessary.

**Staff:** The proposed median barrier is located in the immediate foreground of I-84, as part of the I-84 infrastructure, and is located within the I-84 Corridor Strategy area. For such a project MCC 38.7040(C)(2) applies and allows the use if the project can not meet criteria under MCC 38.7040(A), see Subsection 5.1, above, for the findings. There are some criteria under MCC 38.7040(A) that could not be met for the I-84 KVA but meet the standards for all the other KVAs. The proposed median barrier will be dark brown. It's design and color will to meet the applicable scenic standards as best it can and to meet the standards from the foreground of the I-84 KVA the best it can while still being able function as designed in a safe manner. *The project meets these criteria using the guidelines.*

**5.3.3. MCC 38.7040(C)(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 project has no impact on vegetation. *The criterion is met.*

**5.3.4. MCC 38.7040(C)(5): Development along Interstate 84 shall be consistent with the scenic corridor strategies developed for these roadways.**

**Staff:** The proposed project meets the I-84 Corridor Strategy through the design and the dapper brown earthtone color meeting the I-84 corridor strategies (Exhibit A.8). *This criterion is met.*

**6. CULTURAL REVIEW CRITERIA**

**6.1. GMA Cultural Resource Review Criteria**

**Cultural Resource Reconnaissance Surveys**

**MCC 38.7045(A)(1): A cultural reconnaissance survey shall be required for all proposed uses, except:**

\* \* \*

**(f) Proposed uses occurring in areas that have a low probability of containing cultural resources**

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

**MCC 38.7045 (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:** The proposed replacement of guardrail will be installed within the previously disturbed prism of I-84 and the Tunnel Point I-84 Highway viewpoint area. Margaret L. Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service in consultation with the Oregon State Historic Preservation Office (SHPO) assessed likelihood or not of cultural resources within the proposed project area and found the project area had a low probability of containing cultural resources. Ms. Dryden, submitted a Cultural Resources Survey Determination dated March 7, 2016 (Exhibit C.1).

In the Cultural Resources Survey Determination Ms. Dryden, USFS, states, "I have reviewed the proposed undertaking and area of potential effect as stated on the development review application, against National Scenic Area records and inventories.

Ms. Dryden continues, "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: Not Required" and "A Historic Survey is: Not Required". *These criteria are met.*



## **6.2. SMA Cultural Resource Review Criteria**

- 6.2.1. MCC 38.7050(A):** The cultural resource review criteria shall be deemed satisfied, except MCC 38.7050 (H), if the U.S. Forest Service or Planning Director does not require a cultural resource survey and no comment is received during the comment period provided in MCC 38.7025(B).

**Staff:** A letter dated April 1, 2016 was received from Matt Diederich, MAIS, Oregon State Office of Historic Preservation (Exhibit C.2), stating “extreme caution recommended during the project related to ground disturbing activities. A condition of approval addressing this concern will be required if there is a discovery of cultural resources that the measures under MCC 38.7050(H) be implemented (see Finding 6.2.2.).

The proposed median barrier will be installed with the previously disturbed prism of I-84. The proposed project was reviewed by Margaret Dryden, Archaeologist, Heritage Resources Program Manager, Columbia Gorge National Scenic Area, USFS. In a letter dated on March 7, 2016, Ms. Dryden states, “I have reviewed the proposed undertaking and area of potential effect as stated on the development review application, against National Scenic Area records and inventories.

Ms. Dryden continues, “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: Not Required” and “A Historic Survey is: Not Required”. *These criteria are met.*

## **6.2.2 Discovery During Construction**

**MCC 38.7050(H):** 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 re-sources 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:** A condition will require these procedures to be followed if there is “discovery during construction” of cultural resources or of material is suspected to be human bone or a burial, that the following procedures be followed. *This criterion is met with a condition of approval.*

## **7. GMA Natural Resources Review Criteria**

### **7.1. GMA Wetland Review Criteria**

**MCC 38.7055(A): The wetland review criteria shall be deemed satisfied if:**

- (1) The project site is not identified as a wetland on the National Wetlands Inventory (U.S. Fish and Wildlife Service, 1987);**
- (2) The soils of the project site are not identified by the Soil Survey of Multnomah County, Oregon (U.S.D.A. Soil Conservation Service, 1983) as hydric soils;**
- (3) The project site is adjacent to the main stem of the Columbia River.**
- (4) The project site is not within a wetland buffer zone; and**
- (5) Wetlands are not identified on the project site during site review.**

**Staff:** The guardrail replacement and concrete barrier project site is not identified as a wetland on the National Wetlands Inventory. The soil in the project area is not identified a hydric soils by Soil Survey of Multnomah County, Oregon. The project site is adjacent to the main stem of the Columbia River. The project site is not within a wetland buffer zone (no wetlands are within 150 feet). Wetlands have not been identified on the project site during site review. Additionally the project is within the existing I-84 infrastructure area and will not expand closer to the river. Each criterion has been met to satisfy wetland review. *Wetlands review criteria have been deemed satisfied.*

### **7.2. GMA Stream, Lake And Riparian Area Review Criteria**

**7.2.1. MCC 38.7060(A): The following uses may be allowed in streams, ponds, lakes and riparian areas 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 in-to 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.**

**Staff:** The proposed replacement of existing guardrails with new guardrail and replacement of existing guardrail with concrete barrier met the “replacement of serviceable structures” standard. The proposed reconstruction will not increase the size by more that 100 percent (just minor changes in height of a few inches), will not result in a loss of water quality (Exhibit A.7, A.10, A.17 & A.18), natural drainage, and fish and wildlife habitat (Exhibit A.10 & A.16), and will not intrude further into a stream (Exhibit A.10 & A.11). The project is approved pursuant to the provisions of MCC 38.0045, MCC 38.7060 (C) (see finding below), and has been reviewed under the applicable provisions of MCC 38.7035 through 38.7085. *These criteria are met.*

**7.2.2. MCC 38.7060(C): Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:**

- (1) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;**
- (2) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;**
- (3) The structure will be constructed using best management practices;**
- (4) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and**
- (5) The structure complies with all applicable federal, state, and local laws.**

**Staff:** There is no practical alternative to the project location given the location of the existing highway facility infrastructure. Measures have been applied to ensure that the project and structures will result in the minimum feasible alteration or destruction of water quality (Exhibit A.7, A.17 & A.18), natural drainage, and fish and wildlife habitat of streams and riparian areas, including erosion control measures, no change in drainage, replacement in the same area, no change and no impacts on habitat (Exhibit A.10 & A.16). The structure will be constructed using best management practices (Exhibits A.17 & A.18). *These criteria are met.*

\* \* \*

**7.3. GMA Wildlife Review Criteria**

**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:** The project site is within 1,000 feet of sensitive wildlife areas.

**7.3.1. MCC 38.7065(A): Field Survey**

**A field survey to identify sensitive wildlife areas or sites shall be required for:**

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

**Staff:** The project is within the I-84 right-of-way. *A field survey is not required.*

**7.3.2. MCC 38.7065(B): Uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to MCC 38.7065 (C) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085. The approximate locations of sensitive wildlife areas and sites are shown on maps provided to the County by the Gorge Commission. State wildlife**

**biologists will help determine if a new use would adversely affect a sensitive wildlife area or site.**

**Staff:** The project is review pursuant to MCC 38.7065 (C) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085.

**7.3.3. MCC 38.7065(C) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:**

**(1) Site plans shall be submitted to Oregon Department of Fish and Wildlife by the Planning Director. State wildlife biologists will review the site plan and their field survey records.**

\* \* \*

**(3) The wildlife protection process may terminate if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines:**

\* \* \*

**(b) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.**

**Staff:** ODFW was noticed twice (1) for agency review and (2) for opportunity to comment. We received no comment of concern from ODFW. The proposed project is within the I-84 right-of-way and within the disturbed prism of the highway. ODOT has a Oregon Department of Environmental Quality (DEQ), National Pollutant Discharge Elimination System Storm Water General Permit 1200-CA for soil disturbance requiring best management practices. The applicant through an ESA has determined there will be no effect on an endangered or threaten sensitive species for the project (Exhibit A.16). We have received an email dated August 2, 2016 from Robin Dobson, Ecologist, Columbia River Gorge National Scenic Area, USFS (Exhibit A.19) stating,

*"I have looked over the ODOT proposal and find that there will be no impacts to flora or fauna given that the work is all confined to dedicated space related to I-84. Furthermore, the proposed work is clearly directly related to the highway function. I would agree that the wildlife and plant potion of the NSA review could be considered complete."*

The Planning Director has determined the guardrail replacement placement project would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance. The Planning Director terminates the wildlife protection process. *These criteria are met.*

**7.4. GMA Rare Plant Review Criteria**

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

**Staff:** According to the Columbia River Gorge Commission endemic plants and sensitive plant map, there are no endemic plants and sensitive plants with 1000 feet. *A Rare Plant Site Review is not required.*

## **8. SMA NATURAL RESOURCE SITE 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. Comments from state and federal agencies shall be carefully considered.

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

**(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.**

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

**(c) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:**

**1. The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.**

**2. The wetland is not critical habitat.**

**3. Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.**

**Staff:** The proposed median barrier project is located within the wetland buffer. The applicant states that there is no wetland area found within the median area between the travel lanes where the cable median barrier will be installed. The project is maintenance repair to the highway infrastructure to meet current safety standards for highways with separated travel lanes. There is no wetland in the I-84 right-of-way in the project area. There is no wetland, no critical habitat within the right-of-way at this location. The proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

**\* \* \***

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



**Staff:** The applicant through an ESA has determined there will be no effect on an endangered or threaten sensitive species (Exhibit A.16). In an email (Exhibit A.19) Robin Dobson, Ecologist, USFS stated,

*"I have looked over the ODOT proposal and find that there will be no impacts to flora or fauna given that the work is all confined to dedicated space related to I-84. This criterion is met.*

- 8.3. MCC 38.7075(I): The local government shall submit site plans (of uses that are proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the U.S. Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife for wildlife issues and by the Oregon Natural Heritage Program for plant issues).**

**Staff:** The project appears to be within 1000 feet from Special Aquatic Habitat and Waterfowl Habitat. The application was submitted to the USFS, ODFW and the Portland State Institute for Natural Resources (Oregon Natural Heritage Program) for their comments. We have not received any comments from ODFW or Portland State Institute for Natural Resources regarding wildlife or rare Plants. We received an email (Exhibit A.19) Robin Dobson, Ecologist, USFS stating,

*"I have looked over the ODOT proposal and find that there will be no impacts to flora or fauna given that the work is all confined to dedicated space related to I-84 This criterion is met.*

- 8.4. MCC 38.7075(J): The U.S. Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:**

- (1) Identify/verify the precise location of the wildlife and/or plant area or site.**
- (2) Determine if a field survey will be required.**
- (3) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season.**
- (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.**

**Staff:** The applicant submitted maps showing sensitive and endangered species. The project was noticed to ODFW, USFS and Portland State Institute for Natural Resources (plants) for completeness review and for opportunity to comment. We have not received any comments from ODFW or Portland State Institute for Natural Resources regarding wildlife or rare Plants. We received an email (Exhibit A.19) Robin Dobson, Ecologist, USFS stating,

*"I have looked over the ODOT proposal and find that there will be no impacts to flora or fauna given that the work is all confined to dedicated space related to I-84*

- 8.5. (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.

**Staff:** There are no sensitive or endangered plants in the area of the project. Best practices measure for erosion and sediment control will be applied to the project (Exhibit A.17 & A.18). The work for the proposed project is entirely within the previous disturbed I-84 right of way median strip between the highway's traffic lanes (A.14). The proposed project will not compromise the integrity of the wildlife/plant area or site. ODOT has an ESA Determination of "No Effect" (Exhibit A.16). Given the information provided by the applicant, the project will not impact sensitive or endangered species. No comments of concern were received from ODFW, or Portland State Institute for Natural Resources regarding the sensitive or endangered wildlife or plants were received.

We have received an email dated August 2, 2016 from Robin Dobson, Ecologist, Columbia River Gorge National Scenic Area, USFS (Exhibit A.19) stating,

*"I have looked over the ODOT proposal and find that there will be no impacts to flora or fauna given that the work is all confined to dedicated space related to I-84.. Furthermore, the proposed work is clearly directly related to the highway function. I would agree that the wildlife and plant portion of the NSA review could be considered complete."*

Given the information provided by the applicant, the project will not impact sensitive or endangered species. There have been no comment of concern from state agencies or programs. We received an email (Exhibit A.19) Robin Dobson, Ecologist, USFS stating,

*"I have looked over the ODOT proposal and find that there will be no impacts to flora or fauna given that the work is all confined to dedicated space related to I-84"*

The County finds that the wildlife and /plant protection process has been met and terminates the wildlife/and plant protection process. *This criterion is met.*

## **9. RECREATION RESOURCE SITE REVIEW CRITERIA**

### **SMA Recreation Resource Site Review Criteria**

**MCC 38.7085 (A) The following shall apply to all new developments and land uses:**

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

**Staff:** The proposed project is to modify the I-84 highway existing use, it is not new development, it will be a component of the existing I-84 Highway. The proposed median barrier project will not displace existing recreational use or impact recreational use or development. The County finds that the recreational review *criteria are met.*

## **10. Letters of Comment Received**

**Staff:** We received comments from:

- An email with attached letter submitted by Marge L. Dryden, Heritage Program Manager, US Forest Service addressing cultural resources as outlined in Finding 5.1 of this decision (Exhibit C.1).
- Letter dated April 1, 2016 from Matt Diederich, MAIS, SHPO Archeologist addressing general concern about cultural resources addressed in findings in Section 6 and through conditions of approval.
- A letter dated June 16, 2016 letter from Steven D. McCoy, Staff Attorney, Friends of the Columbia Gorge which outlines the criteria which we must address in this decision. The letter recommended denial of the concrete barrier component of the project. The applicant has withdrawn that component of the project (Exhibit A.19). The findings in the previous sections of this decision address the applicable criteria (Exhibit C.3).
- We have received an email dated August 2, 2016 from Robin Dobson, Ecologist, Columbia River Gorge National Scenic Area, USFS (Exhibit A.19) addressing the NSA wildlife and plant reviews.

## 11. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary to improve the I-84 median for safety. This includes installing four strand cable barrier from Sandy River Bridge Mile Post 17.8 to 20.2 in Gorge Special Public Recreation and Gorge Special Open Space, installing replacement guardrail around Tunnel Pt. parking area and along the access ramp. This approval is subject to the conditions of approval established in this report.

## 8. Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Comments Received

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	2/18/16
A.2	1	Aerial Photo of Cable Barrier Project Area	2/18/16
A.3	1	Aerial Photo of Tunnel Point Guardrail Replacement and Concrete Barrier Installation Project Area	2/18/16
A.4	2	Aerial Photo showing both project locations and a photo showing simulation of median cable barrier, guardrail and concrete barriers.	2/18/16
A.5	25	Narrative addressing code	2/18/16
A.6	1	Cross section for median cable barrier	2/18/16
A.7	3	Grading Plan Narrative	2/18/16
A.8	6	I-84 Corridor Strategy, pages 28, 30, 34, 82 and 83.	2/18/16

A.9	1	Addendum to Narrative for General Management Area (GMA) Scenic Review Criteria MCC 38.7035(B)(6), (7) and (10)	5/27/16
A.10	29	Addendum to Narrative	5/27/16
A.11	22	Attachment A: Location Maps, Zoning Maps, and Plans	5/27/16
A.12	1	Cultural Resources email dated March 02, 2016 from Robert W. Hadlow, Ph.D. Senior Historian clearing the project.	5/27/16
A.13	1	Cultural Resources email dated March 10, 2016 from Tobin C. Bottman, M.S., RPA, ODOT Archaeologist consultation with Native American Tribes with no response.	5/27/16
A.14	3	Project Visualizations Photos	5/27/16
A.15	6	Natural Resource Maps	5/27/16
A.16	5	ESA Determination of "No Effect"	7/18/16
A.17	74	ODOT National Pollutant Discharge Elimination System Storm Water General Permit 1200-CA	7/18/16
A.18	12	ODOT Erosion and Sediment Control, Field Guild of Region 1 Best Management Practices	7/18/16
A.19	1	Email dated August 5, 2016 from Mary E. Young Region 1 Environmental Coordinator, Oregon Department of Transportation, withdrawing the Tummel Point exit concrete barrier component of the application request.	8/5/16
'B'	#	Staff Exhibits	Date
B.1	1	Zoning Map	NA
'C'	#	Administration & Procedures	Date
C.1	3	Email dated February 27, 2013 with Cultural Resources Survey Determination attached, from Margaret Dryden, Heritage Resource Program Manager, Columbia River Gorge National Scenic Area, US Forest Service	3/7/16
C.2	1	Letter dated April 1, 2016 from Matt Diederich, MAIS, SHPO Archeologist addressing general concern about cultural resources	4/1/16
C.3	6	Letter dated June 16, 2016 from Steven D. McCoy, Staff Attorney, Friends of the Columbia Gorge address in code sections that apply to the review and concerns.	6/16/16
C.4	1	Email dated August 2, 2016 from Robin Dobson. Ecologist, Columbia River Gorge National Scenic Area, USFS	8/2/16