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NOTICE OF NSA DECISION

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

Case File: T2-2018-9983

Permit: NSA Site Review for Post Emergency Response for temporary tree storage and shredding at Ainsworth Interchange and the installation of permanent fencing along Toothrock Tunnel, Tanner Creek, and near Multnomah Falls.

Locations:

- #1** Right-of-way adjacent to Ainsworth State Park interchange south of I-84 in the area of the eastbound off ramp - Township 1 North, Range 6 East, W.M. (right-of-way); - temporary tree storage and shredding at approximately mile post (MP) 35.2-35.4.
- #2** I – 84 right of way adjacent to Tanner Creek– Township 2 North, Range 7 East, W.M MP 40.15. The Tanner Creek fencing is at the top of a steep slope between Tanner Creek and the Historic Highway State Trail which passes below I-84.
- #3** I-84 right-of-way along Toothrock Tunnel – Township 2 North, Range 7 East, W.M. MP 41.15 and MP 41.3 – guardrail between I-84 and Historic Columbia River State Highway.
- #4** Historic Columbia River State Highway Viaducts (bridge over land) east and west of Multnomah Falls and north of Tax Lot 100, Section 07, Township 1 North Range 6 East Section 07- MP 17.79 and MP 18.46.

Applicant: Oregon Department of Transportation (ODOT), c/o Terra Lingley, AICP, Columbia River Scenic Area Coordinator

Owner: Oregon Department of Transportation (ODOT)

Zoning: #1 Gorge Special Forest Management Area (GSF-40 and GGF-80), #2 Gorge Special Management Area Open Space (GSO), and #3 Gorge Special Management Open Space (GSO) and #4 Gorge General Management Area Open Space (GSO).

Landscape Setting: River Bottomlands

Proposal: The applicant has submitted a National Scenic Area Post-Emergency Response following the Eagle Creek Fire. The project consists of four different project areas: #1 – Ainsworth Interchange - temporary tree storage and shredding; #2 Tanner Creek right of way - Pedestrian Safety Fencing; #3 Toothrock Tunnel - installation of pedestrian safety fencing in two locations and #4 Multnomah Falls - installation of rock fall fencing at viaducts. (note: site locations and photos begin on pg. 5 of this report)

Decision: Approved with conditions

Unless appealed, this decision is effective December 11, 2019, at 4:00 PM.

Issued by:

By: 
Katie Skakel, Senior Planner

For: Adam Barber, Interim Planning Director

Date: Wednesday, November 27, 2019

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Katie Skakel, Staff Planner at 503-988-0213 or at katie.skakel@multco.us.

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 December 11, 2019 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 38.0015 Definitions, MCC 38.7090 Responses to an Emergency Disaster Event. 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/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. 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. The revegetation at the Ainsworth Interchange which entails replanting area with grass will be completed within one (1) year of the date an applicant completes the grading at the site.

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*.

1.00 Project Description:

Staff: The Oregon Department of Transportation (ODOT) requests a National Scenic Area Post Emergency Response permit to authorize the emergency storage and shredding of tree materials removed as a result of the Eagle Creek Fire and the installation of permanent fencing for rockfall hazards and pedestrian safety in various locations as in response to the Eagle Creek Fire. The emergency disaster response consists of: 1) Ainsworth Interchange temporary tree storage and shredding, 2) Tanner Creek Pedestrian Safety Fencing, 3) Toothrock Pedestrian Safety Fencing, and 4) Multnomah Falls Viaduct Rockfall Fencing. Pursuant to MCC 38.5510 (F), the project is exempt from a Geologic Hazards Permit (GHP) because it is an emergency response conducted according to MCC 38.7090.

MCC 38.0015 defines an Emergency/Disaster as: *A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.*

Staff: The Eagle Creek Fire and resulting erosion, landslide and rock fall concerns are a sudden unexpected occurrence that necessitates immediate action on the part of ODOT to mitigate potential loss or damage to life, health, property, essential public services and the environment.

2.00 Post-Emergency Criteria:

2.01 § 38.7090 RESPONSES TO AN EMERGENCY/DISASTER EVENT

Responses to an emergency/disaster event are allowed in all zoning districts within the Columbia River Gorge National Scenic Area when in compliance with the following standards:

(A) General standards for all response activities.

(1) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

(2) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life, property, public services or the environment, an extension of no more than two years may be granted by the Planning Director, or the U.S. Forest Service for federal agency actions.

(3) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

(4) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake, or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

Staff: The four locations under this NSA permit 1) shredding at Ainsworth Interchange and the installation of permanent fencing along 2) Toothrock Tunnel, 3) Tanner Creek, and 4) near Multnomah Falls have demonstrated and outlined (Exhibit A.2 and A.5) that Best Management Practices have been utilized in the response to the emergency event. The Ainsworth interchange temporary tree storage and shredding project is intended to be completely clear of shredded material (under mutual agreement) with the Forest Service as soon as final arrangements can be made. *Criterion met.*

(B) Notification Requirements

(1) Actions taken in response to an emergency/disaster event, as defined in MCC 38.0015, are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

(a) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.

(b) Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be (S-1 2006) submitted by mail or in person within 7 days.

Staff: As shown in (Exhibit A.3), the applicant met all notification requirements. *Criterion met.*

(c) Notification shall be furnished to the Planning Director, or the U.S. Forest Service for federal agency actions.

Staff: The applicant provided notification at applicable times to Planning Director (Exhibit A.3). *Criterion met.*

(d) At a minimum, the following information shall be required at the time of notification:

- 1. Nature of emergency/disaster event.**
- 2. Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).**
- 3. Location of emergency/disaster response activities.**
- 4. Estimated start and duration of emergency/disaster response activities.**
- 5. Contact person and phone number for the parties conducting emergency/disaster response actions.**

Staff: The applicant provided proper notification of nature of event, response actions, locations, and contact information. *Criterion met.*

e) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

Staff: Repair and maintenance of existing serviceable structure is not part of this review. *Criterion met.*

(2) Upon notification of an emergency/disaster response action, the Planning Director or the Forest Service shall, as soon as possible:

(a) Review their natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites, and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;

(b) Notify the Oregon Department of Fish and Wildlife of all noticed emergency/disaster response actions, to provide that agency an opportunity to consult with responding agencies during the event, and;

(c) Notify the U.S. Forest Service (except when the U.S. Forest Service is the notifying agency), State Historic Preservation Office (SHPO), and the Tribal governments of all emergency/disaster response activities. The U.S. Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

Staff: The natural resource inventory data was reviewed and proper notification and coordination with Oregon Fish and Wildlife, SHPO, Tribal Governments and USFS was completed. *Criterion met.*

(3) Upon notification of a response action, the U.S. Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide on-site advice to minimize impacts to resources from emergency/disaster response actions.

Staff: The USFS coordinated with ODOT and the County in the response actions. *Criterion met.*

(C) Post-Emergency/Disaster Response Site Review Application Requirements

(1) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Planning Director, or U.S. Forest Service for federal agency actions. In the case of an event with multiple responding parties, the agency providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and no more than two (2) extensions shall be granted.

Staff: The date of official notification December 04, 2017 (Exhibit A.1). The applicant requested one extension (Exhibits A.3), resulting in a total of 60 days for the application to be submitted. The application was submitted January 31, 2018, within the 60 days following the notification. *This standard is met.*

(2) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. The terms “development activities” and “development” include the disposal of any soil materials associated with an emergency/disaster response action. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an application for those actions.

Staff: The photos below highlight each development activity conducted at the four sites during the emergency/disaster response. Also, indicated on each site photo is a note as to whether the activity or development is specified as permanent or temporary. The post emergency work at Ainsworth Interchange is the only project area in this NSA application that requires disposal of soil materials that are being removed from the site.

#1: Ainsworth Tree Storage

Photo from
3/6/2018

Temporary tree
storage and
shredding

North



#1: Ainsworth temporary tree storage and shredding [Gorge Special Management Area (Forest) 40 (GSF40) and Gorge General Management Area (Forest) 80 (GGF80)]. Storage and shredding is a temporary activity. With conditions of approval, the site is intended to be completely clear of shredded material (under mutual agreement) with Forest Service by the end of December 2019.

#2: Tanner Creek Pedestrian Safety Fencing

The Historic Highway State Trail crosses under I-84 on the west side of Tanner Creek.

There is railing on the north end, and the trail is at the top of a steep slope that is eroding.

Fencing would be installed for pedestrian and cyclist safety.

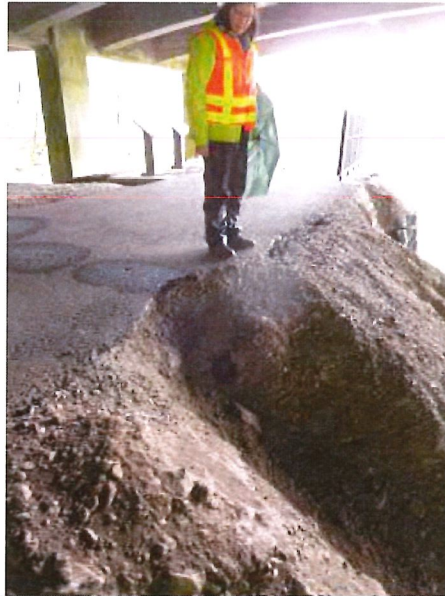
Grey box shows approximate location for fencing.

North



#2 Erosion at Tanner Creek

Additional photos of erosion and need for safety fencing



#2 Tanner Creek Pedestrian Safety Fencing is considered a permanent installation. Tanner Creek is Special Management Area (Open Space) GSO.

#3: Toothrock Tunnel Pedestrian Safety Fencing

Orange outlines indicate approximate locations of fencing

North



#3 Toothrock Pedestrian Safety Fencing

East of the tunnel portal, ODOT and OPRD removed burned trees for safety, and the original railing burned and was removed. ODOT will replace and extend the white railing for pedestrian and cyclist safety.



#3 Toothrock Pedestrian Safety Fencing is considered a permanent installation. [Gorge Special Management Area (Open Space) GSO]

#4 Multnomah Falls Viaducts Rockfall Fencing



#4 Multnomah Falls Viaducts Rockfall Fencing Project is considered a permanent installation. [Special Management Area (Open Space) GSO]

(3) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).

Staff: The four projects have been reviewed under this NSA permit to ensure compliance with MCC 38.7090 (3). SHPO's response (Exhibit D.2) states that the statewide database has revealed that there are no reported sites in the proposed project area and that there are no known cultural resources within 500 ft. of the four project site areas. There is structural development in three locations as part of this NSA Emergency Permit Review; 2) Tanner Creek Pedestrian Safety Fencing, 3) Toothrock Pedestrian Safety Fencing, and 4) Multnomah Falls Viaduct Rockfall Fencing. There will be limited ground disturbance involving mechanized equipment but it will be for post-holing the fence structures. The structural development (of fence installation) requires minimal ground disturbing activity with mechanized equipment (post holes) thus it is not exempt from this NSA review. *Criterion met.*

(4) Applications shall include the following information:

(a) Applicant's name and address.

(b) Location of emergency/disaster response.

(c) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.

(d) A map of the project area drawn to scale, at a scale of 1"=200' or a scale providing greater detail. The map shall include:

1. North arrow and scale.

2. Boundaries, dimensions and size of subject parcel(s).

3. Topography at a contour interval sufficient to describe the terrain of the project site.
4. Bodies of water, watercourses, and significant landforms.
5. Existing roads and structures.
6. New structures placed and any vegetation removal, excavation or grading resulting from the response actions.

(e) An exception to the scale requirements of subsection (4)(d) may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1"=200' or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

Staff: The applicant has provided a site plan (Exhibit A.3) and (Exhibits A.2, A.5, and A.6) to meet the requirements of MCC 38.7090(C) (4). The subject review is for four different locations under the emergency/disaster response activities. The emergency disaster response consists of the 1) Ainsworth Interchange temporary tree storage and shredding, 2) Tanner Creek Pedestrian Safety Fencing, 3) Toothrock Pedestrian Safety Fencing, and 4) Multnomah Falls Viaducts Rockfall Fencing.

The fencing projects consist of Tanner Creek pedestrian safety fence; Toothrock pedestrian safety fences, and Multnomah Falls rockfall safety fencing. The fences qualify as *Structural Development* and a structure is defined as “*is built or constructed, ...or any piece of work ...composed of parts joined together in some definite manner....*” and development is defined as including “*Any mining dredging, filling, grading, paving, excavation,or structure...*”. In addition, the boring and installation of the fence structures constitutes ground disturbance as demonstrated by applicants (Exhibit A.3 and Exhibit A.4) triggering the need for further review through MCC 38.7090.

The fence installations for Toothrock and Multnomah Falls have been strategically placed to prevent further erosion and landslides onto I-84 and the Historic Columbia River Highway. Due to the steep terrain of the Toothrock and Multnomah Falls sites the rockfall fencing is a permanent installation. The Ainsworth Interchange will be reseeded as soon as the final pile of shredded material is removed from the site. As a condition of approval, the applicant has been given until December 2019. ODOT has used best management practices (BMPs) to prevent sedimentation and provide erosion control for their activities on all site locations reviewed in this NSA permit. *These submission requirements have been met.*

2.02 (D) Post-Emergency/Disaster Response Site Review Approval Criteria

Actions taken in all land use designations that are in response to an emergency/disaster event shall be reviewed for compliance with the following standards:

(1) Scenic Resources

(a) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. In the GMA, such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in the Corbett Rural Center zoning district. In the SMA, such actions shall meet the scenic standard to the greatest extent practicable.

Staff: The subject properties are in the GMA (General Management Area) and SMA (Special Management Area). The area of disturbance for the tree storage and shredding at the Ainsworth Interchange has been mostly returned to lawn and will be completed by December 2019. Travelers along I-84 will not be able to tell the area was used as a temporary storage and shredding area once the lawn is

regrown.

The fencing projects in this permit are the:

- 1) Tanner Creek fence which are painted dark black with no glare and blend in with the natural dark basalt landscape which has vegetation that has grown in and helps it blend in more.
- 2) The two fencing projects over Toothrock viaduct where there have been sections of trees on the trail approach to the west side of the viaduct that burned and were removed as hazards between the Historic Columbia River Highway State Trail Guidelines and I-84. The trees provided physical separation between the trail and I-84. Since they are no longer in place, ODOT needs to provide a physical separation for trail users from the steep slope, and ultimately I-84 at approximately MP 27.6 and 27.8. ODOT will add two sections of new brown wooden post and brown mesh fencing consistent with the Historic Columbia River Highway State Trail Guidelines (2011) for trail users safety at this location. At milepost 27.6 ODOT will add 450 feet of new fencing, and at milepost 27.8, ODOT will add 145 feet of new fencing. On the east side of the Toothrock Viaduct Trail approach, the existing white two-rail guardrail and adjacent trees burned and had to be removed. ODOT will replace the white guard rail fence consistent with the Historic Columbia River Highway State Trail Guidelines (2011) and construct a 350 foot guardrail extension to the east for trail user at this location.
- 3) The Multnomah Falls Fences are positioned above two sections of the highway at mile posts (MP) 17.62 and 18.21. The fences have been placed strategically to protect the Historic Columbia River Highway State Trail Guidelines from rockfall hazards as described in the Geotechnical design narrative prepared by Stephen Hay, CEG Interim Region 1 Geo-Environmental Manager (Exhibit A.6) that evaluated the rockfall trajectories and ultimately the location of rockfall fencing. The Eagle Creek Fire destroyed all of the ground cover vegetation and a number of trees. Due to the topography and nature of the fire soil, revegetation will and has started to occur on its own. It is not the intent of ODOT or US Forest Service to replant. The projects meet the GMA and SMA standards above. *Criterion met.*

(b) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

Staff: The work done for the post emergency response – the temporary storage of trees at Ainsworth and the fence projects was done in a manner to preserve existing vegetation. The fence areas were strategically chosen to be installed in areas that will help preserve vegetation and prevent rockfall from coming off a steep talus slope into the Historic Highway. The applicant states in (Exhibit A.3 and Exhibit A.5) that the area disturbed for installation of the new underground fencing area has been revegetated to its previous state of forest undergrowth. *Criterion met.*

(c) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one year requirement may be granted upon demonstration of just cause, with an extension of up to one year.

Staff: The only area where vegetation was removed was in a lawn area of the Ainsworth Interchange and there was a need to remove about 20 trees that survived the fire to install the Multnomah Falls viaducts fencing. USFS will do some planting between the viaduct fencing and the Historic Highway to help screen the fencing. The Oregon Department of Transportation states that after they have completed the need for temporary tree storage and that the area that was used to store and shred the trees will be revegetated so that the site was restored to pre-storage condition [Exhibit A.3 and Exhibit A.4]. These actions result in the area being restored to its pre-response condition to the greatest extent practicable. *Criterion met.*

(d) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.

Staff: The fencing projects of 1) Tanner Creek and 2) Multnomah Falls are painted dark black with no glare and blend in with the natural landscape as the vegetation has grown it blends in more. The Toothrock Viaduct fence on the east side will be painted white to match the classic two-rail wooden guardrail that partially burned in the fire, and which will be extended with the white fencing for continuity with the Historic Columbia River Highway State Trail Guidelines. The Toothrock viaduct fencing to the west of the tunnel which will be painted dark and it will have a dark mesh material. *Criterion met.*

(e) Additions to existing structures, resulting from an emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable.

Staff: The fence projects and the tree storage and shredding work at Ainsworth Interchange are not considered an addition. *Criterion not applicable.*

(f) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action, shall comply with the following standards:

Staff: Spoil materials are defined in Chapter 38 Columbia River Gorge National Scenic Area ordinance in the Geologic Hazards section only. According to MCC 38.5503 spoil materials are “any rock, gravel, soil or other earth material removed by ground disturbing activity.” The trees storage and shredding at Ainsworth Interchange while technically might not be considered spoil material, staff finds that the need to remove the trees are part of the debris removal activities in relation to the emergency/disaster response action so included it under spoil material. Once ODOT and USFS have removed the trees from the temporary storage space, ODOT will reseed exposed soils with a native, gorge approved, seed mix. Existing trees on site will be retained. Most of the site was a grass field prior to the emergency action. After the material is removed the site will be restored to being a grass field with a few scattered trees. As a result of the fire; the tree shredded material shall comply with the following standards:

1. The spoil materials shall either be:

a. Removed from the NSA or

Staff: Most of the shredded tree material will be removed from the NSA by a mutual agreement of the US Forest Service and ODOT.

b. Deposited at a site within the NSA where such deposition is, or can be, allowed, or

Staff: Some of the shredded material is being deposited within the NSA at the Oxbow Park for landscaping projects that does not result in land disturbing activity and will be used for landscaping existing pathways.

c. Contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

Staff: ODOTs site plan (Exhibit A.1) and narrative (Exhibit A.5) outlines the intent to return the Ainsworth Interchange site back to existing conditions that emulates the surrounding landscape and site.

2. The County shall decide whether an applicant removes the spoil materials (MCC 38.7090(E) (1) (f) 1.a.), deposits the spoil materials (MCC 38.7090 (E) (1) (f) 1.b.), or contours the spoils materials (MCC 38.7090(E)(1) (f) 1.c.) The applicant does not make this decision.

Staff: The County has been in contact with the applicant as to the removal of the spoil materials, deposit of spoil materials and the use of the spoil materials for contouring. The applicant is aware that the material must be relocated out of the NSA.

- 3. The County shall select the action in MCC 38.7090(E) (1) (f) 1. that, to the greatest extent practicable, best complies with the provisions in Chapter 38 that protect scenic, cultural, recreation, and natural resources.**

Staff: The County has required that the majority of the spoils be tree shredded material be removed from the NSA. The County is aware of a small amount going to the Oxbow Park site for landscaping and the County believes this best achieves the scenic, cultural, recreation, and natural resources criteria.

- 4. Disposal sites created according to MCC 38.7090 (E) (1) (f) 1.b. shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.**

Staff: This standard requires spoil materials associated with an emergency/disaster response action to be managed in specific ways. Staff finds the damaged and removed trees from the Eagle Creek Fire response qualify as spoil materials subject to these provisions because they are directly related to the emergency response action and best fall into the category of addressing spoil materials. The Ainsworth Interchange tree storage and shredding project (the only site that falls into this category of review) is located in the General Management Area. This project is within Location #1 described on page 1 of the decision. The work at the Ainsworth Intersection included temporary storage and shredding of spoil materials, mostly burned trees resulting from the Eagle Creek fire. The bulk of the tree materials were processed and ultimately removed from the NSA which complies with provision (f)(1)(a). There is a remainder pile of tree debris (spoil materials) at site which will be removed from the site and NSA by the end of December 2019 which also meets (f)(1)(a). Pursuant to provision (f)(3), staff finds removal of tree materials from the NSA best complies with the scenic, cultural, recreation and natural resource protections of Chapter 38. This application does not involve any disposal site within the GMA as referenced in (f) (4). *With condition of approval, criterion met.*

(g) In the Special Management Area, spoil materials associated with grading, excavation, and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

- 1. The spoil materials shall either be:**

- a. Removed from the NSA, or**
- b. Deposited at a site within the NSA where such deposition is, or can be, allowed within two years of the emergency.**

Staff: Most of the tree material will be removed from the NSA. There is a few truckloads that went to the Oxbow Park area for landscaping.

- 2. After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.**

Staff: ODOT has indicated in their narrative (Exhibit A.5) how the site will be rehabilitated to the meet scenic standards.

- 3. All grading (i.e. contouring) shall be completed within 30 days after the spoils materials are removed.**

Staff: The site does not need to be recontoured but it will be reseeded and left in its pre-existing condition within 30 days after all materials have been removed.

- 4. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the**

maximum extent practicable.

Staff: The site will be replanted with native grass seed as it was before the site was use as a site to store and shred trees.

5. All revegetation shall take place within one (1) year of the date an applicant completes the grading.

Staff: The revegetation in post emergency fire situation where the fence projects have been proposed is occurring naturally. The revegetation at the Ainsworth Interchange which entails replanting area with grass will be completed within one (1) year of the date an applicant completes the grading at the site.

With condition of approval, criterion met.

6. MCC 38.7090 (E) (1) (g) shall take effect on August 3, 2006, or approval of a disposal site, which ever comes first.

Staff: Part of the work at the Ainsworth Interchange site is in the Special Management Area. The work at the Ainsworth Intersection included temporary storage and shredding of trees burned trees from the Eagle Creek fire. These were processed and removed from the NSA. There is a remaining pile of shredded trees that needs to be removed. The Ainsworth Interchange site will be completely rehabilitated to the original condition which looked like a grass field that had two intermittent streams. *With conditions, criterion met.*

2.03 (2) Cultural Resources and Treaty Rights

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect Tribal treaty rights.

Staff: The emergency response actions which include four site in this NSA Emergency Permit have been reviewed by USFS and SHPO. Exhibit C.2 is a letter from SHPO concurring that the proposed projects will have “no effect” on archeological resources. SHPO also expressed concern that if discovery of cultural resources or human remains, that applicant follow the MCC 38.7050(H) requirements for such circumstances. Give the findings of no adverse effect on cultural resources, there are no adverse cumulative effects either. The cultural resource review criteria shall be deemed satisfied. *These standards are is met*

(b) The U.S. Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Planning Director.

1. Reconnaissance surveys shall be conducted by the U.S. Forest Service and comply with the standards of MCC 38.7045 (D) (1) and (D)(2)(c).

2. Historic surveys shall be con-ducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival re-search, blueprints, and drawings as necessary.

(c) Following the submittal of a post emergency land use application, in addition to other public notice requirements that may exist, the Planning Director shall notify the Tribal governments when:

1. A reconnaissance survey is required, or 6-68 Multnomah County – Chapter 38 - Columbia River Gorge National Scenic Area (S-LU-2 2009)

2. Cultural resources exist in the project area. All such notices shall include a copy of the site plan required by MCC 38.7090 (C) (4) (d).

Tribal governments shall have 15 calendar days from the date a notice is sent to submit written

comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them. The Planning Director shall send a copy of all comments to the Gorge Commission.

Staff: The US Forest Service determined that the emergency removal of trees and the fencing projects did not require either a Historic Survey or a Cultural Resource Reconnaissance Survey (Exhibit B.2). Therefore, staff finds that the emergency/disaster response actions will not adversely affect cultural resources and will not affect Tribal treaty rights. Because there have been no known cultural resources identified; a reconnaissance survey is not required. *Criterion met.*

2.03 (3) Natural Resources

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.

(b) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in MCC 38.7060(F).

Staff: The Ainsworth Interchange is along I-84, which runs along the Columbia River. The buffer zone for the Columbia River is 100 feet. The tree storage and processing is approximately 500 feet from the edge of the tax lot adjacent to the Columbia River (Exhibit A.5). There are two intermittent streams on Ainsworth Interchange location but the work has been kept outside of the stream buffer area. The work is outside of the riparian buffer zone. The buffer zone for sensitive wildlife or rare plants is 1000 feet. US Forest Service and Oregon Department of Fish and Wildlife were noticed of the emergency application and provided no comments of sensitive wildlife or rare plants in the area. The work proposed in Locations #2 Tanner Creek right of way -Pedestrian Safety Fencing; #3 Toothrock Tunnel - installation of pedestrian safety fencing in two locations and #4 Multnomah Falls - installation of rock fall fencing at viaducts will not adversely affect natural resources. *Criterion met.*

2.04 (4) Deer and elk winter range.

Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall satisfy the standards of MCC 38.7065 (E).

Staff: The proposed fencing is for rockfall containment along steep slopes where the Eagle Creek Fire severely impacted the ability of the soil to hold rocks or debris. Because the fence is permanent and acts as a potential barrier to migration for deer and elk it needs to be evaluated. The proposed permanent fencing is outside of the deer and elk winter range in the area where it is installed along Multnomah Falls, Tanner Creek and the fence adjacent to Toothrock viaduct in conjunction with the emergency response action. Per standards in MCC 38.7065 (E), there were no comments received indicating that there were minor effects on the wildlife area or that site could be eliminated with simple modifications as indicated by Dept. of Fish and Wildlife. No adverse effects were indicated nor any change to proposed fencing projects called for. *Criterion met.*

(5) Rare Plants

a. Emergency/disaster response actions occurring within 1,000 feet of a sensitive plant, shall be reviewed by the Oregon Natural Heritage Program. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.

Staff: The emergency/disaster response actions do not occur within 1,000 feet of a sensitive plant. *This criterion is not applicable.*

(6) Recreational Resources

(a) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect

recreational resources.

Staff: The emergency/disaster response actions at the four locations described in this NSA Site Review for Post Emergency Response for temporary tree storage and shredding at Ainsworth Interchange and the installation of permanent fencing along Toothrock Tunnel, Tanner Creek, and near Multnomah Falls does not have an adverse impact on recreational resources as they are actions located in areas where there are no immediate recreational usage but they are in locations provide protection for transportation uses such as the Old Historic Highway and I-84. *Criterion is met.*

(b) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

Staff: The emergency response of tree removal and shredding at Ainsworth State Park and the fencing projects at Multnomah Falls, Toothrock, and Tanner Creek has occurred within areas that are not active recreational areas of a park. Based on visual inspection by County staff, the areas have been mostly restored and are available for passive recreational activities. *No adverse effects have been identified.*

3.00 Code Compliance and Applications Criteria:

3.1 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.**

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

Staff: There are no open compliance cases associated with the properties (Locations 1-4). Pursuant to MCC 38.0560 properties must be parcels (lawfully established properties) in order to be eligible for approval for any proposed development. However, the subject properties are all within the ODOT right of way so are considered to have a valid easement for work. All work conducted is necessary to protect public safety. *Criterion met.*

4.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the National Scenic Area Post-Emergency Response Site Review the Multnomah Falls fencing, Ainsworth Interchange temporary tree storage and shredding, and the fencing along the Tanner Creek right of way and Toothrock Tunnel in the Gorge Special and General Management Forest zone. This approval is subject to the

conditions of approval established in this report.

5.00 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. All other exhibits are available for review in Case File T2-2018-9983 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	25	Application, Narrative, Maps and Ariel maps of fencing area	01/31/2018
A.2	4	Geotechnical Design Narrative by Stephen Hay, CEG	07/06/2018
A.3	4	Email correspondence from Terra Lingley and Michael Cerbone on timeframe and procedures.	07/13/2018
A.4	22	ODOT supplemental information on HCRH Rockfall Mitigation Project	04/10/2018
A.5	16	USDA Forest Service Columbia River Gorge National Scenic Area Consistency Review Application	01/26/2017
A.6	7	Memorandum on 1-84 Ainsworth EREC Wetlands And Water Survey	1/11/2019
A.7	9	ODOT Submitted Photos of Emergency Work	10/28/2019
B.1	2	A&T Property Information	
B.2	16	Additional Material for Emergency Permit to George Plummer, Multnomah County Planner from Terra Lingley, Columbia Gorge NSA Coordinator, ODOT	07/06/2018
‘C’	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	03/02/2018
C.2	1	Applicant’s Waiver of Pre-filing	01/31/2018
C.3	1	Complete Letter (Day 1)	08/08/2018
C.4	2	Agency Review notice	02/28/2018
C.5	2	Opportunity to Comment	11/28/2018
C.6	1	Applicant request to toll application	12/12/2018
C.7		Administrative Decision	
‘D’	#	Comments Received	Date
D.1	2	Friends of the Columbia Gorge	11/28/2018

D.2	1	State Historic Preservation Office	02/28/2018
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