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MINOR CHANGE TO A DEVELOPMENT REVIEW

Director's Decision

APPLICANT: David Berger and Julie Larson

FILE NO.: C09-0005-K-G-11

ORIGINAL REQUEST:

To install two solar panels and a power line connecting them to an existing residence on a 5 acre parcel.

REQUEST WITH MINOR CHANGE:

Same as original at a different location (100 feet to the northeast of originally approved location) on the subject parcel and a revised support system for the solar panels.

LOCATION: The subject parcel is located on the north side of Lyle, Washington. The parcel is located within the SW ¼ of Section 35, Township 3 North, Range 12 East, Willamette Meridian, Klickitat County, Washington.

LAND USE

DESIGNATION: The subject parcel is designated Residential in the General Management Area.

AUTHORITY TO APPROVE MINOR CHANGE:

This application was received and reviewed under Commission Rule 350-81. The proposed minor changes are therefore being reviewed pursuant to Commission Rule 350-81-046.

Commission Rule 350-81-046 states:

Any change to a development action approved by the Executive Director shall be processed as a new action, except that the Executive Director may approve minor changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-81 and the findings and conclusions for the original action. If the Executive Director approves a minor change, the Director shall notify all of the parties that would have standing to appeal the change, including the applicant, the Forest Service, the four Indian tribal governments, the county planning department, and anyone who submitted comments during the comment period on the original land use application. The change itself (not the original decision) would be subject to appeal under the same time frames applicable to the original decision.

In this report, the original findings of fact are amended to accurately reflect the proposed changes to the project. The proposed changes are then analyzed for consistency with the original decision. Only findings and applicable guidelines that are relevant to the proposed changes are amended and included in this report.

DECISION:

Based upon the following findings of fact, the land use application by David Berger and Julie Larson to install two solar panels and power line connecting them to an existing residence is consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act (Public Law 99-663), Management Plan, and Commission Rule 350-81, and is hereby approved, with conditions.

This approval does not exempt the applicant or successors in interest from complying with all other applicable local, state, and federal laws.

CONDITIONS OF APPROVAL:

The following conditions of approval are given to ensure that the subject request is consistent with the standards of Section 6 and the purposes of P.L. 99-663, and the Management Plan and approvable under Commission Rule 350-81. These conditions must be recorded in county deeds and records to ensure notice of the conditions to successors in interest (Management Plan, Review Uses Guideline 1, pg. II-7-58). **Note: Only the approved site plan is changed from the original decision.**

1. The first two pages of this decision shall be recorded in county deeds and records (Klickitat County Auditor's Office) to ensure notice of the conditions to successors in interest. The applicants shall submit a copy of the recorded decision to the Planning Manager prior to any construction.
2. The development shall be sited and constructed as shown on the site plan, dated July 29, 2009, and as modified by these conditions of approval. If changes to the location, height or design of the structure are proposed, a revised site plan and elevation drawings shall be submitted to the Planning Manager for review and approval prior to application for a building permit from Klickitat County.
3. Existing trees located to the south and west of the installed solar panels that screen the panels from key viewing areas shall be retained, and replaced if they are damaged or die. Replacement trees shall be at least 4-foot tall when planted. The area subject to this condition is indicated on the approved site plan.
4. The color of the solar panels shall be black and dark grey and the support poles shall be black. Any proposed changes from the approved exterior color shall be submitted for review and approval by the Planning Manager before construction begins.
5. Locations for all new structures and other ground-disturbing development shall be staked for Commission inspection prior to any ground disturbing activity. The applicant shall notify the

Commission once staking is complete to arrange for an inspection. Ground disturbance necessary for installation of the panels and utility line may begin only after Commission inspection and approval of project location staking.

6. The applicant shall notify the Gorge Commission within 30 days of project completion to arrange for an inspection to confirm compliance with conditions of approval. Project completion means completion of all work installing the structures (including painting if necessary), and completion of installation of the utility line.
7. If cultural resources are discovered during construction, all construction activities within 100 feet of the cultural resources shall cease and the applicants shall notify the Gorge Commission within 24 hours. The cultural resources shall remain as found; further disturbance is prohibited until permission is granted by the Planning Manager of the Gorge Commission.
8. If human remains are discovered during construction activities, all activities shall cease upon their discovery. Local law enforcement, the Executive Director and Indian Tribal governments shall be contacted immediately. Further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.

DATED AND SIGNED THIS 29th day of July, 2009, at White Salmon, Washington.



Brian Litt
Principal Planner

EXPIRATION OF APPROVAL:

This decision of the Executive Director becomes void on the 4th day of June, 2011.

This decision does not modify the original decision regarding expiration, discontinuance or extension of the validity of the approval.

As per Commission Rule 350-81-044(6), an extension of the validity of a development approval may be requested. Such a request shall be submitted in writing prior to the expiration of the approval. The Planning Manager may grant an extension if it is determined that conditions, for which the applicant was not responsible, would prevent the applicant from commencing the proposed development within the original time limitation. The Planning Manager shall not grant an extension if the site characteristics and/or new information indicates that the proposed use may adversely affect the scenic, cultural, natural or recreation resources in the National Scenic Area.

APPEAL PROCESS:

The appeal period ends the 28th day of August, 2009.

This decision of the Planning Manager shall be final unless the applicant or a person who commented on the applicant's original application (C09-0005-K-G-11) within the 21 day comment period files a Notice of Intent to Appeal and Petition with the Gorge Commission within thirty (30) days of the date of this decision. Information on the appeal process may be obtained at the Commission offices.

NOTES:

Any new land uses or structural development such as residences; garages, workshops, or other accessory structures; or additions or alterations not included in the approved application or site plan will require a new application and review.

COMMENTS FROM OTHER INDIVIDUALS/AGENCIES/GOVERNMENTS:

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

- Yakama Nation
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs Reservation of Oregon
- Nez Perce Tribe
- U.S. Forest Service National Scenic Area Office
- Washington Office of Archaeology and Historic Preservation
- Klickitat County Planning Department
- Klickitat County Building Department
- Klickitat County Health Department
- Klickitat County Assessor
- Washington Department of Fish and Wildlife
- Friends of the Columbia Gorge

Written comments were received from Richard Till, Land Use Law Clerk for the Friends of the Columbia Gorge; and James Fritchey.

SUMMARY OF PROPOSED CHANGES TO THE PROJECT:

The applicant has proposed siting the panels 100 feet to the NNE of the site originally approved; in other words above the driveway rather than below it. The panels would be supported by a set of concrete columns and pipes rather than two central poles. This allows the array to be closer to the ground. A revised site plan and photograph of the panels and support structure are attached to this revised decision.

AMENDED FINDINGS OF FACT AND CONCLUSIONS AND ANALYSIS OF CONSISTENCY OF PROPOSED CHANGES:

Amendments to Findings and Conclusions are shown with ~~strikeout text~~ indicating deletions to the original findings and underlined text indicating additions to the original findings.

A. Land Use

1. The subject parcel is 5 acres in size and located just north of the Lyle, Washington Urban Area. The applicant is proposing to install an approximately 9.5-foot by 51.5-foot array of solar panels mounted on a concrete pier and pipe support structure ~~two solar 15' x 15' panels mounted on 8-foot high posts~~. The panels will supply electricity for an existing single-family dwelling on the parcel. The total generation capacity is a maximum of 7200 KWH/year. This is less than the average annual use since 2004 for this household. A power cable will be buried along the driveway between the panels and the house.

Analysis of Consistency of Proposed Change:

The proposed changes alter the location (by 100 feet) and support structure for solar panels. The size of the array is slightly larger (increasing by approximately 29 sq. ft., from 450 to 489 sq.ft.). The generating capacity is still sized to meet the needs of a single-family dwelling. These changes are consistent with the original decision.

Conclusion:

The proposed use is an allowed review use in the Residential land use designation, subject to compliance with guidelines that protect scenic, natural, cultural and recreational resources (350-81-540 through 620).

Analysis of Consistency of Proposed Change:

The proposed changes do not alter the approved use in a way that is inconsistent with the original findings and conclusions.

B. Scenic Resources

1. Commission Rule 350-81-520(1)(a) states:

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

The proposed project does not involve new buildings or roads. The project is located above the next to an adjacent driveway on a level area with a slight south-facing slope. This site requires less excavation than the originally reviewed site, a slope. Use of the sloped site next to the existing driveway reduces the need for excavation in previously undisturbed areas. The proposed project is consistent with Commission Rule 350-81-520(1)(a).

Analysis of Consistency of Proposed Change:

Once the applicant had a contractor evaluate the originally approved site, he realized that installation of the system on two-poles as envisioned would require significant excavation in order to access the area at the base of the poles and for installation of the poles themselves. This excavation on a steep slope posed a risk to the stability of the adjacent driveway. The proposed site is on more level ground and has sufficient access already. The proposed site minimizes grading and excavation consistent with Commission Rule 350-81-520(1)(a).

6. Commission Rule 350-81-520(2)(d) states:

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

- (A) *Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:*
- (i) *The amount of area of the building site exposed to key viewing areas.*
 - (ii) *The degree of existing vegetation providing screening.*
 - (iii) *The distance from the building site to the key viewing areas from which it is visible.*
 - (iv) *The number of key viewing areas from which it is visible.*
 - (v) *The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).*

The amount of area of the building site exposed to Key Viewing Areas.

Overall, the subject parcel is on a south-facing slope above the town of Lyle, WA. The project location is at an elevation of 440 feet, approximately 360 feet above the level of the Columbia River. The proposed solar panel structures are located near the eastern southern portion of the parcel, at a higher lower elevation than the originally approved site primary alternative sites. The entire site is exposed to those portions of the KVAs from which it is visible that are located to the south. Nearby topography shields the site only slightly somewhat from the portions of KVAs that are located to the west. The upper bench in Lyle where the school sits also provides screening from SR 14 and nearby portions of the Columbia River.

The degree of existing vegetation providing screening.

The proposed structures would be sited to the southeast of the residence where a cluster of trees provides partial screening of the site from KVAs to the west. These trees are mature pines and oaks mostly mature oaks with broad canopies. The high density of branches on the oaks increases the screening effectiveness of these trees during the winter. A Large pine is located to the west that provides some additional screening at times of the year when the oaks have lost their leaves. Existing trees provide less screening for the proposed site than the originally approved site when viewed from low-elevation portions of the KVAs located due south of the project.

The distance from the building site to the Key Viewing Areas from which it is visible.

At the closest point from which it is visible, the building site is within three-quarters of mile of the Columbia River, 1.3 miles north from the Historic Columbia River

Highway, one mile from Interstate 84, and 1.4 miles from the Rowena Plateau and Nature Conservancy Viewpoint.

The number of Key Viewing Areas from which the site is visible.

The proposed development would be topographically visible from four KVAs, the Historic Columbia River Highway, Interstate 84, the Columbia River, and the Rowena Plateau and Nature Conservancy Viewpoint.

The linear distance along the Key Viewing Areas from which the building site is visible.

The proposed development would be topographically visible intermittently along the Historic Columbia River Highway for 3 winding miles, Interstate 84 for approximately 1.5 miles, and approximately one mile along the Columbia River.

In sum, the proposed structure is topographically visible from four KVAs. Due to good siting, topography and existing vegetation the potential visual impact is small ~~less than~~ other sites on the parcel. With conditions for siting, design and screening vegetation, the proposed structure would be visually subordinate from all of these KVAs, consistent with Commission Rule 350-81-520(2)(d).

Analysis of Consistency of Proposed Change:

The revised site is slightly more visible from some KVAs located to the south than the original site due to its higher elevation and less screening vegetation. However, the potential visual impact of the project when viewed from KVAs is slight due to the project's small size and distance from KVAs. The revised location does not substantially change the project's overall impact at this location.

7. Commission Rule 350-81-520(2)(d)(B) states:

- (B) *Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:*
 - (i) *Siting (location of development on the subject property, building orientation, and other elements),*
 - (ii) *Retention of existing vegetation,*
 - (iii) *Design (color, reflectivity, size, shape, height, architectural and design details and other elements), and*
 - (iv) *New landscaping.*

As described below, conditions for siting, design, and retention of existing vegetation are applied to ensure that the development is visually subordinate to its setting as seen from KVAs.

Siting (location of development on the subject property, building orientation, and other elements),

The proposed structure ~~have been~~ is to be sited to the southeast of the existing dwelling and above the driveway amongst a stand of trees. The trees to the south and west provide partial screening from KVAs. The site is at a lower elevation and less prominent position than other locations on the parcel. With conditions to ensure the siting of the structure is as shown on the site plan, the siting would be consistent with this guideline.

Retention of existing vegetation

A mixed stand of coniferous and deciduous trees located to the west and south of the project site would provide screening for the proposed structures. Due to the change in project location, additional trees to the west of the project should be retained in order to maintain effective screening. With conditions to retain these trees, the proposed development would be visually subordinate.

Design (color, reflectivity, size, shape, height, architectural and design details and other elements)

As proposed, each panel is slightly larger than 5' x 3', and there will be 30 panels. The panels will be arranged in a 3 x 10 grid measuring approximately 9.5' x 51.5' (489 sq. ft.). This array of panels will be mounted on a concrete pier and metal pipe support structure at an angle of no more than 45 degrees from horizontal. The structure will have a footprint of approximately 350 square feet. 15' x 15' sitting atop an 8 foot tall, 8-inch diameter pole. The angle of the panel is similar to the angle of the ground so overall height is no greater than 10 feet from adjacent grade. The panels may be fitted with a tracking motor to increase efficiency. The panels would be partially screened by existing vegetation. The colors of the panels are a dark grey and black, and have a coating to reduce reflectivity in order to boost efficiency. With conditions that require the use of panels with these proposed characteristics, the proposed development would be visually subordinate.

New landscaping

No new landscaping has been proposed by the applicant. With conditions to ensure the retention of existing vegetation currently providing screening from KVAs, no new landscaping would be required.

Analysis of Consistency of Proposed Change:

The proposed change results in the panels being located in a site that is less screened by existing trees when viewed from the south along Columbia River and I-84. The location also benefits from additional trees located to the west. However, the resulting effect is minor enough that additional conditions are not necessary in order for the project to meet the visually subordinate scenic standard. The approved site plan will be changed to require some additional trees to the west of the project site to be retained since they screen the revised site from view from KVAs located to the west. The retention of this additional screening vegetation is consistent with the conclusions of the original decision.

Conclusion:

With conditions regarding the retention of screening vegetation, siting, and color, the proposed development would be consistent with the guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area.

Analysis of Consistency of Proposed Change:

The visual impact and the set of requirements needed for the project to meet the scenic standard is not significantly affected by the proposed project revision. The revision is consistent with the original decision's conclusion that the proposed development would be consistent with the guidelines in Commission Rule 350-81-520 that protect scenic resources in the National Scenic Area.

C. Cultural Resources

1. Commission Rule 350-81-540(1)(c)(A)(ii) requires a cultural resources reconnaissance survey for all proposed uses except those described in 350-81-540(1)(c)(A)(i)(I) through (VI).
2. Marge Dryden, Heritage Resource Program Manager for the Columbia River Gorge National Scenic Area, reviewed the revised new land use application and determined that pursuant to Commission Rule 350-81-540(1)(c)(A)(ii) a reconnaissance survey was not required because the site is in a low probability area and is not within 100 feet of a high probability area.

Analysis of Consistency of Proposed Change:

The Forest Service Heritage Resource Program Manager confirmed that the proposed change in location is minor and does not require additional cultural resource review.

Conclusion:

With a condition protecting unknown cultural resources discovered during construction, the proposed development is consistent with the guidelines in Commission Rule 350-81-540 that protect cultural resources in the National Scenic Area.

Analysis of Consistency of Proposed Change:

The change in location does not require any additional review or actions to protect cultural resources beyond those of the original decision. Therefore it is consistent with the findings and conclusions of the original decision.

Applicant: David Beeber

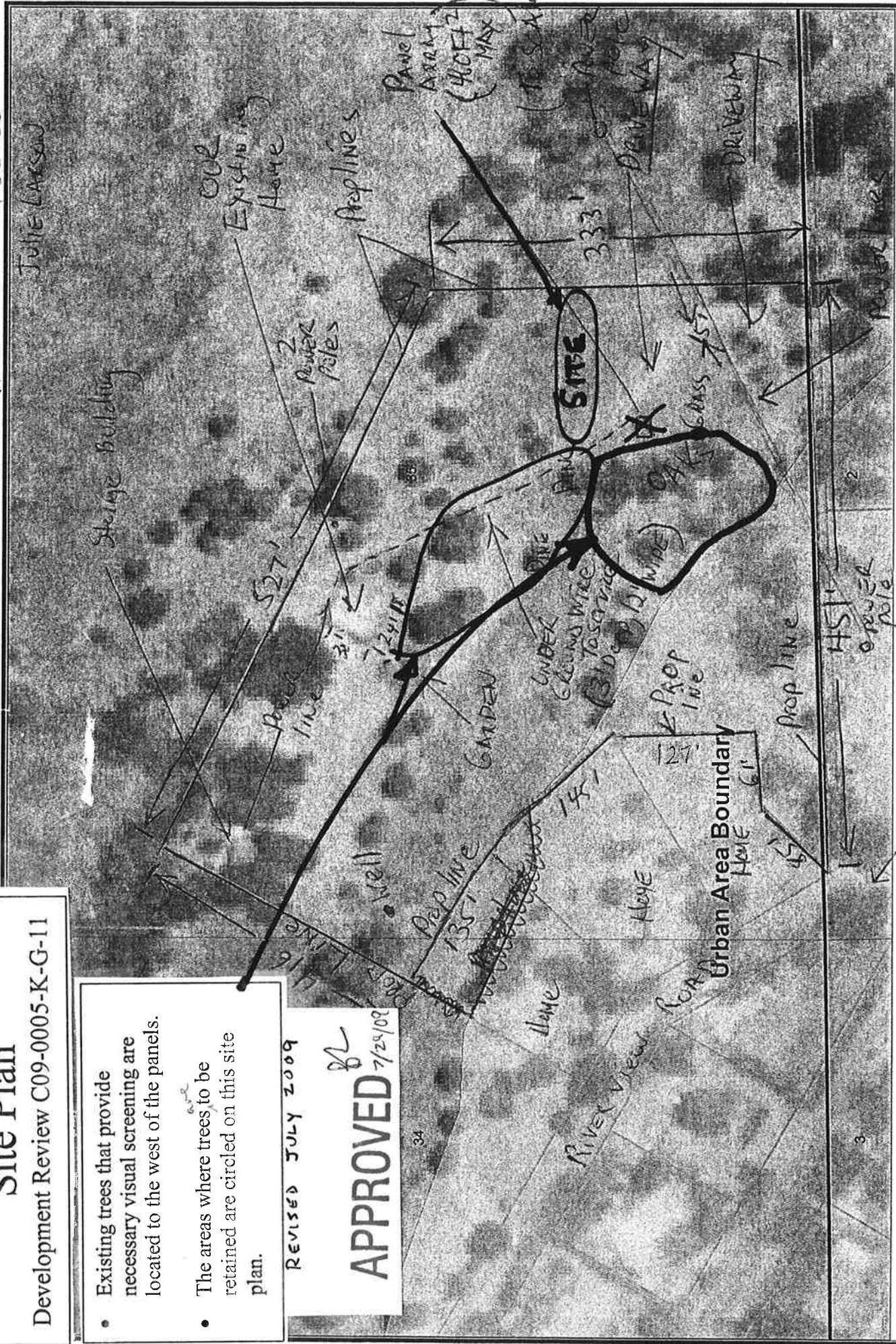
Site Plan

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- Existing trees that provide necessary visual screening are located to the west of the panels.
- The areas where trees to be retained are circled on this site plan.

REVISED JULY 2009

APPROVED
7/25/09



Columbia River Gorge Commission

1 inch = 110 feet



Created by: Jennifer Kaden

Date: 02.17.2009



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