

DIRECTOR'S DECISION

APPLICANT: Fred Heany

LANDOWNER: Same

FILE NO.: C11-0002

REQUEST:

- 1) Placement of a free-standing solar water heater and buried water and electric lines to heat an in-ground pool;
- 2) Installation of a 450 foot long semi-solid fence surrounding the pool and yard;
- 3) After-the-fact review of an in-ground pool, associated equipment cabinet and ground-level deck.

LOCATION: The subject parcel is located at 283 Courtney Road in the SE 1/4 of Section 28, Township 3 North, Range 11 East, W.M., Klickitat County, Washington (Klickitat County Assessor's ID 03-11-2800-0031/00).

LAND USE DESIGNATION: The subject parcel is in the Special Management Area and is designated General Management Area Small-Scale Agriculture pursuant to the provisions of Section 8(o) of the National Scenic Area Act.

DECISION:

Based upon the findings of fact in the Staff Report for Director's Decision C11-0002, the land use application by Fred Heany to place a free-standing solar water heater, associated electric and water lines, in-ground pool with associated deck and equipment room, and fence is found to be consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act P.L. 99-663, and the Management Plan for the Columbia River Gorge National Scenic Area (Management Plan), and approvable under Commission Rule 350-81 and is hereby **approved**.

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-96).

1. Locations for the solar water heater and fence shall be staked for Commission inspection prior to grading, excavation or installation. The applicant shall notify the Commission when staking is complete to arrange for an inspection. Grading and excavation may begin after Commission inspection and approval of staking.

2. The development shall be constructed as shown on the approved site plan and elevation drawings. If modifications are requested, a revised site plan must be submitted for review and approval by the Executive Director.
3. **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 placement of the solar water heater panels, burying of the water and electrical line and installation of the fence.
4. If cultural resources are discovered during construction activities, all 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 Executive Director of the Gorge Commission.
5. 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 8th day of June, 2011 at White Salmon, Washington.



Jill Arens
Executive Director

EXPIRATION OF APPROVAL:

This decision of the Executive Director becomes void on the 8th day of June, 2013.

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 Executive Director 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 Executive Director shall not grant an extension if the site characteristics and/or new information indicate 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 8th day of July, 2011.

The decision of the Executive Director shall be final unless a Notice of Intent to Appeal and Petition is filed with the Commission within thirty (30) days of the date of this decision by the applicant or any person who submitted comment. Information on the appeal process may be obtained at the Commission office.

NOTES:

Any new grading, 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.

AMB
DEC0002.11

N SYMBOLS

SCALE 1" = 100'

YA' AT' EEH B+B

AMB

GARDEN - G

STORAGE - S

FIR PINE OAK TREES - [Symbol]

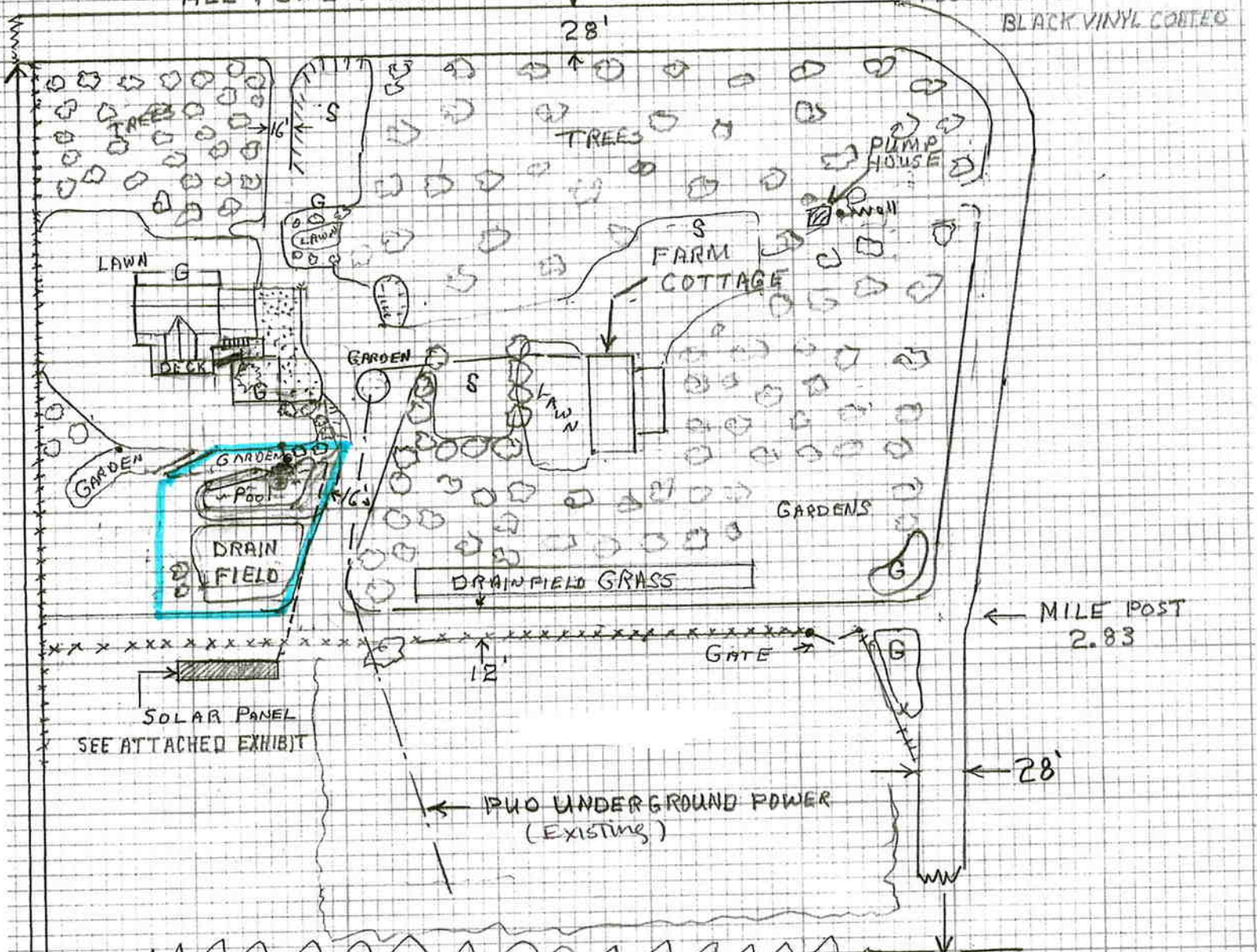
APPLICANT: FRED HEANY

SEE EXHIBIT A-1 TO A-4

ALL POWER UNDERGROUND

4-W Pool Fence

REQUIRED BY COUNTY AND FEDERAL CODES FOR SAFETY
BLACK VINYL CORTEX



APPROVED

RECEIVED

MAR 24 2011

COLUMBIA RIVER GORGE COMM.

SOUTH END PROPERTY

± 660

± 1320'

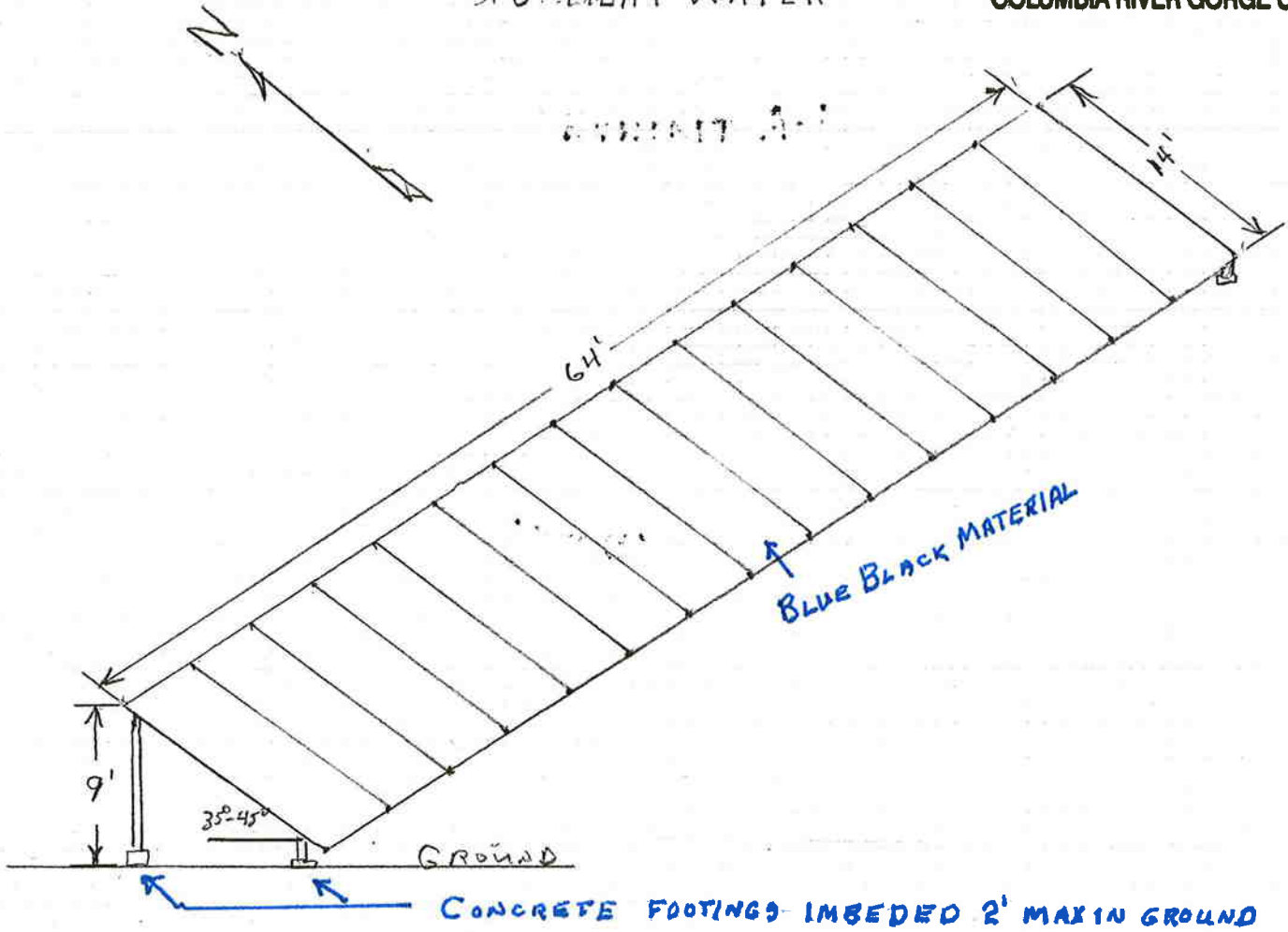
RECEIVED

FEB - 8 2011

SOLAR PANEL
TO HEAT WATER

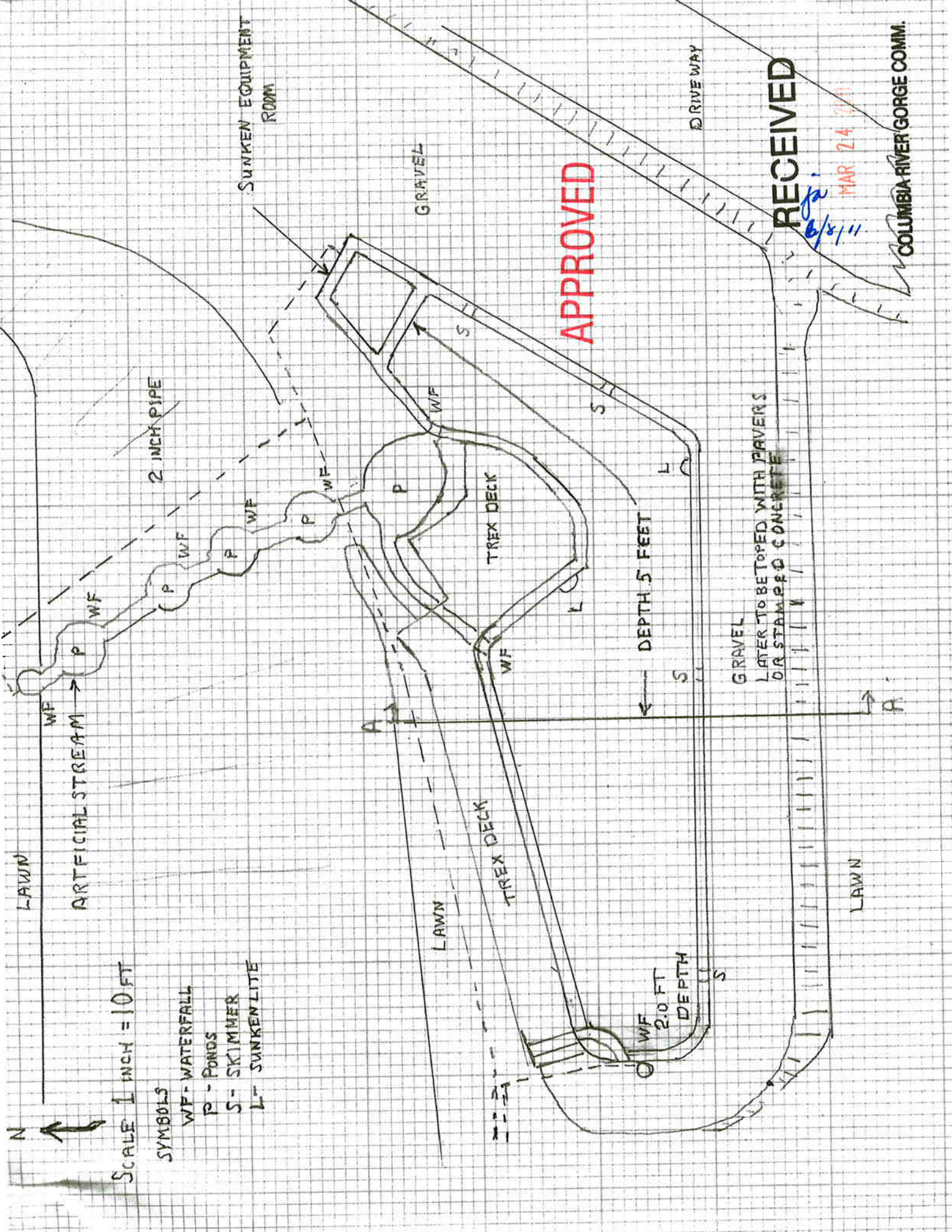
COLUMBIA RIVER GORGE COMM.

EXHIBIT A-1



APPROVED

ja
6/8/11



SCALE 1 INCH = 10 FT

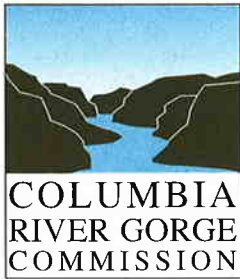
- SYMBOLS
- WF - WATERFALL
 - P - POND
 - S - SKIMMER
 - L - SUNKEN LITE

APPROVED

RECEIVED

MAR 24 2011

COLUMBIA RIVER GORGE COMM.



STAFF REPORT

APPLICANT: Fred Heany

LANDOWNER: Same

FILE NO.: C11-0002

REQUEST:

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LAND USE DESIGNATION: The subject parcel is in the Special Management Area and is designated General Management Area Small-Scale Agriculture pursuant to the provisions of Section 8(o) of the National Scenic Area Act.

COMMENTS FROM OTHER INDIVIDUALS/AGENCIES/GOVERNMENTS:

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

Confederated Tribes and Bands of the 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 Department 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 with the Friends of the Columbia Gorge and Johnson Meninick with the Confederated Tribes and Bands of the Yakama Nation.

FINDINGS OF FACT:

A. Land Use

1. Fred Heany is seeking approval to construct a 64' (L) x 14' (W) x 9' (H) free-standing solar water heater and buried water and electric lines to heat water for a nearby in-ground pool that is also reviewed in this Decision. As proposed, the buried lines will be placed in a single trench, three feet deep, for a distance of approximately 30 linear feet between the pool and panel site. The trench line will predominantly follow the existing gravel driveway, in previously disturbed areas.

Mr. Heany is also seeking after-the-fact approval of an irregularly shaped in-ground pool with an approximate length of 70 feet and a width that ranges between 10 and 20 feet. The depth ranges between two and five feet. In conjunction with the pool, Mr. Heany has constructed a ground-level deck. An associated equipment cabinet is mostly underground at one end of the pool. The deck is approximately 55 feet long by 5 feet wide and exists on the north side of the pool. A fence, not yet constructed, will surround the pool area for safety. The semi-solid fence will range from four to six feet in height and is approximately 450 feet in length.

Existing development on the parcel includes a single family dwelling (with a two-bedroom bed and breakfast), an agriculture labor dwelling, pump house, gravel driveways, associated utilities and pastures that are hayed annually.

2. The subject property is in the Special Management Area. Pursuant to the provisions of Section 8(o) of the National Scenic Area Act, the land use designation for the subject parcel was converted to General Management Area (GMA) Small-Scale Agriculture. The subject parcel is therefore subject to the GMA provisions of the Management Plan.
3. Commission Rule 350-81-020(2) defines "accessory structure/building" as:

Accessory structure/building: A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use...

The main use of the property is residential. Existing development includes a dwelling (with two-bedroom bed and breakfast), an agriculture labor dwelling and a pump house. The solar water heater is proposed to heat the pool and the pool is intended to be used and enjoyed by residents of the dwelling and guests of the bed and breakfast. The fence will enclose the pool for safety. Based on this information, the proposed structures and fence are subordinate or accessory to the primary use on the property, consistent with Commission Rule 350-81-020(2).

4. Commission Rule 350-81-190(1)(d) allows accessory structures larger than 200 square feet for an existing dwelling that are not otherwise allowed outright or eligible for the expedited review process. Pursuant to Commission Rule 350-81-074(1)(a)(E), accessory structures allowed outright are limited to 60 square feet and 10 feet in height. Accessory structures eligible for the expedited review process are limited to structures between 60 and 200 square feet and 10 feet in height (Commission Rule 350-81-050(1)(a)). Semi-solid fences eligible for the expedited review process are limited to 6 feet in height and 100 feet in length.

As proposed, the solar water heater and pool (including equipment cabinet and deck) are larger than 200 square feet each. The pool fence is wrought iron or semi-solid and approximately 450 feet in length. Given this information, the proposed structures and fence do not qualify for the expedited development review process or uses allowed outright and are allowed pursuant to Commission Rule 350-81-190(1)(d).

5. Commission Rule 350-81-084(1) lists guidelines for Indian Tribal Treaty Rights and Consultation within the General Management Area. Commission Rule 350-81-084(1)(a) lists additional notice materials for projects in or providing access to the Columbia River or its fish bearing tributaries or for projects that may affect Indian treaty rights and provides 20 days for tribal governments to submit comments. This proposal is not near the Columbia River or other streams and would not affect Indian treaty rights. Notice of the proposal was mailed to the four tribal governments and 20 days provided for comments.
6. Commission Rule 350-81-084(1)(b) lists guidelines for tribal government consultation when those governments submit substantive written comments. A letter from Johnson Meninick of the Confederated Tribes and Bands of the Yakama Nation was received April 15, 2011. The letter recommended a survey of the project area and a monitor on-site during ground disturbing activities. It did not suggest treaty rights would be affected by the proposal.
7. Commission Rule 350-81-084(c)(B) states:

The treaty rights protection process may conclude if the Executive Director determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.

Because the proposed use would not affect or modify treaty or other rights of any Indian tribe, the treaty rights protection process may conclude pursuant to Commission Rule 350-91-084(c)(B). Cultural resource survey requirements are addressed in Section C of this decision.

Conclusion:

As proposed, the solar water heater, in-ground pool with associated deck and equipment cabinet, and fence are allowed review uses, subject to compliance with the guidelines in Commission Rules 350-81-520 to 350-81-590 that protect scenic, cultural, natural and recreation resources.

B. Scenic Resources

1. Commission Rule 350-81-520(1)(a) through (g) lists scenic resource protection guidelines for all review uses. Commission Rule 350-81-520 (1)(a) is applicable to new buildings and roads and Commission Rule 350-81-520(1)(b) and (d) are applicable to new buildings. No new buildings or roads are proposed with this project. Commission Rule 350-81-520(1)(c) applies to projects requiring new vegetation, which also is not applicable for this project. Commission Rule 350-81-520(1)(e) refers to the compatibility of the proposed development with the designated landscape setting. This is discussed below in Findings B.3 through B.6. Commission Rules 350-81-520(1)(f) and (g) apply only to mineral resource production and quarries which are not proposed with this project. The proposed development is, for the most part, not subject to the scenic resource protection measures in Commission Rule 350-81-520(1).

2. Commission Rule 350-81-520(2) lists scenic resource protection guidelines for review uses on land topographically visible from key viewing areas. The subject parcel is located near the top of Burdoin Mountain, just east of White Salmon and Bingen, Washington. According to Commission inventories, the project site is approximately 1,000 feet higher in elevation than nearby key viewing areas, including the Historic Columbia River Highway, the Columbia River, Interstate 84 and State Route 14. In addition to this significant elevation difference, the development site is set back from south facing slopes that are visible to key viewing areas. Given this information and as confirmed by staff site visits, the proposed development site is not topographically visible from key viewing areas. As such, Commission Rule 350-81-520(2) is not applicable.
3. Commission Rule 350-81-520(3) includes scenic resource protection measures for new development based on the designated landscape setting for the subject property. The Landscape Settings map in the Management Plan classifies the subject parcel as Oak Woodland. Commission Rule 350-81-520(3)(c) contains guidelines for new development in this landscape setting.
4. Commission Rule 350-81-520(3)(c)(A) requires the height of new structures to be below the tree canopy level in wooded portions of the landscape setting. The development will be located on a portion of the property that is not wooded. However, nearby conifer trees are significantly taller than nine-foot tall solar water heater panels and six-foot tall semi-solid fence. The proposed development is consistent with Commission Rule 350-81-520(3)(c)(A).
5. Commission Rule 350-81-520(3)(c)(B) applies only to development on lands visible from key viewing areas and, therefore, is not applicable.
6. Commission Rule 350-81-520(3)(c)(C) applies only to resource-based recreation development and, therefore, is not applicable to the proposed accessory structures.

Conclusion:

The proposed development would not be visible from key viewing areas and does not involve any new buildings or roads, therefore most of the scenic resource protection guidelines in Commission Rule 350-81-520 are not applicable to the proposed solar water heater, pool (including deck and equipment cabinet) and fence. The proposed development is consistent with the requirements for the Oak Woodland landscape setting. The proposed development is consistent with applicable measures that protect scenic resources from adverse effects.

C. Cultural Resources

1. Commission Rule 350-81-540(1) lists cultural resource protection guidelines for review uses. Commission Rule 350-81-540(1)(c)(A) is used to determine when a cultural resource reconnaissance survey is required. In a cultural resources survey determination dated April 8, 2011, Margaret Dryden, U.S. Forest Service Archaeologist, reviewed the proposed use pursuant to this rule and determined a reconnaissance survey of the proposed use was not required because the use does not occur within 500 feet of a known archaeological site and would occur in an area with a low probability of containing cultural resources. The proposed use is thus exempt from reconnaissance survey requirements pursuant to Commission Rules 350-81-540(1)(c)(A)(i) and (ii)(VI).

2. Commission Rule 350-81-540(1)(c)(B) is used to determine when a historic survey is required. Ms. Dryden determined that the proposed use did not require a historic survey as the use would not alter the exterior architecture of buildings or structures that are 50 years old or older nor would it compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older, pursuant to Commission Rule 350-81-540(1)(c)(B).
3. Commission Rule 350-81-540(2)(a)(A) allows interested parties who so request during the comment period to consult with the applicant regarding cultural resources. A letter from Johnson Meninick of the Confederated Tribes and Bands of the Yakama Nation was received April 15, 2011. The letter recommended surveying the project area and monitoring the site during ground disturbing activities. Notification if cultural sites are discovered in the project area also was requested. The letter did not request consultation with the project applicant. Because the proposed use does not require reconnaissance or historic surveys, and no known cultural resources exist in the project area, an on-site monitor is not required for this project. A condition is included requiring Commission notification should any cultural resources be discovered during project construction.
4. Commission Rule 350-81-540(2)(c)(B)(i) states the cultural resource protection process may conclude when the following conditions exist:

The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

As explained in Findings C.1 and 2 above, the proposed use does not require a reconnaissance or historic survey. A comment was received from the Yakama Nation as described above. The concerns raised in the letter are addressed pursuant to the cultural resources protection process in Commission Rule 350-81-540. Pursuant to Commission Rule 350-81-540(2)(c)(B)(i), the cultural resource protection process may conclude.

5. Commission Rule 350-81-540(6) protects cultural resources discovered during construction. It requires that if cultural resources are discovered after construction begins, all construction activities within 100 feet of the discovered cultural resource shall cease; further disturbance is prohibited, and the Gorge Commission shall be notified within 24 hours of the discovery. A condition of approval will alert the applicant to this requirement.
6. Commission Rule 350-81-540(7) protects human remains discovered during construction. It requires that if human remains are discovered after construction begins, all construction activities shall cease and the Gorge Commission, local law enforcement officials and the Indian tribal governments shall be contacted immediately. A condition of approval will alert the applicant to this requirement.

Conclusion:

With conditions requiring the cessation of work and Commission notification if cultural resources or human remains are discovered during construction, the proposed development is consistent with applicable guidelines in Commission Rule 350-81-540 that protect cultural resources in the National Scenic Area from adverse effects.

D. Natural Resources

1. Commission Rules 350-81-560 through 590 contain natural resource protection guidelines. Commission Rule 350-81 protects wetlands (350-81-560); streams, ponds, lakes and riparian areas (350-81-570); sensitive wildlife areas and sites (350-81-580); and sensitive plants (350-81-590).
2. Gorge Commission inventories do not identify any wetlands, streams or riparian areas, or sensitive plants within 1,000 feet of the development site. Therefore, Commission Rules 350-81-560, 350-81-570, and 350-81-590 are not applicable.
3. Commission Rule 350-81-580 contains guidelines to protect sensitive wildlife areas and sites. The Gorge Commission's sensitive wildlife inventory identifies the subject property is within deer winter range. Commission Rule 350-81-580(1)(a)(A) lists deer winter range as a sensitive wildlife area.
4. Commission Rule 350-81-580(4) contains guidelines for review of proposed uses within 1,000 feet of sensitive wildlife areas and sites. Subsection (a) of this section requires that site plans for such uses be submitted to the Washington Department of Fish and Wildlife to review the application and: (A) verify the location of the wildlife area or site; (B) ascertain whether the wildlife area or site is active or abandoned; and (C) determine if the proposed use may compromise the integrity of the wildlife area or site or occur at a time when wildlife species are sensitive to disturbance. The application and site plan were submitted to David Howe, Region 5 Habitat Program Manager for the Washington Department of Fish and Wildlife on April 12, 2011 for review, pursuant to Commission Rule 350-81-580(4). On April 18, 2011, a comment was received from Mr. Howe stating the proposed development would not compromise the integrity of the deer and elk winter range.
5. Commission Rule 350-81-580(4)(c) states:

The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

(A) The sensitive wildlife area or site is not active, or

(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.

Comments received from the Washington Department of Fish and Wildlife confirmed that the proposed solar water heater, pool (including deck and equipment cabinet) and fence would not compromise sensitive wildlife areas or sites. Consistent with Commission Rule 350-81-580(4)(c), the wildlife protection process concluded.

Conclusion:

The proposed development is consistent with the applicable guidelines in Commission Rules 350-81-560 through 350-81-590 that protect sensitive natural resources from adverse effects.

E. Recreation Resources

1. Commission Rule 350-81-086 prevents adverse impacts to existing recreation sites by requiring appropriate buffers for new buildings and structures adjacent to existing recreation sites. No new buildings or structures are proposed with this application and there are no existing recreation sites nearby. Commission Rule 350-81-086 is not applicable.

Conclusion:

The proposed development will not adversely affect existing recreation resources.

cc: Confederated Tribes and Bands of the Yakama Indian Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs Reservation
Nez Perce Tribe
Klickitat County Planning
Klickitat County Building
Friends of the Columbia Gorge
Washington Department of Fish and Wildlife

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