

# Director's Decision

## Summary of Application

<b>FILE NUMBER:</b>	C22-0017
<b>PROPOSAL:</b>	The Columbia River Gorge Commission has received an application for a roof-mounted solar panel array and the after-the-fact review of a new roof for an existing barn.
<b>APPLICANTS:</b>	Jeri Rutherford
<b>LANDOWNERS:</b>	Jeri Rutherford
<b>SIZE and LOCATION:</b>	The subject parcel is 5 acres in size and is described as Tax Lot Number 03-11-3452-0004/00 in the Northeast 1/4 of Section 34, Township 3 North, Range 11 East, Willamette Meridian, Klickitat County, Washington.
<b>LAND USE DESIGNATION:</b>	General Management Area (GMA) – Small-Scale Agriculture (80)  Note: According to Section 8(o) of the National Scenic Area Act, the Forest Service designated the subject parcel General Management Area (GMA) Small-Scale Agriculture. For the purposes of this development review, the Special Management Area (SMA) guidelines no longer apply, and the parcel will be reviewed according to the applicable GMA land use and resource protection guidelines.

## Decision

Based upon the findings of fact and conclusions of law in the staff report accompanying this decision and the conditions of approval in this decision document, the land use application by Jeri Rutherford, for a roof-mounted solar panel array and the after-the-fact review of a new roof for an existing barn is consistent with Commission Rules chapter 350, division 082, and thus consistent with the *Management Plan for the Columbia River Gorge National Scenic Area* and the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act, Pub. L. 99-663, 100 Stat. 4274 (1986), and is hereby **APPROVED**.

## Conditions of Approval

The following conditions of approval are given to ensure that the subject request is consistent with Commission Rules chapter 350, division 082. Compliance with these

conditions of approval is required. The Gorge Commission may take one or more enforcement actions at any time to ensure compliance with these conditions of approval.

1. In accordance with Commission Rule 350-082-0150(3), the applicant shall record the Executive Director's decision and conditions of approval and approved site plan and elevation drawings in county deeds and records (at the Klickitat County Auditor's Office) to ensure notice of the conditions to successors in interest. The record shall be associated with all tax lots and parcels that constitute the subject property. The applicant need not record the separate staff report document containing the relevant findings and conclusions. Once recorded, the applicants shall submit a copy of the recorded documents to the Executive Director.
2. This decision does not exempt the proposal from other non-National Scenic Area rules and regulations. It is the applicant's responsibility to ensure the use complies with all other applicable federal, state, and county laws and to obtain necessary approvals, including utility easement approvals.
3. Inspections Required, contact the Gorge Commission office to schedule:
  - A. Post-completion inspection required.
  - B. Applicants may request interim inspections, and the Gorge Commission staff may, at its discretion, conduct interim inspections.
4. Any new land uses or structural development, alterations, or grading not included in the approved application or site plan will require a new application and review.
5. The barn shall not be used as dwelling and shall not be certified for occupancy.
6. All exterior building materials for the barn, including roof, solar panels, doors, siding, trim, window casings and sashes, decks, and railings shall be dark earth-tone colors. Only approved dark earth-tone colors for exterior materials shall be used. The following color submitted by the applicants for the roof is consistent with this condition and is hereby approved:

Roof: Pabco Antique Black

Any proposed changes to these colors shall be submitted to the Gorge Commission for consistency review with this condition of approval. The color of the development shall be maintained by painting and staining as necessary to maintain the approved color.

7. All elements of the solar panel arrays shall be black. Only this approved dark earth-tone colors shall be used. The approved color for the solar panels is black including panel edging. The framing shall be painted matte black to minimize reflectivity, with no bare aluminum framing or bare structural surfaces. The colors shall be maintained as necessary to ensure the building materials are the approved color and nonreflective.

Any proposed changes to this color shall be submitted to the Gorge Commission for review for consistency with this condition of approval

8. All exterior building materials shall be nonreflective or have low reflectivity. Solar panels shall be black including panels and frames, to minimize reflectivity, with no bare aluminum framing or bare structural surfaces, including brackets and fasteners. The metal framing of the solar panels shall be painted with matte black paint and maintained as necessary to ensure that the material is nonreflective.
9. The annual energy production of the solar panel array shall not exceed the annual energy needs for the residential and agricultural use of the property. Any additional solar panels not included in the approved application or site plan will require a new application and review.
10. The following mitigation measures are required to enhance Oregon white oak woodlands:
  - A. Do not cut Oregon white oak. The landowner is encouraged to reduce hazard fuels throughout parcel, including surface and ladder fuels, and by thinning out dense tree stands.
  - B. Promote "oak release" by removing overtopping and encroaching conifers from the vicinity of oak trees on the subject parcel, thereby reducing the competition for light, water, and nutrients.
  - C. Do not cut any tree containing a gray squirrel nest. WDFW recommends a 50-ft no-cut buffer around nest trees to maintain an interlocking tree canopy and minimize disturbance.
11. Except for dead trees or other dead vegetation that may pose a hazard, all existing mature vegetation in the vicinity the site shall be retained and maintained for screening purposes and to overall visual character and appearance of the landscape is retained.
12. If cultural resources are discovered, all activities within 100 feet of the cultural resources shall immediately cease and the applicants shall notify the Gorge Commission within 24 hours of discovery and the State Physical Anthropologist, Dr. Guy Tasa at (360) 586-3534 or guy.tasa@dahp.wa.gov. The cultural resources shall remain as found and further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.
13. If human remains are discovered, all activities shall cease immediately 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 THIS 31 day of January 2023 at White Salmon, Washington.

Krystyna U. Wolniakowski  
Krystyna U. Wolniakowski  
Executive Director

## Expiration of Approval

Commission Rule 350-082-0160 governs the expiration of this Director's Decision.

Expiration of this Director's Decision is automatic. The Executive Director does not notify applicants or landowners of decisions that are expired or may be close to expiring.

**This decision of the Executive Director becomes void on the 31 day of January 2025 unless construction has commenced in accordance with Commission Rule 350-082-0160(4).**

Commission Rule 350-082-0160(4) specifies that commencement of construction means actual construction of the foundation or frame of the approved structure.

Construction must be completed within two years of the date the applicant commenced construction. Commission Rule 350-082-0160(5) specifies that completion of the structure means completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the National Scenic Area approval. The date of the Executive Director's preconstruction inspection to confirm the location of proposed structural development shall be considered the date the applicant commenced construction unless the Gorge Commission or applicant demonstrates otherwise.

Once the applicant has commenced construction of one element in this decision, the applicant must complete all elements in this decision in accordance with Commission Rule 350-082-0160. The Gorge Commission does not use different commencement of construction dates for different elements in this decision.

The applicant may request one 12-month extension of the time period to commence construction and one 12-month extension to complete construction in accordance with Commission Rule 350-082-0160(6). The applicant must submit the request in writing prior to the expiration of the approval. If the applicant requests an extension of time to complete construction after commencing construction, the applicant shall specify the date construction commenced. The Executive Director may grant an extension upon determining that conditions, for which the applicant is not responsible, would prevent the applicant from commencing or completing the proposed development within the applicable time limitation. The Executive Director shall not grant an extension if the site characteristics 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 on the 2 day of March 2023.**

The decision of the Executive Director is final unless the applicant or any other person who submitted comment files a Notice of Appeal with the Commission within thirty (30) days of the date of this decision. Commission Rule chapter 350, division 70 governs appeal of this decision. This rule is available on the Gorge Commission's website and at the Gorge Commission office. You may contact the Gorge Commission office if you have questions about appealing this decision.



## Notes

1. Any new land uses or structural development such as driveways, parking areas, garages, workshops, fences or other accessory structures; or additions or alterations not included in the approved application or site plan will require a new application and review. New cultivation also requires a new application and review.
2. This decision does not address local, state, or federal requirements that may be applicable to the proposed development. The landowner is responsible for obtaining all applicable county, state, or federal permits required for the development.

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In accordance with Commission Rule 350-082-0150(6), the Gorge Commission staff mailed notice of this decision to the following governments, agencies, and organizations and persons who provided comment on the application:

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 Public Works Department  
Klickitat County Health Department  
Klickitat County Assessor  
Washington Natural Heritage Program  
Washington Department of Fish and Wildlife  
Steve McCoy, Friends of the Columbia Gorge

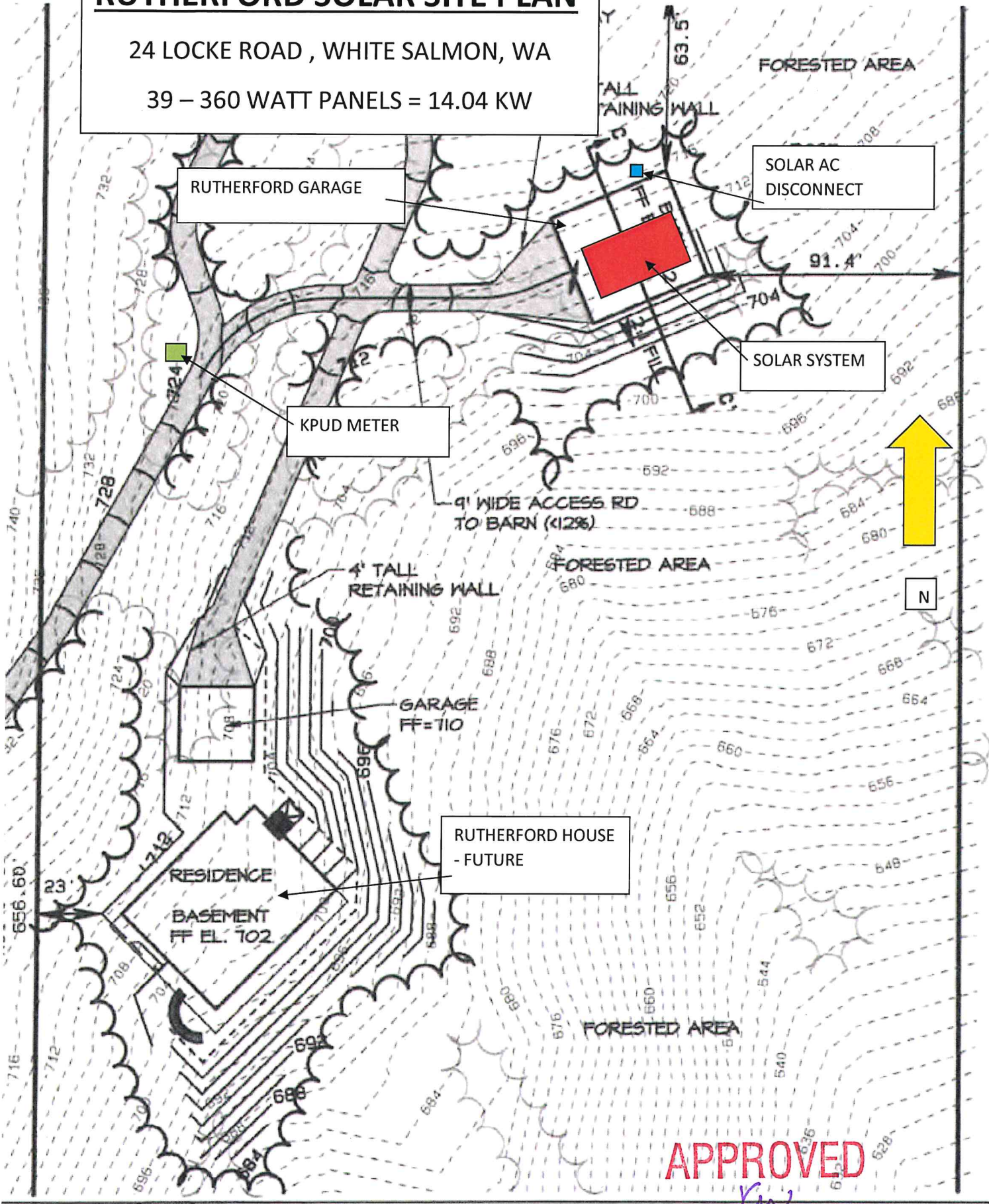
Attachments:

Staff Report for C22-0017  
Approved site plans and elevation drawings

# RUTHERFORD SOLAR SITE PLAN

24 LOCKE ROAD , WHITE SALMON, WA

39 – 360 WATT PANELS = 14.04 KW



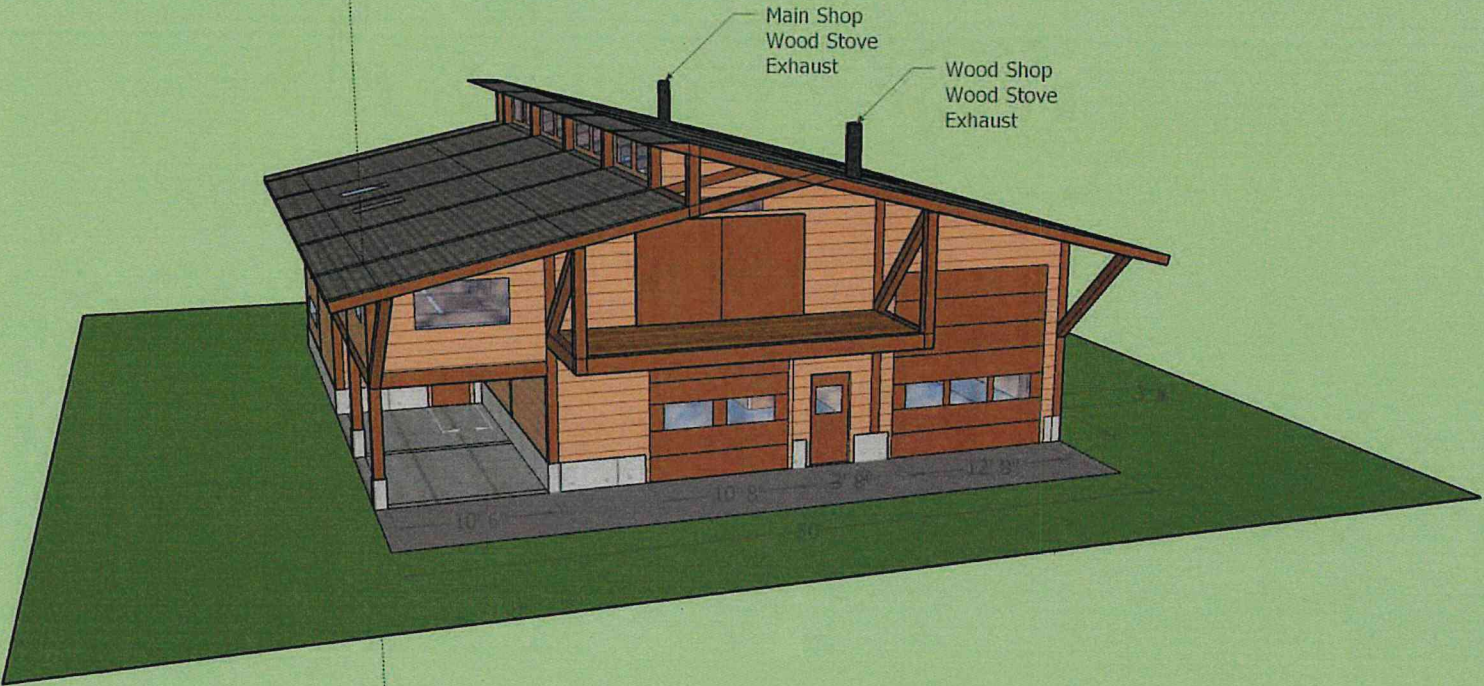
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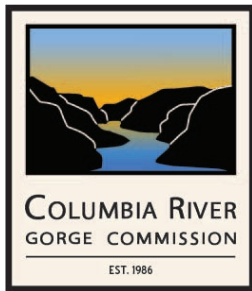
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APPROVED

kw





# Development Review Staff Report

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## Notice of Application Mailed to:

In accordance with Commission Rule 350-082-0110, the Gorge Commission staff mailed notice of this application to property owners within 200 feet of the subject parcel and sent email notice of this application to the following governments, agencies, and organizations:

Confederated Tribes and Bands of the Yakama Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of Warm Springs  
Nez Perce Tribe  
U.S. Forest Service National Scenic Area Office (USFS CRGNSA)  
Washington Department of Archaeology and Historic Preservation (DAHP)  
Klickitat County Planning Department  
Klickitat County Building Department  
Klickitat County Public Works Department  
Klickitat County Health Department



Klickitat County Assessor  
Skamania County  
Washington Natural Heritage Program  
Washington Department of Fish and Wildlife (WDFW)  
Friends of the Columbia Gorge

## Written Comments Received From:

Friends of the Columbia Gorge (Steve McCoy, Staff Attorney)  
USFS CRGNSA (Chris Donnermeyer, Heritage Resource Program manager)

## Findings of Fact

### A. Land Use

1. Jeri Rutherford proposes to build a new roof and roof-top mounted solar panel array for her barn. Ms. Rutherford wants to change the roof on her barn from a monitor roof to a double shed roof with upper clerestory. The height and size of the building will remain the same. The shed roof will better support the size of the solar panel array. The solar panel array consists of thirty-nine panels. No grading is proposed.
2. The subject parcel is in a Special Management Area (SMA) but is designated General Management Area (GMA) Small-Scale Agriculture with a 40-acre minimum parcel size, consistent with Section 8(o) of the National Scenic Area Act.

The subject parcel is five acres in size and lies approximately 1-mile north up Courtney Road from its intersection with SR 14. The parcel is rectangular in shape (660 ft north/south x 330 ft. east/west), and covered in dense vegetation, Oregon white oak with a mix of ponderosa pines and other evergreens. The parcel is in the Oak-Pine Woodland landscape setting.

3. Commission Rule 350-81-190(1)(v) allows additions to existing buildings greater than 200 sq ft in area or greater than the height of the existing building on lands designated small-scale agriculture, subject to compliance with Commission Rules 350-81-520 through 350-81-620 that protect scenic, cultural, natural, and recreation resources. Commission Rule 350-81-020 (60) defines existing structure as any structure that was legally established.

The new roof and solar panel array are an addition to the existing barn. Previous Directors Decisions include Decision C20-0010, which approved a new single-family dwelling, a detached garage, the subject barn, and livestock fencing. The barn is a legally established existing structure.

4. Commission Rule 350-81-020(90)(d) defines industrial uses as any use of land or water primarily involved in the production of electric power for commercial purposes, and the Management Plan prohibits industrial uses in the National Scenic Area.

The solar array for the residence is rated 14 kW. The solar panel array consists of 39 total panels. The applicant provided information about the existing power consumption and estimated power consumption for the property, and provided an energy performance report for the single-family dwelling.

The array consists of 39 panels; and each panel is rated for 360 watts with average production of 240 watts. If the panels get an average of 4.5 hours of direct sunlight every day – the average for the area over a year – the energy output would be approximately 1 kWh per panel per day. For 39 panels, the annual combined maximum energy production is estimated at 14 MWh per year.

The dwelling uses an average of 18 MWh per year and barn uses an average of 7.2 MWh per year. The total use for the property is approximately 25.2 MWh per year, and the total output of the array will be a maximum of 14 MWh per year.

As currently constructed, the total generating capacity of the array is approximately the same as the annual energy needs for the residential use on the property. The system is sized to meet the energy consumption needs of the residence. The solar panels included in this development are intended to be accessory and subordinate to the primary use of the parcel as a residential use.

### **Land Use Conclusion:**

The proposal is an allowed review use, subject to Commission Rules 350-082-0600 through 350-082-0720 that protect scenic, cultural, natural, and recreation resources.

## **B. SCENIC RESOURCES**

1. Commission Rule 350-082-0600(1)(a) states:

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

No new grading is proposed, consistent with this rule.

2. Commission Rule 350-082-0600(1)(b) states:

*New buildings and expansion of existing development shall be compatible with the general scale of existing nearby development. New buildings that are 1,500 square feet or less are exempt from this guideline. Findings addressing this guideline shall include, but are not limited to:*

*(A) Application of the landscape setting design guidelines, if applicable.*

*(B) A defined study area surrounding the development that includes at least ten existing buildings, not including existing buildings within urban areas or outside the National Scenic Area.*

*(C) Individual evaluations of scale for each separate proposed building in the application and each separate building in the study area, including:*

*(i) All finished above ground square footage;*

*(ii) Total area of covered decks and porches;*

*(iii) Attached garages;*

- (iv) Daylight basements;
- (v) Breezeways, if the breezeway shares a wall with an adjacent building; and
- (vi) Dimensions, based on information from the application or in Assessor's records.

(D) An overall evaluation demonstrating the compatibility of proposed development with surrounding existing development and development approved but not yet constructed. Buildings in the vicinity of the proposed development that are significantly larger in size than the rest of the buildings in the study area should be removed from this evaluation.

No new buildings are proposed.

3. Commission Rule 350-082-0600(1)(c) states:

*Landowners shall be responsible for the proper maintenance and survival of any planted vegetation required by 350-082-0600.*

No planted vegetation is required by 350-082-0600.

4. Commission Rule 350-082-0600(2) has guidelines that affect developments on sites visible from KVAs. Staff determined the subject parcel is topographically visible from five KVAs: Columbia River, Historic Columbia River Highway (HCRH), I-84, Rowena Plateau, and SR 14. Because the proposed development is topographically visible from KVAs, the guidelines of Commission Rule 350-082-0600(2) are applicable. The proposed development is visible from the four KVAs at the following distance zones:

Key Viewing Area (KVA)	Distance Zone		
	Foreground	Middle ground	Background
	0 -1/4 mile	1/4 - 4 miles	Over 4 miles
Columbia River		X	
Historic Columbia River Highway		X	X
Interstate 84		X	
Rowena Plateau			X
SR-14		X	X

5. Commission Rule 350-082-0600(2)(a) requires new development to be visually subordinate to its landscape setting as visible from key viewing areas.

Commission Rule 350-082-0070(202) defines *visually subordinate* as follows:

*... A description of the relative visibility of a development, structure, or use where that development, structure, or use does not noticeably contrast with the defining landscape setting characteristics, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan) and the setting appears only slightly altered (distinctive characteristics of that setting remain dominant). As opposed to development, structures, or uses that are fully screened, structures that are visually subordinate may be partially visible but would be difficult to discern to the common viewer. Visually subordinate*



*development, structures, or uses as well as forest practices in the SMAs shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of scale, proportion, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.*

The Director's Decision contains requirements and conditions of approval to ensure the development is *visually subordinate*. Factors contributing to the visibility of the development include the size, shape, dark earth-tone colors, low reflective building materials, distance from KVAs and existing topography and vegetation.

6. Commission Rule 350-082-0600(2)(b) requires that a determination of potential visual effects and compliance with the visual subordination standard in subsection (a) above shall include consideration of the cumulative effects of proposed development. Commission Rule 350-082-0070(50) defines cumulative effects as:

*The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.*

To determine cumulative effects of the proposed development, staff analyzed existing development and development potential of the subject parcel and the adjacent and nearby lands in the Oak-Pine Woodland landscape setting within a half mile of the subject parcel. As seen from KVAs, the subject parcel is in an area where existing dwellings are visible but sparsely scattered throughout the landscape. Staff chose the study area because the parcels are within the same Oak-Pine Woodland landscape setting as the subject property and have similar visibility from KVAs (Key Viewing Areas). Additionally, many of the parcels in the area are developed with single-family dwellings.

As seen from KVAs in the distance, the area is not densely populated, but existing dwellings and accessory buildings are visibly scattered throughout the landscape. Of the 24 parcels in the study area, staff identified 14 parcels with development, including 16 single-family dwellings, and 18 other accessory buildings. Existing development in the vicinity of the proposal that present visual impacts include Courtney Road, SR-14, the BNSF railroad, and the Coyote Wall Recreation Area parking lot. There will not be any visual effects from KVAs in the foreground because no development in the study area will be visible in the foreground of any KVA. The development will be visible from KVAs further away, such as I-84 and the Historic Columbia River Highway. From these KVAs, there is already limited existing development in the viewshed. Generally, however, buildings in these viewsheds are clustered together and appear part of the scattered rural residential development and consistent with the Landscape Setting guidelines.

According to data from Klickitat Assessor Records, within the study area there are 45 parcels. Most of the parcels, comprising approximately 333 acres, are owned by the USFS. Government owned land in the National Scenic Area is not typically developed, so staff assumes that government-owned lands near the subject parcel will not be developed. The remaining 19 parcels are privately-owned. Of the 19 privately-owned

parcels, 15 are developed with dwellings and accessory structures. Three of the privately-owned parcels are undeveloped. Three of the undeveloped privately-owned parcels can be developed in the future and are designated GMA Small-Scale Agriculture with a minimum parcel size of 80 acres by the USFS, according to Section 8(o) of the National Scenic Area Act. Staff assumes for this analysis that these three parcels will someday be developed with a dwelling and accessory structures. The other undeveloped privately-owned parcel is designated SMA Agriculture. According to Commission Rule 350-81-190(c)(D), the minimum parcel size for new dwellings on parcels designated SMA Agriculture is forty acres, and the parcel is larger than 40 acres. Staff assumes this parcel will be developed.

It is possible that there may be similar solar panel arrays on the 'same piece of ground' given the existing residential use and the size of the applicant's property. It is also possible that other buildings in the area can develop renewable energy systems for their properties. However, given the limitations on the number of dwellings and size of other buildings, it is likely that the size of these systems will remain small.

Several factors ensure the proposed roof and solar panel array will not cause adverse scenic impacts, including size, viewing distance, colors, non-reflective and low reflectivity building materials, and screening vegetation. The proposed solar panels will not create any adverse cumulative effects to scenic resources because the solar panels will be difficult to distinguish from KVAs. If new solar panel arrays are built according to applicable land use designation guidelines in the vicinity of the proposed development, and if they are designed in an equivalent manner to existing development and consistent with the guidelines of this chapter, they will be held to the same visual resource protection standards and will be required to be visually subordinate. If new developments, including solar panel arrays, are built in a comparable manner to the proposal, there would be no cumulative effects to scenic resources. By using existing topography and vegetation, and building materials that are dark, earth-toned, low- or non-reflective there will be no significant increase in visibility of new development. Development designed and sited to achieve the standard visually subordinate will not generate adverse cumulative scenic impacts. For the reasons above, the proposed development will not cause adverse scenic impacts, and will not cause adverse cumulative scenic impacts, consistent with Commission Rule 350-81-520(2)(c).

7. Commission Rule 350-082-0600(2)(b) states:

*A determination of the potential visual impact of a new development shall include written findings addressing the following factors:*

*(A) The amount of area of the building site exposed to key viewing areas;*

*(B) The degree of existing vegetation providing screening;*

*(C) The distance from the building site to the key viewing areas from which it is visible;*

*(D) The number of key viewing areas from which it is visible;*

*(E) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads); and*

*(F) Other factors the reviewing agency determines relevant in consideration of the potential visual impact.*

The site is visible from the five KVAs listed in Finding B.5. The barn is located an elevation of 700 ft. There are several groups of mature oak pine and fir trees within 200 ft of the development surrounding it from the north, east and south and provide partial screening from KVAs to the south and southeast.

The site is not visible in the foreground of any KVAs. The closest KVA is Washington State Route 14 (SR 14) at a distance of approximately .5 miles. The farthest KVA is Tom McCall Viewpoint, at a distance of approximately 5.5 miles. Using GIS inventories and conducting site visits, staff found that the proposed building site is visible intermittently along SR 14 in the middle ground for .3 miles, I-84 in the middle ground for 2.25 miles, the Columbia River in the middle ground for 2.14 miles, and the Historic Columbia River Highway for 4.5 miles in the middle ground and .2 miles in the background.

The site is only visible from one higher elevation KVA, Tom McCall Viewpoint (approximately 1,700 ft elevation). From this KVA, existing vegetation both on and off the subject parcel provides effective screening because the site is located in the background, 5.5 miles away. At that viewing distance the development will appear insignificant in the landscape and not be visible to the unaided eye.

As seen from lower-elevation KVAs in the middle ground such as I-84, the Columbia River, and SR-14, the development site is topographically visible because the southern slope of the hillside angles downward towards these KVAs. These KVAs are much lower in elevation than the development site however, and the development site and surrounding areas are densely covered in tall trees which help to screen the development from view of KVAs.

The site is most visible from the Historic Columbia River Highway (HCRH). The bike path and road, which extends from Hood River to The Dalles, is at approximately 500 ft elevation until it travels through Mosier, before climbing back up to higher elevation. The development is intermittently visible for 4.5 miles along the HCRH. Because the elevation of the site and the HCRH are similar, the building site will be more visible from this KVA than other nearby KVAs and will not be screened as effectively by existing vegetation as from other KVAs.

As explained below, conditions are applied to the development's color and reflectivity to ensure the development is visually subordinate to its setting as seen from KVAs. With the retention of the existing trees around the house, the roof and solar panel array will blend with the setting and not noticeably contrast with the landscape.

8. Commission Rule 350-082-0600(2)(c) states:

*The extent and type of conditions applied to a proposed development to achieve visual subordination to its landscape setting shall be proportionate to its potential visual impacts as visible from key viewing areas. Conditions may include, and shall be applied using the following order of priority, with (A)*



*being the first condition to require and (F) being the last condition to require if the prior conditions do not achieve visual subordination:*

*(A) Screening by existing topography.*

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

*(C) Retention of existing vegetation on the applicant's property.*

*(D) Design and building materials (color, reflectivity, size, shape, height, architectural and design details and other elements).*

*(E) New landscaping on the applicant's property.*

*(F) New berms or other recontouring on the applicant's property, where consistent with other applicable provisions.*

The site is visible from the five KVAs listed above in Finding B.4, and not visible in the foreground of any KVA. Factors contributing to the visual subordination of the development include the siting, size, shape, dark earth-tone colors, low reflective building materials, distance from KVAs and existing topography and vegetation.

The proposed development is sited on the subject parcel with minimal visibility from KVAs. The applicant has chosen a dark earth tone color for the roof and the solar panel array, which is included as a condition of approval. Consistent with the landscape settings design guidelines, a condition of approval requires existing vegetation surrounding the development on the parcel be retained except for safety. With these conditions included in the Director's Decision, the proposal will be visually subordinate as viewed from KVAs and consistent with the design guidelines for the Oak-Pine Woodlands Landscape Setting. Staff finds these conditions to be proportionate to the development's potential visual impact as seen from KVAs.

9. Commission Rule 350-082-0600(2)(d) states:

*New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from Key Viewing Areas. The following guidelines shall apply to new landscaping used to screen development from key viewing areas:*

*(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-082-0600 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.*

*(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction. If after five years the vegetation has not achieved a size sufficient to screen the development, the Executive*

*Director may require additional screening to make the development visually subordinate.*

*(C) Unless as specified otherwise by provisions in 350-082-0600, landscaping shall be installed as soon as practicable, and prior to project completion.*

*(D) Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.*

*(E) The Scenic Resources Implementation Handbook includes recommended species for each landscape setting consistent with 350-082-0600(3) and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).*

The applicants did not propose a landscaping plan as part of the proposal, and no new landscaping is required to screen the development from KVAs. As described above in Finding B.8, the development has been sited using existing topography and vegetation to help achieve visual subordination.

10. The Commission Rule 350-082-0600(2)(e) states:

*Existing tree cover screening proposed development from key viewing areas shall be retained as specified in 350-082-0600(3).*

The subject parcel is in the Oak-Pine Woodlands landscape setting. Findings for the Landscape Settings Design Guidelines are addressed below.

11. Commission Rule 350-082-0600(2)(f) states:

*The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas.*

The applicant does not propose any new buildings; however, the existing barn complies with this rule. The barn will be 24 ft tall with the new roof and solar panels, the same height originally approved in Director's Decision C20-0010. The subject property is at an elevation of 700 ft, partway up the steep slopes of Coyote Wall which reaches an elevation of over 1,300 ft. The land continues to rise steeply behind the development as seen from all KVAs, creating a large background and keeping the proposed development below the skyline created by the ridge of Coyote Wall. The proposal is consistent with this rule.

12. Commission Rule 350-082-0600(2)(h) states:

*Unless expressly exempted by other provisions in 350-082-0600, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors approved by the reviewing agency shall be included as a condition of approval.*

The applicant has proposed black solar panels with metal framing that is painted matte black. A condition of approval is included requiring the approved dark earth-tone colors for the exterior materials, and that the color is maintained by the applicant as is necessary. The shingles will be Pabco 'Antique Black.' These dark earth-tones are found

within the shadows of the surrounding landscape. A condition of approval requires all exterior surfaces of the proposed development to be these specific colors to ensure consistency with Commission Rule 350-81-520(2)(l).

13. Commission Rules 350-082-0600(2)(i) states:

*The exterior of buildings on lands visible from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. Continuous surfaces of glass shall be limited to ensure visual subordination. The Scenic Resources Implementation Handbook includes a list of recommended exterior materials and screening methods.*

The roof will be black asphalt architectural shingles. The materials are non-reflective and are consistent with this rule. As discussed above, the applicant has proposed black solar panels with metal framing painted matte black. To minimize the reflectivity of the proposal, a condition of approval is included requiring all parts of the solar panel array to be black including the framing, with no bare aluminum framing or bare structural surfaces. A condition of approval requires all exterior surfaces of the barn to be composed of non-reflective materials to ensure consistency with this rule.

14. Commission Rule 350-082-0600(2)(j) states:

*Any exterior lighting shall be sited, limited in intensity, shielded, or hooded in a manner that prevents lights from being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes.*

New exterior lighting fixtures are proposed. However, a condition of approval is including in the decision in accordance with this rule.

15. Commission Rule 350-082-0600(2)(r) states:

*Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.*

No new building are driveways are proposed.

16. The Landscape Settings Map for Columbia River Gorge National Scenic Area classifies the subject parcel as Oak-Pine Woodlands. Commission Rule 350-082-0600(3)(c) has applicable guidelines for the proposed development in this landscape setting.

17. Commission Rule 350-82-0600(3)(c)(A) states:

*Structure height shall remain below the tree canopy level in wooded portions of this setting.*

On the subject parcel and in the vicinity, trees vary in height up to fifty feet and are a mix of oak, fir, and pine trees. The height of the proposed barn with the new roof and solar panels is 24 ft, which is significantly smaller in height than existing vegetation in the vicinity of the development the development. The height of the barn is below tree canopy level, consistent with this rule.



18. Commission Rules 350-082-0600(3)(c)(B) states:

*In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:*

*(i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.*

*(ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.*

*For substantially wooded portions:*

*(iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., existing tree cover screening the development from Key Viewing Areas shall be retained.*

*(iv) For treeless portions or portions with scattered tree cover:*

*(I) Structures shall be sited on portions of the property that provide maximum screening from Key Viewing Areas, using existing topographic features.*

*(II) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.*

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

The property has oaks and other trees to the east, south and west of the development that help screen the development from view of KVAs. No trees are proposed to be removed, and no new landscaping is required by this Decision. However, a condition of approval is included requiring the applicants to retain existing tree cover screening the development from view of KVAs to ensure the overall visual character and appearance of the landscape is retained, consistent with this rule.

### **Scenic Resources Conclusion:**

The proposed development is consistent with Commission Rule 350-082-0600 that protects scenic resources in the National Scenic Area.

## **C. CULTURAL RESOURCES**

1. Except as specified in Commission Rule 350-082-0620(2)(a)(C), new development in the NSA requires a reconnaissance survey.
2. Chris Donnermeyer, Heritage Resource Program Manager, U.S. Forest Service Columbia River Gorge National Scenic Area, reviewed the land use application and determined in a Cultural Resources Survey Determination letter, dated November 30, 2022, that pursuant to Commission Rule 350-082-0620(2)(a)(C) a Cultural Resource Reconnaissance Survey is not required because the proposed use would involve the modification, expansion, replacement, or reconstruction of existing buildings and

structures, would occur on a site that has been determined to be located within a low probability zone, and does not occur within 500 feet of a known archaeological site.

3. Commission Rule 350-082-0620(2)(a)(D) describes when a historic survey is needed. In his November 2022, Cultural Resources Survey Determination letter, Mr. Donnermeyer determined that a historical survey is not required because the proposed use would not alter the exterior architectural appearance of significant buildings and structures that are 50 years old or older and would not compromise features of the surrounding area that are important in defining the historic or architectural character of significant buildings or structures that are 50 years old or older.
4. Commission Rule 350-082-0620(2)(g)(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 30 calendar days of the date that a notice was mailed.*

The project notice was mailed on October 3, 2022, and the comment period ended on October 24, 2022. As explained above, the proposed use did not require a reconnaissance or historic survey and no comments were received regarding cultural resource concerns. Pursuant to Commission Rule 350-082-0620(2)(g)(B)(i), the cultural resource protection process may conclude.

5. Commission Rule 350-082-0620(6) protects cultural resources discovered after construction begins. 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 is included in the director's decision consistent with this rule.
6. Commission Rule 350-082-0620(6) contains provisions addressing discovery of human remains. A condition of approval is included in the director's decision consistent with this rule.

### **Cultural Resources Conclusion**

With conditions protecting unknown cultural resources and human remains discovered during construction, the proposal is consistent with the guidelines in Commission Rule 350-082-0620 that protects cultural resources in the General Management Area.

### **D. NATURAL RESOURCES**

1. Commission Rule 350-81 provides guidelines for protecting wetlands, streams, ponds, lakes, and riparian areas (Section 0640); sensitive wildlife areas and sites (Section 0650); and sensitive plants (Section 0660) in the GMA.
2. The Gorge Commission's natural resource inventories do not show any wetlands, streams, ponds, lakes, riparian areas, or resource buffer zones on the parcel.

Commission inventories show an intermittent stream and freshwater pond approximately 300 feet away from the proposed development site on an adjacent parcel designated SMA Agriculture, which is greater than the applicable water resource buffers for SMA water resources and GMA water resources. The proposed development is consistent with Commission Rule 350-82-0640.

3. The Gorge Commission's sensitive wildlife inventory shows the development site is located within Winter Range and Oregon white oak woodlands; sensitive wildlife areas defined by Commission Rule 350-082-0690 Table 1 – Priority Habitats. Commission Rule 350-082-0650, which protects sensitive wildlife areas and sites, applies to the proposal.
4. Commission Rule 350-082-0650(3)(a) requires the Gorge Commission notify the Washington Department of Fish and Wildlife (WDFW) when a new development or land use is proposed within a sensitive wildlife area, in this case, deer and elk winter range and Oregon white oak woodlands. On October 3, 2022, Gorge Commission staff sent WDFW a copy of the applicant's land use application and site plan.
5. Commission Rule 350-082-0650(3)(b) states:

*Oregon white oak shall not be removed if practicable alternatives exist. If no practicable alternative exists, a wildlife survey and mitigation plan shall be required. This guideline shall not apply to forest practices that are otherwise allowed and that do not violate conditions of approval for other approved uses.*

The proposed development takes places in the Oregon white oak woodlands and there are several Oregon white oak trees on site. To ensure the integrity of Oregon white oak woodlands on subject parcel, the following recommendations are included as conditions of approval:

- A. Do not cut Oregon white oak. The landowner is encouraged to reduce hazard fuels throughout parcel, including surface and ladder fuels, and by thinning out dense tree stands.
- B. Promote “oak release” by removing overtopping and encroaching conifers from the vicinity of oak trees on the subject parcel, thereby reducing the competition for light, water, and nutrients.
- C. Do not cut any tree containing a gray squirrel nest. WDFW recommends a 50-ft no-cut buffer around nest trees to maintain an interlocking tree canopy and minimize disturbance.

Due to the size and nature of the development, with these conditions of approval, staff does not believe the proposed development compromises the integrity of the parcel as a wildlife site. These are the same conditions of approval included in Directors Decision C20-0010, the original approval for the barn and agricultural use.



6. Commission Rule 350-082-0650(3)(d) states:

*The wildlife protection process may conclude if the Executive Director, in consultation with the state wildlife agency, determines:  
(A) The sensitive wildlife site is not active; or  
(B) The proposed use would not compromise the integrity of the Priority Habitat or sensitive wildlife site or occur during the time of the year when wildlife species are sensitive to disturbance.*

WDFW did not indicate any concerns with the proposed development. With conditions of approval regarding the protection Oregon white oak on the subject parcel, staff does not believe the proposed development compromises the integrity of the parcel as wildlife site due to the size, location and nature of the development.

7. Commission Rule 350-082-0650(1)(c) states:

*Proposed uses within 1,000 feet of a Priority Habitat or sensitive wildlife site shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.*

Commission Rule 350-082-0070(50) defines *cumulative effects* as:

*The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.*

As noted in finding D.4 above, the development site is located within the Big White Salmon River Winter Range. Staff considered the existing conditions of the study area and the likelihood of other similar development. For the purposes of evaluating the cumulative effects of repeated similar activities, staff focused on similarly zoned National Scenic Area lands within the Big White Salmon River Winter Range.

The Big White Salmon River Winter Range is approximately 16,000 acres spanning three to four miles on either side of the White Salmon River. Existing conditions in the study area can be described as rural with dispersed structural development. Corridors of trees, including Douglas fir and Oregon white oak exist primarily along stream corridors which have protected buffers.

WDFW did not indicate any concerns with the proposed development. Staff believes the proposed development will have negligible effect on existing Winter Range and Oregon white oak woodlands. Pursuant to Commission Rule 350-082-580(1)(c), staff does not believe the proposed development creates any adverse effects, including cumulative effects, to the integrity of the parcel as wildlife site, due to the size, location and nature of the development.

8. The Gorge Commission's sensitive plant inventory does not show any sensitive plant sites within 1,000 feet of the proposed development. The proposal complies with Commission Rule 350-082-0660 that protects sensitive plants.

## **Natural Resources Conclusion:**

With the conditions of approval discussed above, the proposed development is consistent with the rules in Commission Rule 350-082, Sections 0640 through 0690, that protect natural resources in the National Scenic Area.

## **E. RECREATION RESOURCES**

1. Commission Rule 350-082-0580(3) states:

*If new buildings or structures may detract from the use and enjoyment of established recreation sites, an appropriate buffer shall be established between the building/structure and the parcel.*

The property is designated Recreation Class 2, according to the Gorge Commission's Recreation Intensity Class map. The proposed development is located near USFS lands associated with the Coyote Wall recreation site and is .4 miles northwest of the Coyote Wall trailhead. While the proposed development will be topographically visible from the Coyote Wall recreation site, intervening vegetation and the dark-earth tone colors of the development will limit its visibility for recreation users at that site. Staff finds the proposed use will not detract from the use and enjoyment of the Coyote Wall recreation site.

## **Recreation Resources Conclusion:**

The proposed development is consistent with Commission Rule 350-082-0580(3) that protects recreation resources in the National Scenic Area.

## **F. TREATY RIGHTS PROTECTION**

1. Commission Rule 350-082-0130 provides protection of tribal treaty rights from new development in the National Scenic Area.
2. Commission Rule 350-082-0130(1) lists additional notice requirements for projects in or providing access to the Columbia River or its fish bearing tributaries or for projects that may affect tribal treaty rights and provides 30 days for tribal governments to submit comments.

The subject parcel has no access to the Columbia River, but pursuant to other noticing requirements, notice of the proposal was mailed or emailed to the four Treaty Tribe governments on October 3, 2022. The notice included a comment period of 30 days that ended on November 2, 2022.

3. Commission Rule 350-082-0130 (1)(d) lists guidelines for tribal government consultation when any of those governments submit substantive written comments.

No substantive comments were received.

4. Commission Rule 350-082-0130(1)(i) 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.*

The subject parcel does not provide access to the Columbia River or its fish bearing tributaries. No known treaty rights are affected by this proposal and no treaty rights concerns were raised by the tribal governments. Because the proposed use does 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).

**Treaty Rights Conclusion:**

The proposed development is consistent with the guidelines in Commission Rule 350-082-0130, which provides protection for treaty rights and any other rights of any Indian tribe.

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