

# Director's Decision

## Summary of Application

<b>FILE NUMBER:</b>	C23-0009
<b>PROPOSAL:</b>	The Columbia River Gorge Commission has received an application for a roof-top solar panel array.
<b>APPLICANTS:</b>	Pro-Stat Services, LLC.
<b>LANDOWNERS:</b>	William Osborne
<b>SIZE and LOCATION:</b>	The subject parcel is approximately one and a half acres in size and located at 106 Riverview Drive and described as tax lot number 02-13-1720-1202/00 in the northeast quarter of Section 17, Township 2 North, Range 13 East, Willamette Meridian, Klickitat County, Washington.
<b>LAND USE DESIGNATION:</b>	General Management Area (GMA) – Residential (5)

## 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 Pro-Stat Services, LLC, for a roof-top mounted solar array, 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. A post-completion inspection is required. Please contact the Gorge Commission office when all construction is complete to schedule this inspection. The applicant may request interim inspections and 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 developments shall be constructed as shown on the approved project description, site plan and elevation drawings. Any changes shall be reviewed and approved by the Executive Director before the changes are implemented.
6. The color of all elements of the solar panel array shall be black. Only these 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.

7. 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. All exterior building materials shall be nonreflective or have low reflectivity. The applicants proposed matte finish is consistent with this condition and is hereby approved.
8. 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.
9. 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](mailto: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.

10. 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 15 day of February 2024 at White Salmon, Washington.



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 15 day of February 2026 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 this Director's Decision 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 16 day of March 2024.**

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

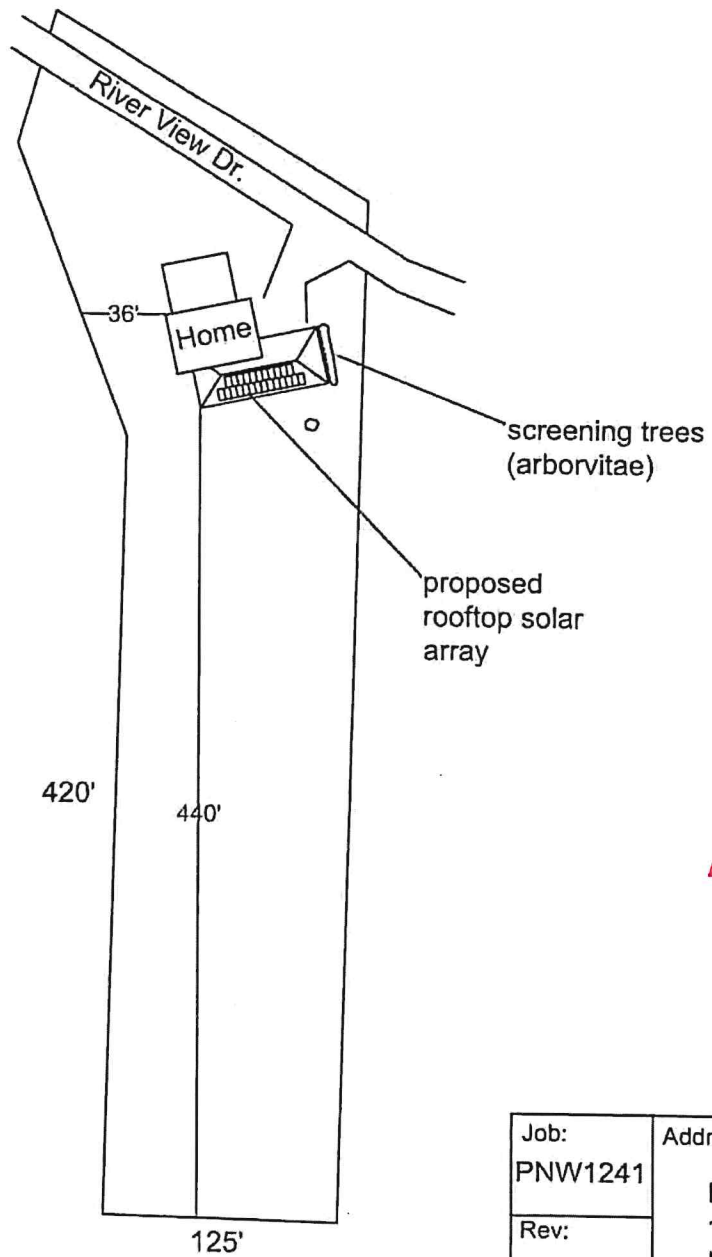
Attachments:

Staff Report for C23-0009

Approved site plans and elevation drawings



For CRGC  
Plot



**APPROVED**  
*kw*

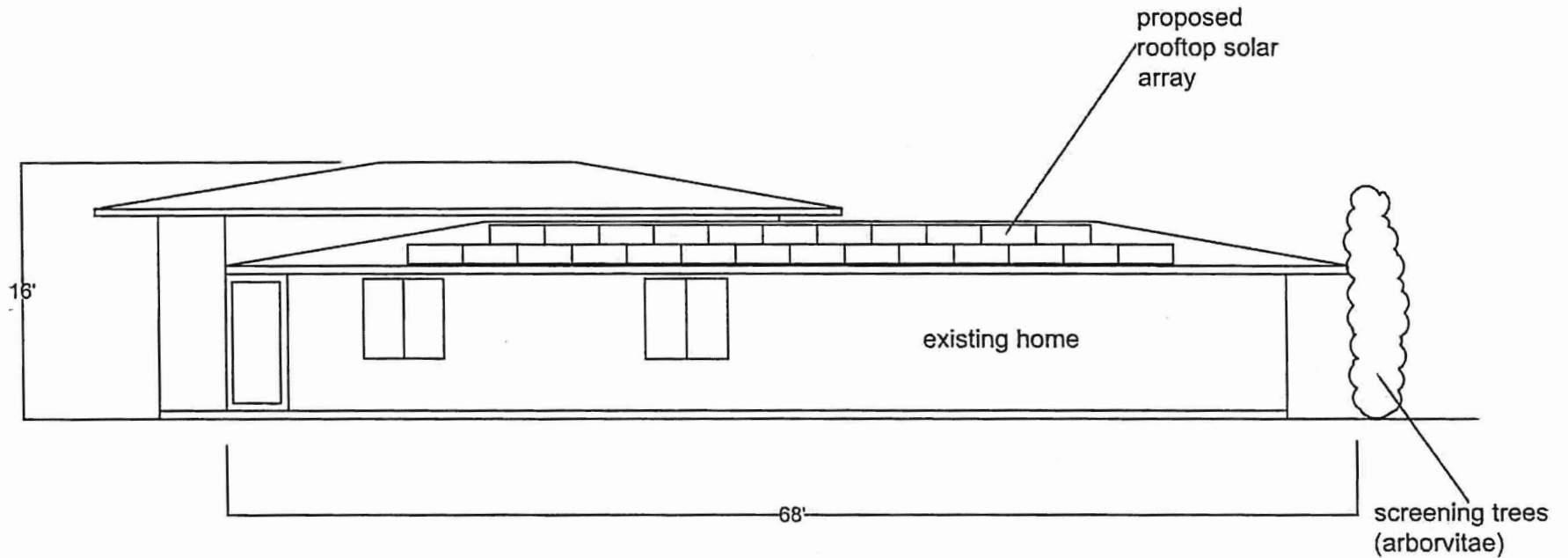
Scale  
1" = 100'

Job: PNW1241	Address: Bill, Cheryl Osborne 106 River View Drive Lyle, WA 98635
Rev: AM	
PROSTAT ELECTRIC & SOLAR	

For CRGC  
South Elevation

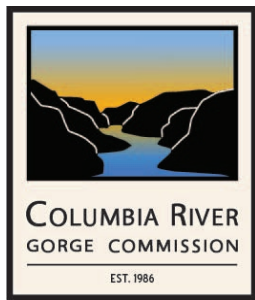
**APPROVED**

*kw*



Scale  
1" = 10'

Job: PNW1241	Address: Bill, Cheryl Osborne 106 River View Drive Lyle, WA 98635
Rev: AM	
PROSTAT ELECTRIC & SOLAR	



# Development Review Staff Report

## Summary of Application

<b>FILE NUMBER:</b>	C23-0009
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<b>LAND USE DESIGNATION:</b>	General Management Area (GMA) – Residential (5)

## 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)  
Ralph Gutierrez (Neighbor)

## Findings of Fact

### A. Land Use

1. Pro-Stat Services, LLC, working on behalf of William Osborne, proposes to build a new roof-top mounted solar panel array for the single-family dwelling on the subject property. The solar panel array consists of twenty-four panels. No grading is proposed.
2. The subject parcel is five acres designated GMA Agriculture and is in the Rural Residential landscape setting. The property is located adjacent to SR-14. Earlier Director's Decisions include C08-0005, which approved a single-family dwelling with attached garage and associated utilities.
3. Commission Rule 350-082-0220(1)(v) allows additions to existing buildings or structures that generate solar power for approved uses, provided the panels and hardware are non-reflective black or dark earth tone colors and do not increase overall roof height.
4. Commission Rule 350-082-0070(105)(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 array consists of 24 panels; and each panel is rated for 400 watts with an 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 1.08 kWh per panel per day. For 24 panels, the annual average energy production is estimated at 9.5 MWh per year and a maximum energy production is 15.8 MWh per year.

The dwelling uses an average of 26 MWh per year according to Klickitat Public Utility District records. The energy produced by the solar panels will not exceed the energy needed to power the residential and agricultural uses on the property. The proposed solar panels are accessory and subordinate to the primary uses of the parcel and will not be used commercially. The proposed solar array is not industrial use.

### Land Use Conclusion:

The proposal is an allowed expedited review use, subject to Commission Rule 350-082-220(2) that protects scenic, cultural, natural, and recreation resources.

## B. SCENIC RESOURCES

1. Commission Rule 350-082-0220(2)(a)(A) states:

*In the GMA, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.*

The application does not include woven wire fences for agricultural use. This rule does not apply.

2. Commission Rule 350-082-0220(2)(a)(B) states:

*Except signs, the colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors approved by the reviewing agency shall be included as a condition of approval. This guideline shall not apply to additions to existing buildings smaller in total area in square feet than the existing building, which may be the same color as the existing building.*

The proposed accessory building will be topographically visible from multiple KVAs including SR-14, I-84, the Historic Columbia River Highway and Rowena Plateau. The applicant has proposed black solar panels with metal framing that are painted matte black. A condition of approval is included in the Director's Decision requiring all elements of the proposal to be this color, consistent with Commission Rule 350-082-0220(2)(a)(B).

3. Commission Rule 350-082-0220(2)(a)(C) states:

*Except signs, structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.*

The applicant has proposed black solar panels with metal framing that is painted matte black. A condition of approval will require the use of matte paint to ensure the panels will have low reflectivity and that the paint be maintained to ensure that the array will continue to have low reflectivity.

4. Commission Rule 350-082-0220(2)(a)(D) states:

*Any exterior lighting shall be sited, limited in intensity, hooded, and shielded 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. Shielding and hooding materials shall be composed of non-reflective, opaque materials.*

No exterior lighting is proposed. This rule does not apply. If any lighting is proposed in the future, it will require application and review by the Gorge Commission prior to installation.

5. Commission Rule 350-082-0220(2)(a)(E) states:

*Signs shall comply with 350-082-0520.*

No signs are proposed. This rule does not apply.

6. Commission Rule 350-082-0220(2)(a)(F) states:

*Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).*

The proposed accessory building is within one-half mile of SR-14 and the Columbia River and is topographically visible. The proposed development takes place within the General Management Area. According to Commission Rule 350-082-0600(2), the applicable scenic standard for development in the General Management Area that is visible from KVAs is *visually subordinate*. The presence of the development is not in itself contrary to the described scattered rural development of the Rural Residential landscape setting. As proposed, the solar panels and hardware are matte black and do not increase the overall roof height. The dark color of the solar panels will ensure that they blend in with the shaded areas around the development site. The proposed solar panel array will be sited, screened, and designed to meet the applicable scenic standard *visually subordinate*.

#### **Scenic Resources Conclusion:**

The proposed development is consistent with Commission Rule 350-082-220(2)(a) that protects scenic resources in the National Scenic Area.

### **C. CULTURAL RESOURCES**

1. Commission Rule 350-082-220(2)(b)(A) states that the expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey or historic survey as determined by 350-082-0620(2)(a)(C) and 350-082-0620(2)(a)(D).
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 January 9, 2024, that pursuant to Commission Rule 350-082-620(2)(a)(C) a Cultural Resource Reconnaissance Survey is not required because the proposed use 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 350-082-620(2)(a)(D) describes when a historic survey is required. In his January 9, 2024, Cultural Resources Survey Determination letter, Mr. Donnermeyer determined 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 350-082-220(2)(b)(B) states:

*The GMA guidelines that protect cultural resources and human remains discovered during construction (350-082-0620(6) and (7)) shall be applied as conditions of approval for all development approved under the expedited development review process, including development in the SMAs.*

Commission Rule 350-082-0620(6) protects cultural resources discovered during construction, and Commission Rule 350-082-0620(7) contains provisions addressing discovery of human remains during construction. Conditions of approval are included in the director's decision consistent with these rules.

### **Cultural Resources Conclusion**

With conditions protecting unknown cultural resources and human remains discovered during construction, the proposal is consistent with Commission Rule 350-082-220(2)(b) that protects cultural resources in the National Scenic Area.

## **D. NATURAL RESOURCES**

1. Commission Rule 350-082-0220(2)(d)(A) protects water resources. The rule states:

*The development is outside water resources and their buffer zones. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.*

The Gorge Commission's water resource inventory data identifies a perennial stream over 450 ft away from the proposal. The proposal is outside the 100 ft buffer required for perennial streams and Commission Rule 350-082-0640(6)(f). The development is consistent with Commission Rule 350-082-0220(2)(d)(A).

2. Commission Rule 350-082-0220(2)(d)(B) protects sensitive wildlife and rare plants. The rule states that the development is allowable if it meets one of the following:

*(I) The development is at least 1,000 feet from known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range) and known rare plants.*

*(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained.*

*(III) For sensitive wildlife, the development is within 1,000 feet of known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range), but an appropriate federal or state wildlife agency determines the Priority Habitat or sensitive wildlife site is*

*not active, the proposed development would not compromise the integrity of the Priority Habitat or wildlife area, or the proposed development would not occur during the time of the year when wildlife species are sensitive to disturbance.*

*(IV) For rare plants, the development is within 1,000 feet of known rare plants, but the Oregon Biodiversity Information Center or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the rare plants.*

The development will not disturb the ground. The development is consistent with Commission Rule 350-082-0220(2)(d)(B)(II).

#### **Natural Resources Conclusion:**

With the conditions of approval discussed above, the proposed development is consistent with Commission Rule 350-082-0220(2)(d) that protects natural resources in the National Scenic Area.

### **E. RECREATION RESOURCES**

1. Commission Rule 350-082-0220(c) states:

*The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.*

No recreation site or facility exists on the subject parcel or adjacent parcels.

#### **Recreation Resources Conclusion:**

The proposed development is consistent with Commission Rule 350-082-0220(2)(c) that protects recreation resources in the National Scenic Area.

### **F. TREATY RIGHTS PROTECTION**

1. Commission Rule 350-082-0220(2)(e) provides protection of tribal treaty rights from new development in the National Scenic Area. It states:

*(A) Proposed development shall not affect or modify any treaty or other rights of any Indian tribe.*

*(B) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if a tribal government submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.*

*(C) Except as provided in subsection (B) above, 350-082-0130 shall not apply to proposed development reviewed under the expedited review process.*

Notice of the proposed development was sent to the four Treaty Tribe governments on December 20, 2023. Pursuant to Commission Rule 350-082-0220(2)(e)(C), the 30-day notice period for tribal treaty rights and consultation does not apply. No comments were received from any tribal government during the 10-day comment period for expedited review uses, or in the 30 days after the initial notice. Staff concludes that the proposed development does not affect or modify any known treaty or other rights of any Indian tribe.

**Treaty Rights Conclusion:**

The proposed development is consistent with the guidelines in Commission Rule 350-082-0220(e), which provides protection for treaty rights and any other rights of any Indian tribe.

BG  
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