

ATTACHMENT D – STAFF REPORT

File Number: PLASAR-17-07-0010

Applicant: Common Energy LLC, Scott Sorenson

Owner: Anna-Louise Reysenbach

Request: Scenic Area Review to add an 18 panel black solar array (approximately 330 square feet) on a south facing roof of an existing single family dwelling.

Decision: Approved, with **Conditions**

Decision Date: August 31, 2017

Appeal Deadline: September 15, 2017

Location: The property is located at south of Proctor Road, 0.2 miles west of it's intersection with Rattler Ridge Road, approximately 1.8 miles southwest of Mosier, Oregon; more specifically described as:

<u>Existing Tax Lot</u>	<u>Acct #</u>	<u>Acres</u>
2N 11E 10 2000	251	3.88

Zoning: The property is zoned F-3 (80), Small Woodland Forest Zone, in the General Management Area of the Columbia River Gorge National Scenic Area.

Past Actions: None

Procedure Type: Administrative

Prepared By: Will Smith, Associate Planner

I. APPLICABLE STANDARDS

Wasco County National Scenic Area Land Use & Development Ordinance (NSALUDO)

A. Chapter 3 – Basic Provisions, Section 3.150, F-3, Small Woodland Forest Zone

Section 3.150.D, Uses Permitted Subject to Scenic Area Review

Section 3.150.G, Property Development Standards

B. Chapter 11 – Fire Safety Standards

Section 11.110, Siting Standards

Section 11.120, Defensible Space

Section 11.130, Construction Standards for Dwellings and Structures

Section 11.140, Access Standards

Section 11.150, Fire Protection or On-Site Water Required

C. Chapter 14 – Scenic Area Review

Section 14.100, Provisions for all new development

Section 14.200, Key Viewing Areas

Section 14.300, Scenic Travel Corridors

Section 14.400, Landscape Settings

Section 14.500, Cultural Resources – GMA

Section 14.600, Natural Resources – GMA

Section 14.700, Recreation Resources - GMA

Section 14.800, Indian Tribal Treaty Rights and Consultation - GMA

I. BACKGROUND

A. Legal Parcel: This property is Parcel 3 in Partition Plat from Minor Partition MIP-78-123. This partition was approved by Wasco County and recorded on November 27, 1990. The latest deed, 2002-4114, matches the description from the original partition. The (Legal) Parcel definition reads “A unit of land created as follows: b) A parcel in an existing, duly recorded major or minor land partition...” Staff finds that this lot matches that criterion and is a Legal Parcel.

B. Site Description: This 3.9 acre parcel is predominantly grassland among Ponderosa Pine trees.. The existing structures sit at an elevation of 680 feet ASL. The property is flat from the road to the home site, and then drops off steeply down to Rock Creek which lies 120’ southeast of the home and runs through the property from the southwest to the northeast. This 50% slope has a southeast aspect and rises again toward the southeast corner of the parcel with a northwest aspect. A BPA transmission line easement runs through the property approximately 60’ south of the development. The dwelling is accessed by a short driveway off Proctor Road, a gravel road.

C. Surrounding Land Use: All adjacent properties are zoned GMA F-3 (80) Small Woodland Forest Zone. Proctor Road continues past the home and dead ends ¼ mile to the southwest. Rock creek runs through the subject parcel, as well as parcels east and south west. 30% - 40% slopes rise up from the creek to the northwest and southeast. No farm uses are evident in the area. Other properties nearby and along Proctor Road are unoccupied or contain single family dwellings with occasional accessory buildings as well. Adjacent properties are similarly wooded as the subject property with Ponderosa Pine, scattered oak, and grass beneath the canopy. The BPA easement is open and lightly vegetated.

D. Public Comment: Notice of Administrative Action was mailed on August 3, 2017, to all owners of property within 200' of the subject lot, the U.S. Forest Service - Columbia River Gorge National Scenic Area Office, Columbia River Gorge Commission, Oregon State Historic Preservation Office, the four Columbia River Treaty Tribe Indian tribal governments, and other interested parties registered within Wasco County. This notice provided a 20-day pre-notice for public comment. As of the notice of this decision, the following comments were received:

(August 4, 2017) Laura Loop, realty Specialist, Bonneville Power Administration
Bonneville Power Administration (BPA) has a power line easement across this parcel. BPA reviewed the application and "does not have any objection to mount an 18-panel black solar array on the roof of an existing structure" but they did request that staff adds language protecting this easement to the approval and all associated documentation.
Staff Response: Staff has included their language in Section 3.150 and the Notice of Decision.

(August 17, 2017) Steven McCoy, Staff Attorney, Friends of the Columbia Gorge
Mr. McCoy cited various review criteria and application requirements and stated that conditions of approval must be recorded.
Staff Response: All applicable criteria are addressed throughout this report.

(August 25, 2017) Chris Donnermeyer, Heritage Resources Program Manager, Columbia River Gorge National Scenic Area
Mr. Donnermeyer submitted a Cultural Resource Survey Determination dated August 25, 2017, which states that a cultural resource reconnaissance survey is not required, nor is a historic survey required.
Staff Response: Cultural resources are discussed in Section 14.500.

II. FINDINGS:

Wasco County National Scenic Area Land Use & Development Ordinance (NSALUDO)

A. Chapter 3 – Basic Provisions

Section 3.150, F-3, Small Woodland Forest Zone

D. Uses Permitted Subject to Review: The following uses and activities may be allowed on a legal parcel designated Small Scale Agriculture subject to the Subsection G - Property Development Standards, Chapter 11 - Fire Safety Standards & Chapter 14 - Scenic Area Review, as well as any other listed or referenced standards.

FINDING: Legal parcel information was addressed in I.A. where the subject property was found to be a legal parcel.

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8. *Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 3 below. Non-commercial wind energy conversion systems which fit this category are subject to the applicable provisions of Chapter 19.*

FINDING: The request is to place an 18-panel, 16.5' x 20', 330 square foot solar array on the roof of an existing single family dwelling. This constitutes an accessory structure to that lawfully established dwelling and does not add any square footage to the accessory structure total on the property nor does it not meet the requirements for an expedited review. Staff finds that the request complies with Criterion 2.

Section 3.150.G., Property Development Standards

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2. Structure Siting Standards

The approval of new dwellings and accessory structures on Small Woodland Lands shall comply with the following standards:

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- b. *Clustering or locating proposed development closer to existing development, including roads, on adjacent lands may minimize the impact on nearby or adjacent forest operations and may be considered as an alternative to the two hundred (200) foot setback required in criterion a above.*

Dwellings and accessory buildings shall be setback at least fifty (50) feet from the right of way of the road unless the road is a Scenic Travel Corridor, in which case the provisions of Section 14.300 shall apply.

FINDING: The 2012 staff report (File #PLASAR-12-10-0011) approved this single family dwelling on the subject parcel. The setback requirement for this structure was to be more than fifty (50) feet from the right of way of the road and more than 200' from adjacent properties. The dwelling is 80' from the road right of way, 240' from the southern property line, and 210' from the eastern property line more than the minimum required. There are no adjacent agricultural uses, so agricultural setback standards do not apply. There is a Bonneville Power Administration (BPA) transmission line easement located on the parcel, however. BPA has submitted comment within the pre-notice period raising no objections to the placement of these panels, but requesting the addition of the following language to help ensure public safety and reliable operations of BPA's facilities:

“Portions of this tax lot may be encumbered by easements for high-voltage transmission lines owned by the Bonneville Power Administration (BPA). BPA has acquired rights for these easements that limit the landowner's use of this area. BPA has the right to ingress and egress, and the right to keep the easement free and clear of all buildings, sheds, fences, roads, in-ground, and above-ground swimming pools, trampolines, or any other type of structure, and trees and vegetation. All activities planned with the BPA easement must be reviewed and approved by BPA prior to their occurrence. Do not build, dig, plant, or burn within the easement area without first contacting BPA. Information regarding land use within the BPA easement may be obtained by calling (800) 836-6619.”

A **condition** of approval is added requiring that the applicant adheres to all easement requirements under BPA's authority. With this **condition**, staff finds that the request complies with Criterion 2.

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3. *Height - Maximum height for all structures shall be thirty-five feet (35') unless further restricted in accordance with Chapter 14 - Scenic Area Review.*

FINDING: The current dwelling is listed as 26' tall. The proposed installation of 18 solar panels will add be on a sloped roof and adds 1.3" of overall height to the 26' foot tall building, which is less than the 35' stated standard. Staff finds that the request complies with Criterion 5.

D. Chapter 11 – Fire Safety Standards

Section 11.110, Siting Standards – Locating Structures for Good Defensibility

Section 11.120, Defensible Space – Clearing and Maintaining a Fire Fuel Break

Section 11.130, Construction Standards for Dwellings and Structures – Decreasing the Ignition Risks by Planning for a more Fire-Safe Structure

Section 11.140, Access Standards – Providing Safe Access to and Escape From Your Home

Section 11.150, Fire Protection or On-Site Water Required – Ensuring Dwellings Have Some Fire Protection Available Through Manned or Unmanned Response)

FINDING: The Fire Safety Standards, adopted by the Wasco County Court in 2007, require property owners to be made aware of potential fire risks in areas outside of urban areas of Wasco County, and requires compliance with siting standards, fuel break requirements, construction standards, access standards, and on-site water storage requirements.

As part of a complete application, the property owners completed a Fire Safety Standard Self-Certification Form. By signing the self-certification form, the owners have acknowledged that they understand these standards and commit to achieve compliance with them within one year of the date of approval and maintain them through the life of the development. This certification further commits all future property owners to this same requirement. A copy of this self-certification form is available for inspection at the Wasco County Planning Department under Files PLASAR-17-07-0010 and a **condition** of approval is included requiring the applicant to adhere to these standards.

The subject property is located within the boundaries of Mosier Fire District (structural) and Oregon Department of Forestry (wildfire) for fire protection. The proposed solar panels will be constructed of fire-resistant materials. A 50 foot fuel fire break will be provided around all current buildings.

Though not specifically addressed in Chapter 11, it is essential that all new dwellings in Wasco County have a valid address so that emergency responders can quickly find the property. A **condition** of approval is included requiring that current and future owners shall clearly post the address of the subject lot on both sides of a post or mailbox, or other similar post, support, stake or pedestal which cannot be easily removed or destroyed which is within 30' of the driveway which accesses the dwelling. The address numbers shall be legible, reflective, and at least 2½ inches high. On an August 9, 2017 site visit it was noted that these address numbers were installed and in compliance. This **condition** of approval ensures that the address and safety standards remain in compliance.

Chapter 14 – Scenic Area Review

Section 14.100, Provisions For All New Development (GMA & SMA)

- A. *All new development, except uses allowed through the expedited review process, shall be reviewed under the applicable sections of Key Viewing Areas, Scenic Travel Corridors, Landscape Settings, Natural Resources, Cultural Resources, and Recreation Resources.*

FINDING: The following applicable sections of Chapter 14 are addressed below: Section 14.200, Key Viewing Areas, Section 14.300, Scenic Travel Corridors, Section 14.400, Landscape Settings, Section 14.500, Cultural Resources – GMA, Section 14.600, Natural Resources – GMA, Section 14.700, Recreation Resources – GMA, and Section 14.800, Indian Tribal Treaty Rights and Consultation – GMA.

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

FINDING: No new buildings or roads are proposed. The request is for a structural addition of an 18-panel, 16.5' x 20', 330' square foot solar array on an existing single family dwelling. No ground disturbance or grading will occur because the solar array will be placed on the roof of the existing building. Staff finds that the request complies with Criterion B.

- C. *New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable.*

FINDING: No new buildings are proposed. The structural addition will place 330 square feet of solar panels on the roof of an existing detached accessory building. The array adds 1.3" to the SE facing roof of the 26' tall building but will not affect the overall height. This height is compatible with existing nearby residential development. On an August 9, 2017 site visit staff determined that the adjacent detached garage is 24' tall. Staff finds that the request complies with Criterion C.

- D. *Unless expressly exempted by other provisions, colors of all exterior surfaces of structures on sites not visible from Key Viewing Areas shall be earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.*

FINDING: According to the application, the solar panels, rails, and hardware will be black. These colors are dark earth tone colors that are further addressed in Criterion I. Staff finds that the request complies with Criterion D.

- E. *Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of dark earth-tone colors found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.*

FINDING: The approved single family dwelling contains a building footprint of approximately 1200 square feet. The solar panels will have a 330 square foot footprint, less than the building footprint. Though the solar panels and hardware could use other colors, they have proposed black for the panels, rails and hardware, and are in compliance. Staff finds that the request complies with Criterion E.

- F. *Outdoor lighting shall be directed downward, sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways,*

and the Columbia River as well as preventing the lighting from being highly visible from Key Viewing Areas and from noticeably contrasting with the surrounding landscape setting. Shielding and hooding materials shall be composed of nonreflective opaque materials. There shall be no visual pollution due to the siting or brilliance, nor shall it constitute a hazard for traffic.

FINDING: There is no outdoor lighting proposed or required for the addition of the solar panels. Staff finds that the request complies with Criterion F.

G. All ground disturbance as a result of site development shall be revegetated no later than the next planting season (Oct-April) with native species. The property owners and their successors in interest shall be responsible for survival of planted vegetation, and replacement of such vegetation that does not survive.

FINDING: The request does not require any ground disturbance. The solar panels will be located on the roof of an existing detached accessory building. Staff finds that the request complies with Criterion G.

H. Except as is necessary for site development or fire safety purposes, the existing tree cover screening the development area on the subject parcel from Key Viewing Areas and trees that provide a back drop on the subject parcel which help the development area achieve visual subordination, shall be retained. Additionally, unless allowed to be removed as part of the review use, all trees and vegetation within buffer zones for wetlands, streams, lakes, ponds and riparian areas shall be retained in their natural condition. Any of these trees or other trees required to be planted as a condition of approval that die for any reason shall be replaced by the current property owner or successors in interest no later than the next planting season (Oct-April) after their death with trees of the same species or from the list in the landscape setting for the property.

To ensure survival, new trees and replacement trees shall meet the following requirements

- 1) All trees shall be at least 4 feet tall at planting, well branched, and formed.*
- 2) Each tree shall be braced with 3 guy wires and protected from livestock and wildlife. The guy wires need to be removed after two winters.*
- 3) The trees must be irrigated until they are well established.*
- 4) Trees that die or are damaged shall be replaced with trees that meet the planting requirements above.*

FINDING: The subject parcel is forested with Ponderosa pine and Oregon white oak trees. None are proposed to be removed. A **condition** of approval is included in the Notice of Decision requiring all on-site trees to be retained. Trees that die for any reason shall be replaced by the current owner or successors in interest no later than the next planting season (October – April) after their death with trees of the same species or from the list in the landscape setting for the property. Replacement trees will meet the standards in 1) – 4). With this **condition** of approval, staff finds that the request complies with Criterion H.

Section 14.200, Key Viewing Areas

The following is required for all development that occurs on parcels/lots topographically visible from Key Viewing Areas.

FINDING: The parcel is entirely obscured from key viewing areas by a ridge to the northwest. Staff finds that this proposal is not required to standards found in Section 14.200.

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Section 14.300, Scenic Travel Corridors

The Historic Columbia River Highway (Highway 30) and Interstate 84 (I-84) are designated as Scenic Travel Corridors, and development along a Scenic Travel Corridor must be set back at least 100' from the edge of pavement of the Scenic Travel Corridor roadway.

FINDING: Staff finds that the request complies with Section 14.300 because the subject parcel is not located along a Scenic Travel Corridor, and all new development will be more than 100' from the edge of the pavement of a Scenic Travel Corridor. Highway 30 and Interstate 84 are located approximately 1.3 miles north of the subject parcel.

Section 14.400, Landscape Settings (GMA & SMA)

Landscape settings are the combination of land uses, landforms and vegetation patterns which distinguish an area in appearance and character from other portions of the National Scenic Area.

GMA Only

1. *Accessory structures, outbuildings and accessways shall be clustered together as much as possible. Exceptions to this criterion, where necessary for farming operations, are permitted.*

FINDING: The request is to place an 18-panel, 16.5' x 20', 330 square foot solar array on the roof of an existing single family dwelling. Placing the panels on the roof achieves clustering. Staff finds that the request complies with Criterion 1.

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Section 14.500, Cultural Resources – GMA

The purpose of this section is to protect and enhance cultural resources, and ensure that proposed development does not have an adverse effect on significant cultural resources.

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B. Applicability of the Cultural Resource Reconnaissance and Historic Survey Requirements

1. *The reconnaissance survey standards of C, Cultural Resource Reconnaissance and Historic Survey, apply until a cultural resource survey of the General Management Areas is complete.*

a. A reconnaissance survey shall be required for all proposed uses, except:

- (1) *The modification, expansion, replacement, or reconstruction of existing buildings*

and structures.

FINDING: The request is to place an 18-panel, 16.5' x 20', 330 square foot solar array on the roof of an existing single family dwelling. According to comments dated August 25, 2017 received from Chris Donnermeyer, Heritage Resources Program Manager, Columbia River Gorge National Scenic Area, a cultural resource reconnaissance survey is not required. Staff finds the proposal complies with Criterion 1.

2. *A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or compromise features of the surrounding area that are important in defining the historic or architectural character of the buildings or structures that are 50 years old or older.*

FINDING: The request is to place an 18-panel, 16.5' x 20', 330 square foot solar array on the roof of an existing single family dwelling. The single family dwelling was built in 2012. The request would not alter the exterior architectural appearance of significant buildings and structures that are 50 years old or older, and it 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. Staff finds the proposal complies with Criterion 2.

C. Cultural Resource Reconnaissance and Historic Surveys

1. Gorge Commission/Tribal Government Notice

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- c. Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit written comments to the County Planning Office.*

(1) Written comments should describe the nature and extent of any cultural resources that exist in the project area and identify individuals with specific knowledge about them.

(2) The County shall send a copy of all comments to the Gorge Commission.

FINDING: On August 3, 2017, the four Indian tribal governments and the State Historic Preservation Office (SHPO) were sent notice of the proposed development. As of the comment deadline, August 23, 2017, no comments were received from these organizations. Staff finds the proposal complies with Criterion 1.

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4. Conclusion of the Cultural Resource Protection Process

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- c. The cultural resource protection process may conclude when one of the following conditions exist:*

(1) 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 20 calendar days of the date that a notice was mailed.

FINDING: As discussed in Criterion B.1. and 2. above, the proposed uses do not require a reconnaissance or historic survey and no known cultural resources are known to exist in the project area. As discussed in Criterion C.1., there were no concerns voiced by interested persons within 20 calendar days of the date that a notice was mailed that have not been addressed by this report. Staff finds the proposal complies with Criterion 4.

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G. Discovery During Construction:

1. **Halt Construction:** *All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.*
2. **Notification:** *The project applicant shall notify the County Planning Office and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.*
3. **Survey and Evaluation:** *The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Office (see, ORS 358.905 to 358.955).*

FINDING: If cultural resources are found during construction, all construction within 100' of the discovered cultural resource shall cease and the resource shall remain as found; further disturbance is prohibited. In addition, the owner shall notify the Wasco County Planning Department, Gorge Commission and four Indian tribal governments within 24 hours of discovery. **Conditions** of approval are included in the Notice of Decision requiring compliance with these requirements. With these **conditions** of approval, staff finds that the request complies with Criterion G.

H. Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

FINDING: With a **condition** of approval the request is consistent with Criterion H. If human remains (human skeletal remains, bones, or teeth, with or without attendant burial artifacts) are discovered during construction, all survey, excavation, and construction activities shall cease, and the human remains shall not be further disturbed. The owner shall immediately notify local law enforcement officials, the County Planning Office, the Gorge Commission, and the four Indian tribal governments. A **condition** of approval are included requiring the owner compliance with the requirements in H. With this **condition** of approval staff finds that the request is consistent with Criterion H.

Section 14.600, Natural Resources – GMA

A. *Wetlands*

FINDING: There are no identified wetlands on the subject parcel. Staff finds that the proposal complies with Criterion A.

B. *Streams, Ponds, Lakes, and Riparian Areas*

FINDING: There is one body of water on the subject parcel – Rock Creek. Section 14.600.B.2.a.(2) requires a no-disturbance buffer of 50’ from Rock Creek. The single family dwelling was approved in a 2012 Scenic Area Review, PLASAR-12-10-0011, and is located 120’ from Rock Creek, exceeding that minimum buffer. Staff finds that the request complies with Criterion B.

C. *Wildlife Habitat*

FINDING: There are no sensitive wildlife habitats in the area. Staff finds that the request complies with Criterion C.

D. *Rare Plants*

FINDING: According to GIS data provided by the Gorge Commission/USFS National Scenic Area and the Oregon Biodiversity Information Center (ORBIC) at Portland State University, the subject parcel potentially contains rare plants. This request is to place solar panels on the roof of the existing detached accessory building. No plants are proposed to be removed as a result of this project, and there will be no ground disturbance. Staff finds that the request complies with Criterion D.

Section 14.700, Recreation Resources – GMA

The purpose of this section is to protect and enhance recreation resources consistent with Indian treaty rights, and to protect scenic, natural, cultural and recreation resources when providing new recreation opportunities.

FINDING: There are no nearby recreational uses. The nearest such use is the Twin Tunnels trail in Mosier approximately 1.5 miles to the northeast of the subject parcel. Staff finds that the request complies with Section 14.700.

Section 14.800, Indian Tribal Treaty Rights and Consultation - GMA

The purpose of this section is to ensure that the Scenic Area Act, the Management Plan, and these implementing ordinances do not affect or modify any treaty or other rights of any Indian tribe. It requires notification to the four tribal governments when new uses are proposed

FINDING: Section 14.800 provides protection of Indian Tribal Treaty Rights from new development in the National Scenic Area. Section 14.800.B.3. 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. The subject property has no access to the Columbia River, but pursuant to other noticing requirements, notice of the proposal was mailed or e-mailed to the four tribal governments on August 3, 2017, and a 20-day comment period was provided. No comments were received during the comment period from any tribal body.

Section 14.800.C. lists guidelines for tribal government consultation when those governments submit substantive written comments. No comments were received. Given this information, the proposed development is consistent with Section 14.800.C.

Section 14.800.D. states that 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 property 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 would not affect or modify treaty or other rights of any Indian tribe, the treaty rights protection process may conclude pursuant to Section 14.800.D.