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Document Title(s) or transactions contained therein:

1. Petition for Judicial Review
2. Case No. 00-2-00018-1
3. \_\_\_\_\_
4. \_\_\_\_\_

GRANTOR(S) (Last name, first, then first name and initials)

1. Skamania County
2. Friends of the Columbia Gorge
3. \_\_\_\_\_
4. \_\_\_\_\_

☐ Additional Names on Page \_\_\_\_\_ of Document.

GRANTEE(S) (Last name, first, then first name and initials)

1. Reynier, Ronald H. etux
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

☐ Additional Names on Page \_\_\_\_\_ of Document.

LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section Township, Range, Quarter/Quarter)  
Lots 5,6,9 & 10 Hamilton's Addition to the Town of Underwood

☐ Complete Legal on Page \_\_\_\_\_ of Document.

REFERENCE NUMBER(S) Of Document assigned or released:

☐ Additional Numbers on Page \_\_\_\_\_ of Document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

03-10-23-2-2-0200-00

☐ Property Tax parcel ID is not yet assigned.

☐ Additional Parcel Numbers on Page \_\_\_\_\_ of Document.

The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.

SKAMANIA COUNTY  
ORIGINAL FILED

FEB - 4 2000

Lorena E. Hollis, Clerk

SUPERIOR COURT OF WASHINGTON  
COUNTY OF SKAMANIA

RONALD H. REYNIER and KRISTI  
B. REYNIER,

Petitioners,

vs.

SKAMANIA COUNTY,

Respondent.

and

FRIENDS OF THE COLUMBIA GORGE,

Intervenor-Respondent.

No. 00-2-00018-1

PETITION FOR JUDICIAL  
REVIEW

I. PETITIONERS

Petitioners are Ronald H. Reynier and Kristi B. Reynier,  
61 Scenic Heights Road, Underwood, Washington, 98651.  
Petitioners are represented by Ronald H. Reynier, P.C., P.O.  
Box 758, Hood River, Oregon 97031, telephone (541)386-4264.

II. RESPONDENTS

Respondent is Skamania County, 240 NW Vancouver  
Avenue/P.O. Box 790, Stevenson, Washington, 98648. Respondent  
is represented by Bradley W. Anderson, P.O. Box 790,  
Stevenson, Washington 98648, telephone (509)427-9405 ext. 244.

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1 - PETITION FOR JUDICIAL REVIEW

PHILLIPS REYNIER & SUMERFIELD  
P.O. BOX 752  
718 STATE AVENUE  
HOOD RIVER, OREGON 97031  
(541) 386-4264



1  
2  
3 III. INTERVENORS

4 Friends of the Columbia Gorge are represented by Gary K.  
5 Kahn, Reeves, Kahn and Eder, P.O. Box 86100, Portland, Oregon,  
6 97286, telephone (503) 777-5473.

7 IV. JURISDICTION

8 This petition is brought pursuant to 16 U.S.C. 544m.  
9 Pursuant to 16 U.S.C. 544m(b)4, a petition for judicial review  
10 may be filed within (60) days after the date of service of the  
11 Gorge Commission's final decision.

12 V. AGENCY ACTION

13 Petitioners hereby challenge the Columbia River Gorge  
14 Commission's decision to affirm the Skamania County Board of  
15 Adjustment's conditions imposed on a land use application in  
16 Skamania County NSA-97-13, CRGC file number COA-S-98-01 and  
17 the denial of a land use application in Skamania County NSA-  
18 97-14, CRGC file number COA-S-98-02.

19 On February 28, 1997, petitioners applied for two land  
20 use permits through the Skamania County Planning Department  
21 under NSA-97-13 and NSA-97-14. On June 24, 1997, the Skamania  
22 County Director of Planning ("Director") issued her Director's  
23 Decision approving NSA-97-13 with conditions and denying NSA-  
24 97-14.

25 NSA-97-13 was an application to construct a single family  
26 residence on lots 5 and 6, Hamilton's Addition to the Town of  
27 Underwood, a recorded subdivision. NSA-97-14 was an

Page 2 - PETITION FOR JUDICIAL REVIEW

PHILLIPS REYNIER & SUMERFIELD  
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1  
2 application to construct a second single family residence on  
3 lots 9 and 10, Hamilton's Addition to the Town of Underwood.  
4 These lots were contiguous to lots 3 and 4, Hamilton's  
5 Addition to the Town of Underwood, also owned by Petitioners,  
6 for which no land use application had been submitted. The  
7 Director approved NSA-97-13, but conditioned approval on all  
8 six lots being combined into one large tax lot. The Director  
9 denied NSA-97-14 because she had approved a residence in NSA-  
10 97-13 for the entire contiguous six lots. The Director  
11 included lots 3 and 4 in the decisions although no land use  
12 application had been submitted for those lots.  
13

14 On or about July 14, 1997 petitioners filed a Notice of  
15 Appeal of the Director's Decisions to the Skamania County  
16 Board of Adjustment.

17 On or about September 2, 1997 the Skamania County Board  
18 of Adjustment, without county legal counsel, heard testimony  
19 and arguments on the appeals and affirmed the Director's  
20 Decision. A written order was entered on December 11, 1997.

21 On or about January 6, 1998 petitioners appealed the  
22 Board of Adjustment's decisions to the Columbia River Gorge  
23 Commission, which consolidated the appeals and permitted the  
24 intervention of Respondent Friends of the Columbia Gorge on  
25 February 2, 1998.

26 On or about September 14, 1999 the Columbia River Gorge  
Commission, sitting in an appellate capacity, considered oral  
Page

3 - PETITION FOR JUDICIAL REVIEW

PHILLIPS REYNOLDS & SUMERFIELD  
P.O. BOX 753  
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(541) 386-4264



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2  
3 arguments from the petitioner and intervenor Friends of the  
4 Columbia Gorge. Skamania County did not participate in the  
5 appeal. The Columbia Gorge Commission upheld the decision of  
6 the Board of Adjustment.

7 On or about December 10, 1999 the Columbia River Gorge  
8 Commission, through its chairperson, issued a final written  
9 decision in the case, a copy of which is attached and  
10 incorporated herein as Exhibit A.

11 **VI. GENERAL ALLEGATIONS**

12 In 1986, the United States Congress adopted the Columbia  
13 River Gorge National Scenic Act (the Act), 16 U.S.C. § 544, et  
14 seq., which became effective through an interstate compact  
15 between the States of Oregon and Washington. Among other  
16 things, the Act authorized formation by the states of the  
17 Columbia River Gorge Commission.

18 One of the early responsibilities of the Gorge Commission  
19 was to prepare and adopt a Management Plan that included "land  
20 use designations" for the use of nonfederal lands with the  
21 Scenic Area. 16 U.S.C. §544d(b). A primary purpose of the  
22 Management Plan is to ensure that land in the Scenic Area is  
23 used consistently with the purposes and standards of the Act.

24 In October, 1991, the Gorge Commission adopted the  
25 Management Plan for the Columbia River Gorge National Scenic  
26 Area.

The Gorge Commission has responsibility for administering

Page

4 - PETITION FOR JUDICIAL REVIEW

PHILLIPS REYNOLDS & SUMERFIELD  
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1  
2  
3 the Management Plan. 16 U.S.C. §544e(a).

4 After adoption by the Gorge Commission of the Management  
5 Plan, counties within the scenic area may adopt a "land use  
6 ordinance" setting land development standards consistent with  
7 the Management Plan. 16 U.S.C. §544e(b)(1).

8 In 1993, Skamania County adopted Ordinance 1993-04 as its  
9 land use ordinance (codified as Title 22, Skamania County Code  
10 (SCC) pursuant to 16 U.S.C. § 544e. The Gorge Commission  
11 reviewed the ordinance and determined that it was consistent  
12 with the Management Plan.

13 Pursuant to the Commission's approval of the ordinance,  
14 Skamania County was delegated the land use permitting  
15 authority of the Commission for the purpose of administering  
16 the Management Plan. Final land use decisions of the County  
17 may be appealed Board of Adjustment and, subsequently, to the  
18 Columbia River Gorge Commission by any adversely affected  
19 person or entity.

20 VII. WHY RELIEF SHOULD BE GRANTED

21 In this case, both Skamania County and the Columbia River  
22 Gorge Commission failed to properly interpret Skamania County  
23 Ordinance 22.08.090 which permits one residence per legally  
24 created parcel and Skamania County Ordinance 22.08.090 which  
25 defines "parcel", both of which constitute errors of law.  
26 Further, the inclusion of lots 3 and 4 without any application  
therefore and the mandate that all contiguous lots be merged

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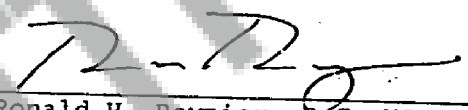
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3 together as one are arbitrary, capricious and contrary to law.  
4

5 WHEREFORE, the Petitioners pray for judgment as follows:

- 6 1. The Columbia River Gorge Commission's order be  
7 reversed in cause number COA-S-98-01 insofar as its  
8 conditions to merge all lots.  
9 2. The Columbia River Gorge Commission's order be  
10 reversed in cause number COA-S-98-02, permitting a  
11 residence on lots 9 and 10.  
12 3. For such other relief as is just and equitable.

13 DATED this 2 day of February, 2000.

14 PHILLIPS REYNIER & SUMERFIELD

15   
16 Ronald H. Reynier, P.C. WSN 16157  
17 Attorney for Petitioners  
18  
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23  
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26

Page 6 - PETITION FOR JUDICIAL REVIEW

PHILLIPS REYNIER & SUMERFIELD  
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(541) 386-4264

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

KRISTI REYNIER and RONALD REYNIER,

Petitioners,

vs.

SKAMANIA COUNTY,

Respondent,

and

FRIENDS OF THE COLUMBIA GORGE,

Intervenor-Respondent.

CRGC No. COA-S-98-01  
CRGC No. COA-S-98-02

FINAL OPINION AND  
ORDER

This case involves an appeal by Kristi and Ronald Reynier from a decision of Skamania County approving one application for development and denying another. We affirm.

The property, located in Underwood, WA, consists of an old subdivision, Hamilton's Addition, platted in 1912, where the Reyniers own six lots. They submitted applications to construct a dwelling on lots 5 and 6 (Skamania County No. NSA-97-13) and a dwelling on lots 9 and 10 (Skamania County No. NSA-97-14).

The County Planning Director approved the application to construct a dwelling on lots 5 and 6, which was conditioned on the denial of the application to construct a dwelling on lots 9 and 10 and that all contiguous lots owned by the Reyniers be merged into one large lot. The application to construct a dwelling on lots 9 and 10 was denied. The Reyniers appealed both decisions to the



Skamania County Board of Adjustment. The Board of Adjustment modified<sup>1</sup> and upheld the Planning Director's decisions. The Reyniers then filed this appeal with the Columbia River Gorge Commission.

The Columbia River Gorge Commission met on September 14, 1999 to hear oral argument and deliberate to a decision. The County did not participate in this appeal. Instead, the only party appearing in support of the decision was the intervenor-respondent, Friends of the Columbia Gorge.

Since the issues presented here are primarily legal in nature, our review focuses on whether the decision violates a provision of applicable law and is prohibited as a matter of law, or whether the decision improperly construes the applicable law based on the record before us.<sup>2</sup>

In the first assignment of error, the Reyniers assert Skamania County erred by refusing to acknowledge a pre-1937 subdivision and its separate individual lots when part of the subdivision has been developed with other

<sup>1</sup> The Board of Adjustment's modification related to construction of fencing and did not relate to the issue before us in this appeal.

<sup>2</sup> Commission Rule 350-60-220(1) provides:

(1) The Commission shall reverse or remand a land use decision for further review when:

- (a) The governing body exceeded its jurisdiction;
- (b) The decision is unconstitutional;
- (c) The decision violates a provision of applicable law and is prohibited as a matter of law; or
- (d) The decision was clearly erroneous or arbitrary and capricious.
- (e) The findings are insufficient to support the decision;
- (f) The decision is not supported by substantial evidence in the whole record;
- (g) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);
- (h) The decision improperly construes the applicable law; or
- (i) A remand is required pursuant to 360-60-090(2)(d).

homes, streets, and infrastructure. The Reyniers contend the individual lots in the 1912 subdivision are each legally created and independently developable, and that the lots cannot be required to be merged as a condition to build one single family residence. In the second assignment of error, the Reyniers contend that if the individual lots within the 1912 subdivision are legally created parcels, then Skamania County Code permits one dwelling per lot, or multiple homes in this case. These two assignments of error are closely related. The issue in this case is the validity of the subdivision.

The Friends of the Columbia Gorge contend the 1912 subdivision is no longer valid for three reasons:

1. The 1912 subdivision did not vest prior to 1987 when the Washington Legislature adopted RCW 58.17.033;
2. The 1912 subdivision was invalidated by 1937 and 1969 subdivision statutes as addressed in Attorney General Legal Opinion, 1974, No. 7 and Attorney General Opinion, 1996, No. 005; and
3. Even if the subdivision is a "final plat," it expired in 1986.

We hold the County's decision did not violate applicable law and is not prohibited as a matter of law; further we hold the County's decision properly construed the applicable law based on the record before us. We affirm the County's decision. We adopt the findings of fact, conclusions of law, and decision of Skamania County in this matter (Skamania County Planning Director's Decision Nos. NSA-97-13 and NSA-97-14 as modified by the Skamania County Board of Adjustment) and the reasoning in Attorney General



Legal Opinion, 1974, No. 7 and Attorney General Opinion, 1996, No. 005, and find that a developer of a pre-1937 subdivision must comply with the current subdivision standards and regulations. Additionally, we conclude that the facts of this case, including the expired 1991 Gorge Commission approval, do not give the Reyniers a vested right to build on the individual lots in the 1912 subdivision.

The decision of the Skamania County Board of Adjustment is **AFFIRMED**.

DATED this 10<sup>th</sup> day of December, 1999

  
Anne W. Squier, Chair  
Columbia River Gorge Commission

NOTICE: You are entitled to judicial review of this Final Order within 60 days from the date of this order, pursuant to section 15(b) (4) of the Scenic Area Act, P.L. 99-663.

BEFORE THE SKAMANIA COUNTY BOARD OF ADJUSTMENT

Ronald and Kristi Reynier,

Appellants,

vs

Harpreet Sandhu, Director, Skamania  
County Department of Planning and  
Community Development,

Appellee.

File No. NSA-97-13  
File No. NSA-97-14

CORRECTED

FINDINGS OF FACT,  
CONCLUSIONS, DECISION AND  
ORDER ON APPEAL

This matter, having come on for hearing de novo on the 6th of November 1997, and continued on the 25<sup>th</sup> of November 1997, Appellants Ronald and Kristi Reynier; and Appellee Skamania County Department of Planning and Community Development; and the Board having duly considered the testimony and other evidence properly before it, makes the following Findings of Fact and Conclusions:

FINDINGS OF FACT

The Staff Reports and their Exhibits for the above captioned files are hereby adopted and incorporated herein, except as hereby modified.

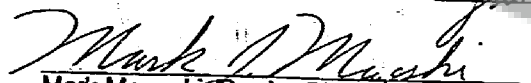
CONCLUSION

The Director's Decisions are reasonable, appropriate and should be upheld, with the exception of clarifying Condition #3 of NSA-97-13 to only apply to new fencing.

DECISION

Based upon the record, findings of fact and conclusions, the Board of Adjustment hereby upholds the Director's Decisions, and modifies Condition #3 of NSA-97-13 to state: "All new fencing shall be prohibited until such time that the landowner applies for new fencing."

DATED this 30 day of January, 1998

  
Mark Mazeski, Senior Planner  
Secretary to the Board of Adjustment



ORDER

Based upon the foregoing Findings of Fact and Conclusions,

IT IS HEREBY ORDERED THAT:

The decisions of the Director are upheld, with the exception of clarifying Condition #3 of NSA-97-13 to only apply to new fencing.

SKAMANIA COUNTY BOARD OF ADJUSTMENT

By:

*Mark J. Mazeski*  
Mark Mazeski  
Secretary to the Board

**APPEALS:** Appeals of the Board of Adjustment must be filed with the Columbia River Gorge Commission within 30 days of the date of this Decision. Please contact the Gorge Commission for their rules of appellate procedure.

BEFORE THE SKAMANIA COUNTY BOARD OF ADJUSTMENT

Ronald and Kristi Reynier,

Appellants,

vs

Harpreet Sandhu, Director, Skamania  
County Department of Planning and  
Community Development,

Appellee.

File No. NSA-97-14

FINDINGS OF FACT,  
CONCLUSIONS, DECISION AND  
ORDER ON APPEAL

This matter, having come on for hearing de novo on the 6<sup>th</sup> of November 1997, and continued on the 25<sup>th</sup> of November 1997, Appellants Ronald and Kristi Reynier; and Appellee Skamania County Department of Planning and Community Development; and the Board having duly considered the testimony and other evidence properly before it, makes the following Findings of Fact and Conclusions:

FINDINGS OF FACT

The Staff Report and its Exhibits for the above captioned file are hereby adopted and incorporated herein.

CONCLUSION

The Director's Decision is reasonable, appropriate and should be upheld.

DECISION

Based upon the record, findings of fact and conclusions, the Board of Adjustment hereby upholds the Director's Decision.

DATED this 11 day of December, 1997

Linda Hunter  
Linda Hunter, Chair



BEFORE THE SKAMANIA COUNTY BOARD OF ADJUSTMENT

Ronald and Kristi Reynier,

Appellants,

vs

Harpreet Sandhu, Director, Skamania  
County Department of Planning and  
Community Development,

Appellee.

File No. NSA-97-13

FINDINGS OF FACT,  
CONCLUSIONS, DECISION AND  
ORDER ON APPEAL

This matter, having come on for hearing de novo on the 6th of November 1997, and continued on the 25<sup>th</sup> of November 1997, Appellants Ronald and Kristi Reynier; and Appellee Skamania County Department of Planning and Community Development; and the Board having duly considered the testimony and other evidence properly before it, makes the following Findings of Fact and Conclusions:

FINDINGS OF FACT

The Staff Report and its Exhibits for the above captioned file are hereby adopted and incorporated herein.

CONCLUSION

The Director's Decision is reasonable, appropriate and should be upheld.

DECISION

Based upon the record, findings of fact and conclusions, the Board of Adjustment hereby upholds the Director's Decision.

DATED this 11 day of December, 1997

Linda Hunter  
Linda Hunter, Chair

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions,

**IT IS HEREBY ORDERED THAT:**

The decision of the Director is upheld.

**SKAMANIA COUNTY BOARD OF ADJUSTMENT**

By:

*Linda Hunter*  
Linda Hunter, Chair

**APPEALS:** Appeals of the Board of Adjustment must be filed with the Columbia River Gorge Commission within 30 days of the date of this Decision. Please contact the Gorge Commission for their rules of appellate procedure.



**ORDER**

Based upon the foregoing Findings of Fact and Conclusions,

**IT IS HEREBY ORDERED THAT:**

The decision of the Director is upheld.

**SKAMANIA COUNTY BOARD OF ADJUSTMENT**

By:

*Linda Hunter*  
Linda Hunter, Chair

**APPEALS:** Appeals of the Board of Adjustment must be filed with the Columbia River Gorge Commission within 30 days of the date of this Decision. Please contact the Gorge Commission for their rules of appellate procedure.

Return Address: Ron and Kristi Reynier  
61 Scenic Heights Road  
Underwood, WA 98651

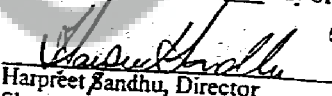
Skamania County  
Department of Planning and  
Community Development

Skamania County Courthouse Annex  
Post Office Box 790  
Stevenson, Washington 98648  
509 427-9458 FAX 509 427-4839

Director's Decision

APPLICANT: Ron Reynier  
FILE NO.: NSA-97-14  
PROJECT: Single-family residence with accessory building  
LOCATION: Located off of Cooper Avenue on Packard Street, in Underwood; Section 23 of T3N, R10E, W.M., and identified as Skamania County Tax Lot #3-10-23-22-200.  
ZONING: General Management Area; Residential (R-1).  
DECISION: Based upon the entire record before the Director, including particularly the Staff Report, the application by Ron Reynier, described above, is found to be inconsistent with Title 22 SCC and is hereby denied.  
REASONS FOR DENIAL: One single-family residence has already been approved on this parcel (See NSA-97-13).

Dated and Signed this 24<sup>th</sup> day of June, 1997, at Stevenson, Washington.

  
Harpreet Sandhu, Director  
Skamania County Planning and Community Development.

NOTES

Any new residential development, related accessory structures such as garages or workshops, and additions or alterations not included in this approved site plan, will require a new application and review.



Return Address: Ron and Kristi Reynier  
61 Scenic Heights Road  
Underwood, WA 98651

**Skamania County  
Department of Planning and  
Community Development**

Skamania County Courthouse Annex  
Post Office Box 790  
Stevenson, Washington 98648  
509 427-9458 FAX 509 427-4839

**Director's Decision**

**APPLICANT:** Ron Reynier  
**FILE NO.:** NSA-97-13  
**PROJECT:** Single-family residence with accessory building  
**LOCATION:** Located off of Cooper Avenue on Packard Street, in Underwood; Section 23 of T3N, R10E, W.M., and identified as Skamania County Tax Lot #3-10-23-22-200.  
**ZONING:** General Management Area; Residential (R-1).  
**DECISION:** Based upon the entire record before the Director, including particularly the Staff Report, the application by Ron Reynier, described above, subject to the conditions set forth in this Decision, is found to be consistent with Title 22 SCC and is hereby approved.

Although the proposed development is approved, it may not be buildable due to inadequate soils for septic and/or lack of potable water. These issues are under the jurisdiction of Skamania County's Building Department and the Washington State Health District.

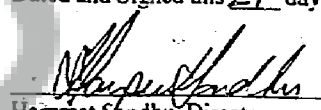
Approval of this request does not exempt the applicant or successors in interest from compliance with all other applicable local, state, and federal laws.

**CONDITIONS OF APPROVAL:**

The following conditions are required to ensure that the subject request is consistent with Skamania County Title 22. This document, outlining the conditions of approval, must be recorded in the deed records of the Skamania County Auditor in order to ensure notice of the conditions of approval to successors in interest. SCC §22.06.050(C)(2).

- 1) Prior to the issuance of any building permits, applicant shall submit to the Planning Department, a final site plan showing the location of all proposed development.
- 2) Front yard setbacks shall be 15 feet from the front lot line or forty-five feet from the centerline of a public or private road. Side yard setbacks shall be five feet and rear yard setbacks shall be fifteen feet.
- 3) All fencing shall be prohibited at the present time.
- 3) The following procedures shall be effected when cultural resources are discovered during construction activities:
  - a) **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.
  - b) **Notification.** The project applicant shall notify the Planning Department 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.
  - c) **Survey and Evaluations.** The Gorge Commission shall arrange for the cultural resources survey.

Dated and Signed this 24<sup>th</sup> day of June, 1997, at Stevenson, Washington.

  
Harpreet Sandhu, Director  
Skamania County Planning and Community Development

**NOTES**

Any new residential development, related accessory structures such as garages or workshops, and additions or alterations not included in this approved site plan, will require a new application and review.



Skamania County Planning and Community Development  
File: NSA-97-14 (Reynier) Director's Decision  
Page 2

As per SCC §22.06.050(C)(2), the Director's Decision shall be recorded in the County deed records prior to commencement of the approved project.

As per SCC §22.06.050(C)(5), the decision of the Director approving a proposed development action shall become void in two years if the development is not commenced within that period, or when the development action is discontinued for any reason for one continuous year or more.

#### APPEALS

The decision of the Director shall be final unless a written Notice of Appeal is filed by an interested person within 20 days from the date hereof. Appeal may be made to the Skamania County Board of Adjustment, P.O. Box 790, Stevenson, WA 98648, on or before 7-14-97. Notice of Appeal forms are available at the Department Office.

A copy of the Decision was sent to the following:

Skamania County Building Department  
Skamania County Assessor's Office

A copy of this Decision, including the Staff Report, was sent to the following:

Persons submitting written comments in a timely manner  
Yakama Indian Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of the Warm Springs  
Nez Perce Tribe  
Columbia River Gorge Commission  
U.S. Forest Service - NSA Office  
Board of County Commissioners

<nsa-reynier14.dd>