

157 FERC ¶ 61,112  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, and Colette D. Honorable.

Public Utility District No. 2 of Grant County,  
Washington

Project No. 2114-279

ORDER MODIFYING AND APPROVING NON-PROJECT USE OF PROJECT  
LANDS AND WATER

(Issued November 17, 2016)

1. On March 10, 2016, as supplemented on March 29, 2016, Public Utility District No. 2 of Grant County, Washington (Grant PUD), licensee for the Priest Rapids Hydroelectric Project No. 2114 (Priest Rapids Project), filed an application for non-project use authorization to lease 38.5 acres of project lands on Crescent Bar Island to the Crescent Bar Condominium Master Association, the Crescent Bar Recreation Vehicle Homeowners Association, and the Crescent Bar South RV Park Owners Association (collectively, HOAs). As discussed below, this order approves Grant PUD's request with certain conditions.

**I. Background**

2. The Priest Rapids Project is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington, and includes the Wanapum and Priest Rapids developments. The project occupies federal lands managed by the Bureau of Reclamation, the Bureau of Land Management, the U.S. Department of the Army, the U.S. Department of the Interior's Fish and Wildlife Service (FWS), and the U.S. Department of Energy. Crescent Bar Island is a man-made island created from fill material during construction of Wanapum Dam, and is located approximately 20 miles upstream from the dam. The licensee owns Crescent Bar Island, and a portion of the mainland shoreline directly north of the island, which together total approximately 218 acres. This area of the project is referred to as the Crescent Bar Recreation Area.

3. The Commission issued an original 50-year license for the Priest Rapids Project in 1955.<sup>1</sup> In 1962, Grant PUD leased 194 acres of project lands, including Crescent Bar Island (approximately 179 acres) and approximately 15 acres of the mainland shoreline, to the Port of Quincy, Washington, for a 50-year lease term to promote the development of public recreation and industry. The Port of Quincy installed water and sewer facilities, and developed a golf course, restaurant, boat moorage, trailer park, and camping area. Subsequently, the Port of Quincy subleased the land to a private developer that later sold its interest to Crescent Bar, Inc., and other private entities for the operation and maintenance of recreational facilities, including motels, condominiums, a trailer park, boat moorage, and other specified facilities. Crescent Bar, Inc. sublet to individuals, homeowners associations, and commercial enterprises.<sup>2</sup>

4. On April 17, 2008, the Commission issued a new 44-year license to Grant PUD for continued operation and maintenance of the Priest Rapids Project (Relicense Order).<sup>3</sup> As relevant here, the Relicense Order approved Grant PUD's proposed Recreation Plan, and in Article 418 of the new license required Grant PUD to implement various recreation measures within a year of the issuance date of the license.<sup>4</sup> Article 419 of the new license required Grant PUD to file for Commission approval a Shoreline Management Plan (SMP) and to include in its final SMP, among other things, provisions for recreation improvements within the Crescent Bar Recreation Area.<sup>5</sup> Article 419 also directed Grant PUD to manage Crescent Bar Island under two land use classifications: Planned Development and Conservation, with no further development occurring beyond the existing disturbed footprint.

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<sup>1</sup> *Public Utility District No. 2 of Grant County, Washington*, 14 F.P.C. 1067 (1955).

<sup>2</sup> In 1998, groups of business lessees, condominium lessees and dwellers, and recreational vehicle tenants on the island sought to exclude from the project boundary the lands underlying their businesses and residences. In 1999, the Commission issued an order dismissing the complaints, finding that Crescent Bar Island is needed for project purposes, including protection of flowage, recreation, and aesthetic values. *Public Utility District No. 2 of Grant County, Washington*, Order on Complaints, 88 FERC ¶ 61,012, at 61,031, *reh'g denied*, 89 FERC ¶ 61,177 (1999).

<sup>3</sup> *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049 (2008) (Relicense Order).

<sup>4</sup> Relicense Order, 123 FERC ¶ 61,049 at 61,335 (Article 418).

<sup>5</sup> *Id.* at 61,336 (Article 419).

5. In 2010, Grant PUD's Board of Commissioners voted to not renew or extend the Port of Quincy's lease upon its expiration in June 2012 in order to maximize public recreation use and access, and end residential use, on Crescent Bar Island. From early 2011 until mid-2015, Grant PUD was involved in litigation with the three on-island Homeowners Associations (HOAs), which sought to maintain the existing residential areas on the island. A 2012 court order required the parties to maintain the status quo with respect to the on-island residential areas pending a determination on the merits of the case or further court order.

6. On February 10, 2012, Commission staff issued an order modifying and approving Grant PUD's February 26, 2010 request to amend certain provisions of Article 418 and to remove recreation measures involving Crescent Bar Island from Article 419 and to add them to Article 418.<sup>6</sup> The February 10, 2012 Order did not change any substantive requirements for recreation development at Crescent Bar Island or modify any other aspect of the SMP requirements, but simply allowed Grant PUD to (1) implement all recreational provisions for Crescent Bar Island and the rest of the project under Article 418 in order to keep all recreation requirements coordinated; and (2) keep all shoreline project-wide policy development and guidance under the Article 419 SMP.<sup>7</sup> In addition, the Commission approved Grant PUD's revised implementation schedule pertaining to development plans for recreation facilities and improvements across the project.<sup>8</sup>

7. The Commission approved Grant PUD's SMP,<sup>9</sup> as modified, on April 18, 2013.<sup>10</sup> The approved SMP classifies the lands currently encumbered by the three existing

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<sup>6</sup> *Public Utility District No. 2 of Grant County, Washington*, 138 FERC ¶ 62,114, *reh'g denied*, 140 FERC ¶ 61,201 (2012) (February 10, 2012 Order).

<sup>7</sup> *See Public Utility District No. 2 of Grant County, Washington*, 140 FERC ¶ 61,201 at PP 6, 8.

<sup>8</sup> Due to the court order, Grant PUD states that it was unable to complete the planned recreation improvements, or implement the Recreation Plan or SMP, within the leased area.

<sup>9</sup> Grant PUD filed its final SMP on March 2, 2010 in Project No. 2114-208.

<sup>10</sup> *Public Utility District No. 2 of Grant County, Washington*, 143 FERC ¶ 61,046, *reh'g denied*, 144 FERC ¶ 61,210 (2013). Grant PUD's SMP identified three land use classifications, rather than seven as originally proposed, eliminating the "Planned Development" classification under which Crescent Bar Island was previously classified.

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residential developments on Crescent Bar Island as Public Recreation Development, and allows non-project uses within this land classification. The SMP explains that Grant PUD will consider non-project use requests on lands classified as Public Recreation Development, provided the proposed non-project use is consistent with the license and goals set forth in the SMP.<sup>11</sup>

8. On July 28, 2015, Grant PUD's Board of Commissioners approved a settlement agreement with the HOAs, which provides that the three residential areas on Crescent Bar Island, totaling 38.5 acres, will remain.<sup>12</sup> The settlement is contingent upon Commission approval of this non-project use application and certain lease conditions intended to ensure consistency with the SMP, Recreation Resources Management Plan (Recreation Plan), and other project purposes.

## **II. Grant PUD's Non-Project Use Request**

9. Grant PUD proposes to enter into three lease agreements, one with each of the on-island HOAs, to allow continued residential use of 38.5 acres of project lands on Crescent Bar Island. Grant PUD states that the remainder of on- and off-island project lands previously leased to the Port of Quincy (i.e., 155.5 acres) will be available for public use under Grant PUD's management and control. Grant PUD set forth its proposal for improved public access and recreational development on Crescent Bar Island and the associated mainland shoreline in a separately filed Recreation Plan Amendment Application.<sup>13</sup> Commission staff modified and approved this amendment, in part, on September 21, 2016.<sup>14</sup>

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Instead, the SMP classified the developed portion of Crescent Bar Island, and its related mainland, as "Public Recreation Development," and the undisturbed areas of Crescent Bar Island (i.e., the southern portion of the island and the back channel islands) as "Resources Management."

<sup>11</sup> SMP at 19.

<sup>12</sup> On August 3, 2015, the federal district court judge dismissed the lawsuit, based on the settlement agreement reached by Grant PUD and the three HOAs.

<sup>13</sup> See Grant PUD Recreation Resources Management Plan Amendment Application, Project No. 2114-280 (filed March 8, 2016).

<sup>14</sup> *Public Utility District No. 2 of Grant County, Washington*, 156 FERC ¶ 62,205 (2016) (September 21, 2016 Order). The September 21, 2016 Order authorized Grant PUD to: (i) relocate the existing off-island 55-site campground to the northwest end of

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10. The proposed non-project use of 38.5 acres would permit residential use to continue in three designated lease areas. Specifically, Grant PUD proposes to lease:

- 6 acres to the Crescent Bar Condominium Master Association for 110 individual units, a swimming pool, lawn, and parking areas;
- 27.3 acres to the Crescent Bar Recreational Vehicle Homeowners Association for 253 residences (generally RV park models) and associated decks and/or patio areas, a swimming pool, lawn areas, driveways, and access roads; and
- 5.2 acres to the Crescent Bar South RV Park Owners Association for 52 residences (generally RV park models) and associated decks and/or patio areas, a swimming pool, lawn areas, driveways, and access roads.

All facilities associated with the three proposed leases are pre-existing. Grant PUD states that it will not allow significant new development within any of the lease footprints without express authorization from the Commission and all consulting agencies. In addition, Grant PUD states that it will prohibit expansion of the leased areas.

11. Grant PUD submitted a draft lease agreement with its application.<sup>15</sup> Grant PUD states that the following lease conditions are relevant to project purposes and its license requirements:

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the island; (ii) replace the existing off-island campground site with a day use area, including picnic tables, swim area and barrier, restrooms, parking, and connector trails; (iii) add one additional mile of non-motorized, multipurpose trail, including a low-impact trail on the south end of Crescent Bar Island; (iv) renovate an existing on-island two-lane boat launch, and provide a formalized parking area with up to 70 spaces and an accessible restroom; (v) enhance the existing on-island day use area, including renovations and enhancements to existing playground, sports court, picnic area, parking area, multipurpose lawn, and addition of an accessible bathroom; (vi) retain the existing nine-hole golf course as a project recreation facility; and (vii) construct necessary support facilities. *Id.* Commission staff denied Grant PUD's proposal to construct a 61-slip marina along the northern shoreline of Crescent Bar Island, because the licensee had not provided evidence that it had engaged in necessary consultation with the U.S. Department of Commerce's National Marine Fisheries Service (NMFS) and FWS. *Id.* at Ordering Paragraph (D). The order indicated that Grant PUD could refile an application to add the marina that includes evidence of consultation. *See id.*

<sup>15</sup> *See* Grant PUD March 10, 2016 Non-Project Use Authorization Request, Appendix A (Non-Project Use Application).

- Grant PUD will have the exclusive right to control and manage its properties outside the lease areas for public recreation and use.
- The leases will be subject to all applicable provisions, terms, and conditions set forth in the project license and amendments to the license.
- Grant PUD will have full, unconditional, unrestricted, and complete control over project operations, including the control of reservoir elevations.
- Grant PUD will have the right to inundate the leased lands as may be necessary to operate and maintain the Wanapum Development.
- Grant PUD will retain the right to clear or remove any timber, brush, debris, and natural obstructions within the lease area that may be detrimental to the operation of the project.
- Each HOA must use its best efforts and take all necessary precautions to protect the environmental features of the lease area, including the prevention of soil erosion and protection of vegetative cover and water quality.
- Each HOA must comply with Grant PUD's Historic Properties Management Plan (HPMP)<sup>16</sup> as it pertains to the protection of cultural and archaeological resources. Any ground disturbance within the lease area will require approval from Grant PUD.
- Each HOA must ensure its lease area, including all infrastructure within the lease area, complies with all applicable regulatory requirements, including local zoning, building, fire, health and sanitary codes, and any other applicable local, state, or federal regulations.
- Each HOA's use of the lease area must not endanger health, create a risk of uncontrolled fire, or create a nuisance. Additionally, each HOA must not conduct or permit any loud or boisterous activities that interfere with the public's quiet and peaceful enjoyment of the adjacent recreational areas, or otherwise be incompatible with project uses.
- Grant PUD and all jurisdictional permitting agencies must approve any substantive structural change within the lease areas.

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<sup>16</sup> 137 FERC ¶ 62,081 (2011).

12. Grant PUD states that the proposed non-project use is consistent with its license obligations, approved management plans, and Grant PUD management guidelines and policies, and will not interfere with its ability to operate the project. Specifically, Grant PUD maintains that this non-project use will not lessen its ability to implement its obligations, under the SMP and Recreation Plan, to improve public recreation access and use, while protecting and enhancing the wildlife habitat and scenic quality of Crescent Bar Island.

**A. Water and Fire Safety Improvements**

13. For residential use to continue on Crescent Bar Island, Grant PUD states that it will upgrade the water system (to meet local fire flow requirements) and the wastewater treatment system (to comply with state water quality regulations).<sup>17</sup> Grant PUD states that it is working with the HOAs and the Washington State Department of Ecology to design and permit an upgraded wastewater treatment plant for the island in order to meet state water quality regulations.<sup>18</sup> Pursuant to the settlement agreement, Grant PUD states that the HOAs will pay 90 percent of the costs to upgrade the water and wastewater systems, while Grant PUD will pay the remaining 10 percent.<sup>19</sup>

14. Grant PUD states that fire and safety assessments of Crescent Bar Island and existing facilities began in 2015, in coordination with the Grant County Fire Marshal. In order to address concerns raised by the Fire Marshal, Grant PUD states that the HOAs agreed to: (i) adhere to Grant County Fire District's evacuation plan for the Crescent Bar area; (ii) make on-site volunteers available for training with Grant County Fire District No. 3 (Fire District No. 3); (iii) install compliant fire extinguishers throughout the leased areas; (iv) provide infrastructure to allow water withdrawal from HOA swimming pools where possible; (v) provide a map with addresses for all RV park residences; (vi) replace smoke detectors more than 10 years old with updated units that include carbon monoxide detection; and (vii) work with Grant PUD to ensure that upgrades to the existing water system will provide adequate flows for fire suppression on the island.

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<sup>17</sup> Non-Project Use Application at 14.

<sup>18</sup> *Id.*

<sup>19</sup> Grant PUD explains that its 10 percent share of the costs will account for public use of the water and wastewater systems, and will include full sewer hookups at the campground and other recreational facilities within the Crescent Bar Recreation Area. *Id.*

**B. Environmental Impacts**

15. Grant PUD states that its non-project use proposal does not include any action with impacts or potential impacts to Crescent Bar Island that are beyond the scope of the environmental reviews prepared for the licensing of the project and the SMP order. All facilities and land uses associated with the proposed non-project use are preexisting, with the exception of the water and wastewater system upgrades. Because the water and wastewater systems will not be located within the identified wetlands on the island, Grant PUD does not anticipate any potential impacts to fish, wildlife, vegetation, water quality, or scenic quality.<sup>20</sup>

16. Grant PUD maintains that its proposal would allow 80 percent of the previously leased 194-acre area to be available to the public (i.e., 155.5 acres),<sup>21</sup> thus allowing it to achieve the “maximum and most reasonable extent of public access and recreation that could be attained under the circumstances.”<sup>22</sup> Grant PUD emphasizes that converting portions of Crescent Bar Island to publicly available recreation would benefit recreational resources at the project.

17. Based on preliminary results of a 2015 cultural resource survey conducted on the developed portions of Crescent Bar Island, Grant PUD does not anticipate any significant potential impacts to cultural resources associated with the proposed upgrades to the water and wastewater systems.<sup>23</sup> Grant PUD further indicates that the final results of the cultural resources survey will undergo stakeholder consultation consistent with license Article 416 and the HPMP. The state historic preservation office will also review the final cultural resources survey results during the permitting process for the water and wastewater system upgrades.<sup>24</sup>

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<sup>20</sup> *Id.* at 16.

<sup>21</sup> This includes approximately 105 acres of developed recreation area on Crescent Bar Island, 35 acres of undeveloped area at the southern end of the island, and approximately 15 acres of developed recreation area on the off-island portion of mainland shoreline directly north of the island.

<sup>22</sup> Non-Project Use Application at 27.

<sup>23</sup> *Id.* at 23.

<sup>24</sup> *Id.*



**C. Consistency with SMP**

18. Grant PUD states that the proposed non-project use will not inhibit its ability to implement measures required by the SMP and Recreation Plan, including specific measures to improve public recreation access and use, while protecting and enhancing wildlife habitat and scenic qualities of Crescent Bar Island. Grant PUD also recognizes that the SMP requires it to ensure that any land use agreement also meets relevant safety, health, project operation, and license-related objectives. According to Grant PUD, the lease terms will ensure that the proposed non-project use fulfills these requirements. The SMP classifies the 38.5 acres of project lands proposed for non-project use as “Public Recreation Development,” which allows for non-project uses that Grant PUD determines to be consistent with the project license and SMP goals. In this case, Grant PUD believes that the proposed non-project use is consistent with the approved SMP and other relevant management plans.

**D. Agency and Tribal Consultation**

19. Grant PUD provided a draft of the proposed non-project use request to FWS, Washington Department of Fish and Wildlife (Washington DFW), Washington Recreation Conservation Office, Washington Department of Natural Resources, the Wanapum Indians, and the Grant County Planning Department on February 2, 2016. Washington DFW provided comments on the proposed non-project use on March 3, 2016, and the licensee’s application responds to those comments.

20. Grant PUD’s application also includes agency correspondence regarding the wastewater facility permit,<sup>25</sup> and fire and safety issues on Crescent Bar Island.<sup>26</sup> The Fire Marshal identified three significant issues: (i) providing adequate fire flows to aid in fire suppression efforts; (ii) improving traffic circulation to facilitate the movement of

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<sup>25</sup> See Non-Project Use Application, Appendix B (letter dated March 13, 2015 from the Washington Department of Ecology to Crescent Bar Inc. approving updated engineering report for the Crescent Bar Wastewater Facility).

<sup>26</sup> See Non-Project Use Application, Appendix C (several letters dated between August 26, 2015 and February 2, 2016, from Grant PUD, the HOAs, and the Fire Marshal discussing various issues related to fire and life safety on Crescent Bar Island).

emergency vehicles; and (iii) adding clearly identifiable site locations and addresses in the RV parks.<sup>27</sup>

### **III. Public Notice, Interventions, and Comments**

21. On April 5, 2016, the Commission issued public notice of the Grant PUD's non-project use application, establishing May 5, 2016, as the deadline for filing comments, interventions, and protests. Washington DFW and NMFS filed notices of intervention.<sup>28</sup> Pat Kelleher and Phillip J. Kelleher filed timely motions to intervene.<sup>29</sup> Pat Kelleher opposes the non-project use. The Crescent Bar Condominium Master Association, the Crescent Bar Recreational Vehicle Homeowners Association, and the Crescent Bar South R.V. Park Owners Association filed a timely, joint motion to intervene, expressing support for the proposal.<sup>30</sup> Danna Dal Porto filed comments and a late motion to intervene, which the Commission granted.<sup>31</sup> Ms. Dal Porto opposes continued residential use on Crescent Bar Island.

22. Fire District No. 3 filed comments opposing the licensee's proposal to remove a fire station from the island as part of the redevelopment plan.<sup>32</sup> Grant PUD filed a response to the Fire District's comments.

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<sup>27</sup> See *id.* (February 2, 2016 letter from Fire Marshal). Grant PUD filed additional correspondence from to the HOAs regarding the corrective actions to address these issues on April 21 and July 1, 2016.

<sup>28</sup> Under Rule 214(a) of the Commission's Rules of Practice and Procedure, Washington DFW and NMFS became parties to the proceeding upon the timely filing of their notices of intervention. 18 C.F.R. § 385.214(a) (2016).

<sup>29</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2016).

<sup>30</sup> *Id.*

<sup>31</sup> Secretary's August 30, 2016 Notice Granting Late Intervention.

<sup>32</sup> The fire station is located outside of the proposed lease areas.

#### IV. Discussion

##### A. Commission Authorization of Non-Project Uses

23. We have reviewed the application pursuant to the Federal Power Act's comprehensive development/public interest standard, as informed by comments on the proposed non-project use.<sup>33</sup> As discussed below, we conclude that the proposed non-project use of project lands and waters would have minor environmental impacts and would not interfere with licensed project purposes.

24. Pat Kelleher argues that the leased areas would prevent public access to the shoreline of the Columbia River. Because the proposed residential use is not a project purpose, he asserts that it is not a legitimate public interest concern that the Commission should consider. Ms. Dal Porto also contends that authorizing continued residential use on Crescent Bar Island is not in the public interest. In addition, Ms. Dal Porto states that Grant PUD's proposal to improve public access and recreation at the Crescent Bar Recreation Area is insufficient.

25. While the requested non-project use will permit continued residential use of 38.5 acres of Crescent Bar Island, the public will have access to approximately 145 developed acres of public access and recreation amenities at the Crescent Bar Recreation Area (i.e., Crescent Bar Island and its associated mainland shoreline).<sup>34</sup> As described above, the Commission recently authorized Grant PUD to proceed with several improvements to public access and recreation.<sup>35</sup> Once these improvements are complete,<sup>36</sup> the public will have access to a variety of recreation amenities at the Crescent Bar Recreation Area, including several that will provide public shoreline access, such as a shoreline park and trail, beach access, a designated swim area, boating facilities,

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<sup>33</sup> See, e.g., *Alabama Power Company*, 145 FERC ¶ 61,262, at P 19 (2013).

<sup>34</sup> Ms. Dal Porto contends that the total amount of acreage available for public recreation is inaccurate, stating that the parking areas and the golf course should not be factored into this total. We disagree. The parking areas support several public recreation amenities, including the campground, day use areas, boating facilities, and trail system. In addition, the nine-hole golf course is available to the public, and is an approved project recreation facility. See September 21, 2016 Order, 156 FERC ¶ 62,205 at P 39.

<sup>35</sup> See *supra* note 14.

<sup>36</sup> Grant PUD is required to complete construction of the approved recreation facilities for the Crescent Bar Recreation Area by May 31, 2018. See September 21, 2016 Order, 156 FERC ¶ 62,205 at ordering para. (E).

and a low-impact trail along the southern, undeveloped portion of the island. In light of these improvements, we are satisfied that sufficient public access and recreation will exist on Crescent Bar Island.

26. To ensure consistency with project purposes, including public recreation, resource protection, and public access, we are requiring Grant PUD to include the following conditions in each HOA lease: (1) the lessee's use and occupancy of project lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the lessee shall take all reasonable precautions so that the operation and maintenance of the permitted facilities will occur in a manner that protects the scenic, recreation, and other environmental values of the project; and (3) the lessee shall not unduly restrict public access to project lands and waters.

### **B. Environmental Analysis**

27. Commission staff prepared a Final Environmental Impact Statement (EIS) in November 2006 for the relicensing of the Priest Rapids Project, which analyzed potential impacts to environmental resources, including geology and soils, water quality and quantity, threatened and endangered species, recreation and land use, socioeconomics, and aquatic, terrestrial, and cultural resources.<sup>37</sup> In the relicense application, Grant PUD proposed to manage 105 acres of Crescent Bar Island for planned development.<sup>38</sup> The EIS found that private development would be allowed on the island and could occur during the term of the new license, if a master plan was developed demonstrating that the proposed uses were consistent with the license.<sup>39</sup>

28. The EIS also indicated that any further development could potentially result in loss of riparian habitat and more habitat fragmentation, potential exclusion of public access to project lands and waters, potential adverse effects on juvenile Chinook salmon, disturbances to wintering bald eagles, and impacts on the shining flatsedge (a state-sensitive plant).<sup>40</sup> Therefore, the EIS concluded that no further development on

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<sup>37</sup> See Final Environmental Impact Statement, Project No. 2114-116 (issued November 17, 2006) (EIS).

<sup>38</sup> As discussed above, the classification changed to Public Recreation Development under the approved SMP. The SMP states that non-project uses may be allowed within areas classified as Public Recreation Development.

<sup>39</sup> EIS at 426.

<sup>40</sup> *Id.*

Crescent Bar Island should occur beyond the existing disturbed footprint, except for the proposed trail.<sup>41</sup> Here, Grant PUD requests Commission authority to lease 38.5 acres of project lands within the existing disturbed footprint to the HOAs for continued residential use. Therefore, the current proposal not only meets the criteria set forth in the EIS analysis, but also encompasses significantly fewer acres than the 105 acres of planned development previously contemplated in the EIS.<sup>42</sup>

29. There are no potential adverse impacts to environmental resources or the human environment resulting from the current proposal that Commission staff did not previously evaluate in the EIS for the relicensing proceeding, because the residential structures on Crescent Bar Island have existed since the 1960s and 1970s. Additionally, no new ground-disturbing activity will result from the proposed non-project use, except for those associated with the water, wastewater, and fire safety upgrades.

30. Any potential ground-disturbing activities associated with the water, wastewater, and fire safety issues on Crescent Bar Island would occur within the previously-disturbed footprint. Because Crescent Bar Island is man-made from fill material, no unique, undisturbed geological features or characteristics exist on the island that would be adversely impacted by any ground-disturbing activities within the previously-disturbed footprint. The EIS did not identify any archaeological or cultural resources on Crescent Bar Island during the comprehensive inventory conducted from September 2001 to March 2003, and preliminary results of a 2015 cultural resources survey of the developed portions of Crescent Bar Island did not identify any potential impacts to cultural resources. Any disturbance to wildlife would be temporary, lasting only as long as construction activities were occurring, and best management practices required by all applicable state and local permits would address any potential impacts to water quality or aquatic resources, including endangered species. Therefore, we conclude that the proposed non-project use will have minimal environmental impacts.

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<sup>41</sup> *Id.*

<sup>42</sup> Grant PUD states that 80 percent of the 194-acres of project lands previously leased to the Port of Quincy will be available to the public, which includes the 105 acres of developed recreation area referenced in the license application and EIS, as well as the 35 acres of undeveloped area at the southern end of Crescent Bar Island. This area will remain undisturbed, except for the trail required under Article 418, and approved as modified. *See* September 21, 2016 Order, 156 FERC ¶ 62,205 at ordering para. (B).

31. Grant PUD determined that it would benefit the public to redevelop the portions of the island not occupied by the existing residential structures as public recreational resources. Therefore, the proposed leases stipulate that no expansion of the leased areas beyond the 38.5 acres is allowed. Grant PUD will redevelop the remaining previously-disturbed acreage outside of the leased areas for improved public recreation.

**C. Replacement Fire Station**

32. Fire District No. 3 requests that the Commission condition approval of this non-project use on a requirement that Grant PUD provide Fire District No. 3 with an equivalent replacement for the fire station that Grant PUD will remove as part of its planned recreation improvements on Crescent Bar Island. Fire District No. 3 states that Grant PUD's plan to remove the fire station without assisting in the construction of a suitable replacement violates its Commission license requirement to prevent and suppress fires, and is inconsistent with the Washington State Shorelines Management Act and the Grant County Master Shoreline Program. In response, Grant PUD clarifies that the building in question, a former restroom and shower building, is not a fully equipped fire station, but rather provides weather-protected storage of a water tender, associated equipment, and two bunk rooms for volunteer firefighters. Grant PUD states that it offered to temporarily house the water tender and associated equipment in a maintenance building on the west side of Crescent Bar Island.

33. The HOAs contend that this issue has no bearing on the non-project use application, and should be resolved at the state and local level. In response, Ms. Dal Porto filed a comment asserting that the residents of Crescent Bar Island pay very little for fire protection services. She states that the residents of the on-island condominium units do not pay real property taxes, which fund public services such as fire protection. While the residents of the on-island RV parks pay property taxes on their mobile homes, she suggests that their property tax contributions designated for fire protection services are minimal. In addition, Ms. Dal Porto contends that a residential fire station is needed to provide emergency medical and fire protection services for Crescent Bar Island residents and visitors. However, she argues that the cost of building a new fire station to serve the island should be the responsibility of the Crescent Bar Island residents, not the Grant PUD ratepayers as a whole.

34. We agree with Grant PUD and the HOAs that it is not appropriate to condition a non-project use approval on the construction of a fire station. Providing funds for fire protection services is not required to fulfill project purposes, and is a matter appropriately resolved at the state and local level. Finally, we note that the Fire Marshal, who has been consulted and provided comments on Grant PUD's proposal, has not expressed concerns about the fire station.

#### **D. Other Matters**

35. Several individuals filed comments that address the recreation improvements proposed for Crescent Bar Island and the associated mainland shoreline as part of Grant PUD's Recreation Plan amendment. These commenters oppose the reduction in size of a commercial retail building on Crescent Bar Island.<sup>43</sup> In addition, commenters expressed the need for a marina and a gas dock. Commission staff addressed specific concerns related to the recreation improvements at the Crescent Bar Recreation Area, including the reduction in size of the commercial retail building, in its September 21, 2016 Order, explaining that the Commission does not require licensees to provide commercial or vendor support facilities, such as restaurants, general stores and laundry facilities), and would not require Grant PUD to provide these facilities.<sup>44</sup> In any event, the recreation amenities in question are not part of the proposed lease areas, and the Commission's action on this non-project use application will not affect these amenities.

36. Commenter Gloria Ogoshi asks the Commission to find the leaseholders and Grant PUD in violation of the terms of the lease. As previously noted, the Port of Quincy's lease expired in 2012. Grant PUD and the HOAs have not yet executed the draft lease agreement that Grant PUD submitted along with its application. In any case, the Commission has no jurisdiction over compliance with the lease, which is not a license requirement. Accordingly, we deny this request.

#### **V. Conclusion**

37. We have reviewed the application pursuant to the Federal Power Act's comprehensive development/public interest standard, as informed by comments on the proposed non-project use. As discussed above, the record indicates that the proposed non-project use of 38.5 acres of project lands would only have minor environmental impacts and would not interfere with licensed project purposes, including flowage, public safety, and public access. For the above reasons, we conclude that the proposed non-project use of project lands and waters, as modified above, would be consistent with project purposes and is approved.

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<sup>43</sup> Commission staff recently approved Grant PUD's proposal to relocate a 55-site overnight camping facility from an off-island location to the northwest end of Crescent Bar Island. *See id.* at P 24. To accommodate the campground relocation, Grant PUD plans to construct a new commercial building, resulting in a reduction of the commercial retail space available on Crescent Bar Island. *See id.* at P 26.

<sup>44</sup> *See id.* at PP 26-27.

The Commission orders:

(A) Public Utility District No. 2 of Grant County, Washington's request for authorization to permit non-project use of 38.5 acres of project lands on Crescent Bar Island, filed on March 10, 2016, and supplemented on March 29, 2016, is approved, with the modification in Ordering Paragraph (B) below.

(B) Public Utility District No. 2 of Grant County, Washington must include the following conditions in any lease issued for the non-project use approved in Ordering Paragraph (A) above:

(1) the lessee's use and occupancy of project lands and waters must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use;

(2) the lessee must take all reasonable precautions so that the operation and maintenance of the permitted facility will occur in a manner that protects the scenic, recreational, and other environmental values of the project; and

(3) the lessee must not unduly restrict public access to project lands and waters.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2016). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.