

Director's Decision

Summary of Application

FILE NUMBER:	C24-0005
PROPOSAL:	The Columbia River Gorge Commission has received an application for a new fruit and produce stand.
APPLICANT:	Mary Kleihege
LANDOWNER:	Mary Kleihege
SIZE and LOCATION:	The subject parcel is approximately 214 acres in size and located at 386 Lyle Snowden Road and described as tax lot number 03-12-0900-0001/00 in the eastern half of Section 9, Township 3 North, Range 12 East, Willamette Meridian, Klickitat County, Washington.
LAND USE DESIGNATION:	General Management Area (GMA) – Commercial Forest (80)

Decision

Based upon the findings of fact and conclusions of law in the staff report accompanying this decision and the conditions of approval in this decision document, the land use application by Mary Kleihege, for a fruit and produce stand, is consistent with Commission Rules chapter 350, division 082, and thus consistent with the *Management Plan for the Columbia River Gorge National Scenic Area* and the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act, Pub. L. 99-663, 100 Stat. 4274 (1986), and is hereby **APPROVED**.

Conditions of Approval

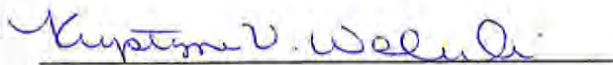
The following conditions of approval are given to ensure that the subject request is consistent with Commission Rules chapter 350, division 082. Compliance with these conditions of approval is required. The Gorge Commission may take one or more enforcement actions at any time to ensure compliance with these conditions of approval.

1. In accordance with Commission Rule 350-082-0150(3), the applicant shall record the Executive Director's decision and conditions of approval and approved site plan and elevation drawings in county deeds and records (at the Klickitat County Auditor's Office) to ensure notice of the conditions to successors in interest. The record shall be associated with all tax lots and parcels that constitute the subject property. The applicant need not record the separate staff report document containing the relevant

findings and conclusions. Once recorded, the applicants shall submit a copy of the recorded documents to the Executive Director.

2. This decision does not exempt the proposal from other non-National Scenic Area rules and regulations. It is the applicant's responsibility to ensure the use complies with all other applicable federal, state, and county laws and to obtain necessary approvals, including utility easement approvals.
3. Any new land uses or structural development, alterations, or grading not included in the approved application or site plan will require a new application and review.
4. The developments shall be constructed as shown on the approved project description. The fruit and produce stand will make use of the first level of the Cedar Barn and the shed side; this is approximately 42 ft X 70 ft (2,940 sq ft). The barn shall not be used for occupancy or for commercial events. Any changes shall be reviewed and approved by the Executive Director before the changes are implemented.
5. Associated incidental agricultural products from the local region and associated incidental marketing materials shall not make up more than 25% of the sales at the stand. Incidental products may include processed foods like jams and wine.
6. Foods prepared for consumption on the premises are not allowed.
7. At minimum, one standpipe shall be installed a minimum of 50 feet from the barn.
8. If cultural resources are discovered, all activities within 100 feet of the cultural resources shall immediately cease and the applicants shall notify the Gorge Commission within 24 hours of discovery and the State Physical Anthropologist, Dr. Guy Tasa at (360) 586-3534 or guy.tasa@dahp.wa.gov. The cultural resources shall remain as found and further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.
9. If human remains are discovered, all activities shall cease immediately upon their discovery. Local law enforcement, the Executive Director and Indian Tribal governments shall be contacted immediately. Further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.

DATED THIS 20 day of November 2024 at White Salmon, Washington.



Krystyna U. Wolniakowski
Executive Director

Expiration of Approval

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

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

This decision of the Executive Director becomes void on the 20 day of November 2026 unless construction has commenced in accordance with Commission Rule 350-082-0160(4).

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

Construction must be completed within two years of the date the applicant commenced construction. Commission Rule 350-082-0160(5) specifies that completion of the structure means completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the National Scenic Area approval.

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

The applicant may request one 12-month extension of the time period to commence construction and one 12-month extension to complete construction in accordance with Commission Rule 350-082-0160(6). The applicant must submit the request in writing prior to the expiration of the approval. If the applicant requests an extension of time to complete construction after commencing construction, the applicant shall specify the date construction commenced. The Executive Director may grant an extension upon determining that conditions, for which the applicant is not responsible, would prevent the applicant from commencing or completing the proposed development within the applicable time limitation. The Executive Director shall not grant an extension if the site characteristics or new information indicate that the proposed use may adversely affect the scenic, cultural, natural or recreation resources in the National Scenic Area.

Appeal Process

The appeal period ends on the 20 day of December 2024.

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

Notes

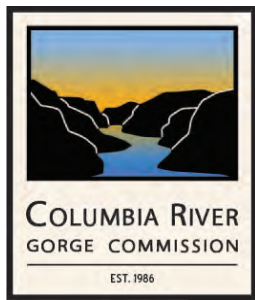
1. Any new land uses or structural development such as driveways, parking areas, garages, workshops, fences or other accessory structures; or additions or alterations not included in the approved application or site plan will require a new application and review. New cultivation also requires a new application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

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

Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs Reservation of Oregon
Nez Perce Tribe
U.S. Forest Service National Scenic Area Office
Washington Department of Archaeology and Historic Preservation
Klickitat County Planning Department
Klickitat County Building Department
Klickitat County Public Works Department
Klickitat County Health Department
Klickitat County Assessor
Washington Natural Heritage Program
Washington Department of Fish and Wildlife
Steve McCoy, Friends of the Columbia Gorge

Attachments:

Staff Report for C24-0005



Development Review Staff Report

Summary of Application

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LANDOWNERS:	Mary Kleihege
SIZE and LOCATION:	The subject parcel is approximately 214 acres in size and located at 386 Lyle Snowden Road and described as tax lot number 03-12-0900-0001/00 in the eastern half of Section 9, Township 3 North, Range 12 East, Willamette Meridian, Klickitat County, Washington.
LAND USE DESIGNATION:	General Management Area (GMA) – Commercial Forest (80)

Notice of Application Mailed to:

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

Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs
Nez Perce Tribe
U.S. Forest Service National Scenic Area Office (USFS CRGNSA)
Washington Department of Archaeology and Historic Preservation (DAHP)
Klickitat County Planning Department
Klickitat County Building Department
Klickitat County Public Works Department
Klickitat County Health Department
Klickitat County Assessor
Skamania County
Washington Natural Heritage Program
Washington Department of Fish and Wildlife (WDFW)
Friends of the Columbia Gorge

Written Comments Received From:

Friends of the Columbia Gorge (Steve McCoy, Staff Attorney)
USFS CRGNSA (Chris Donnermeyer, Heritage Resource Program Manager)
Basil F. Rotschy (Neighbor)

Findings of Fact

A. Land Use

1. Mary Kleihege is proposing a new fruit and produce stand in an existing barn, hereafter referred to as the cedar barn. The subject parcel is 214 acres and designated GMA Commercial Forest with an 80-acre minimum parcel size. The subject parcel is one of several parcels in Klickitat County that make up L77 Ranch; the ranch comprises over 1,000 acres in the NSA.
2. Commission Rule 350-082-0270(4)(a)(C) allows fruit and produce stands on lands designated Commercial Forest, subject to compliance with 350-082-0600 through 350-082-0720 and 350-082-0270(4)(b). Fruit and produce stands are defined by Commission Rule 350-082-0070(87) as:

A venue on a farm or ranch selling produce and agricultural products primarily grown on the subject farm or ranch. Associated incidental agricultural products from the local region and associated incidental marketing materials shall not make up more than 25% of the sales at the stand. Incidental products may include processed foods like jams and jellies. Foods prepared for consumption on the premises are not permitted. Fruit and produce stands are not a commercial use.

The applicant requests a fruit and produce stand inside an existing recently remodeled agricultural building (Director's Decision C20-0013). The fruit and produce stand will occupy the first level of the cedar barn, approximately 2,940 sq ft (42 ft X 70 ft). Conditions of approval are included stating associated incidental agricultural products from the local region and associated incidental marketing materials shall not make up more than 25% of the sales at the stand and foods prepared for consumption on the premises are not permitted. With these conditions included in the decision, the proposal is consistent with the definition of fruit and produce stands.

Commission Rule 350-082-0270(4)(b) contains the "Approval Criteria for Specified Review Uses." It states:

(A) The owners of land that is designated Commercial Forest Land, Large Woodland, Small Woodland, Large-Scale Agriculture, or Small-Scale Agriculture and that lies within 500 feet of the perimeter of the subject parcel have been notified of the land use application and have been given at least ten days to comment prior to a final decision.
(B) The use will not seriously interfere with accepted forest or agricultural practices on nearby lands devoted to resource use.

(C) The use will be sited in a way that minimizes the loss of forest or agricultural land and minimizes the chance of interference with accepted forest or agricultural practices on nearby lands.

(D) The use will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel and complies with 350-082-0270(5).

Neighbors within 500 ft of the proposal were notified on May 23, 2024. The fruit and produce stand will be located on a private road which only accesses the subject property. The fruit and produce stand will be located in an existing agricultural building, the cedar barn, and will not reduce and available agricultural or forestry land on the parcel. L77 Ranch is the dominant ranch in the area and the fruit and produce stand will not interfere with its current practices. The fruit and produce stand will not significantly increase fire hazard or risks to fire suppression personnel or increase fire suppression costs because the proposal is in an existing building that complies with 350-082-0270(5) the approval Criteria for Fire Protection in Forest Designations. Compliance with Commission Rule 350-082-082-0270(5) is included below.

3. Commission Rule 350-082-082-0270(5) includes the approval Criteria for Fire Protection in Forest Designations. It states:

(a) All buildings shall be surrounded by a maintained defensible space of at least 50 feet. Hazardous fuels shall be removed within the defensible space. Irrigated or fire resistant vegetation may be planted within the defensible space. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation should be removed from beneath trees. The Executive Director may consult with a fire professional to adjust defensible space to account for site slope. Defensible space may be adjusted to protect riparian vegetation and other resources, or as recommended by local fire districts, conservation districts, or other professional.

During the site visit, staff observed a 50-foot buffer zone for defensible space. The proposal is consistent with this requirement.

(b) Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structure(s).

A condition of approval is included in the decision to make the landowner aware of this requirement and to ensure compliance with this criterion.

(c) A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separate from the dwelling.

According to well logs from the Washington Department of Ecology, a new well was installed on the property on April 7, 2020, but no pump data was provided. The applicant stated they have a well capable of delivering sixty-five gallons per minute. The proposal is consistent with this requirement.

(d) Access drives shall be constructed to a minimum of 12 feet in width and not exceed a grade of 12 percent. Turnouts shall be provided at a minimum of every 500 feet and at the building site. Access drives shall be maintained to a level that is passable to fire equipment. Variances to road guidelines may be made only after consultation with the local rural fire district and the Washington Department of Natural Resources in Washington or the Oregon Department of Forestry in Oregon.

The applicant does not propose any new access drives. The proposal is consistent with this requirement.

(e) Utility supply systems shall be underground whenever possible.

No additional utilities are proposed in the application. The proposal is consistent with this requirement.

(f) Roofs of structures shall be constructed of fire-resistant materials such as metal, fiberglass, or asphalt shingle or tile. Roof materials such as cedar shake and shingle shall not be used.

No new roofs are proposed. The existing roof is a dark fire-resistant metal. The proposal is consistent with this requirement.

(g) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be equipped with a spark arrestor that includes at least one screen no coarser than 1/8-inch mesh metal that is noncombustible and corrosion resistant.

The applicant does not propose any chimneys or stovepipes. The proposal is consistent with this requirement.

(h) All structural projections such as balconies, decks and roof gables should be built with fire resistant materials equivalent to that specified in the International Building Code.

No new decks are proposed for the cedar barn. The existing deck is cedar treated with a fire-resistant stain. The proposal is consistent with this requirement.

(a) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with

no coarser than 1/8-inch mesh metal screen that is noncombustible and corrosion resistant.

No new exterior modifications are proposed to the cedar barn. The Gorge Commission encourages the applicant to observe these recommendations to maximize the fire resistance of the cedar barn.

4. Commission Rule 350-082-0520 includes guidelines about signs. Staff asked the applicant whether they wanted any signs for the proposal and informed them of the sign guidelines. The applicants stated that they do not want any signs at this time. A condition of approval is included to make the applicants aware of the requirements regarding signs.

Land Use Conclusion:

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

B. SCENIC RESOURCES

1. Commission Rule 350-082-0600 contains guidelines for the protection of scenic resources in the National Scenic Area. The proposal does not include the construction of any new buildings, roads, fences, or other structures. No signs are proposed. The exterior of the building was previously reviewed in a prior Director's Decision C20-0013). Because no new development is proposed, the scenic resource protection guidelines in Commission Rule 350-81-520 do not apply.

Scenic Resources Conclusion:

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

C. CULTURAL RESOURCES

1. Except as specified in Commission Rule 350-082-0620(2)(a)(C), new development in the NSA requires a reconnaissance survey.
2. Chris Donnermeyer, Heritage Resource Program Manager, U.S. Forest Service Columbia River Gorge National Scenic Area, reviewed the land use application and determined in a Cultural Resources Survey Determination letter, dated June 11, 2024, that pursuant to Commission Rule 350-082-0620(2)(a)(C) a Cultural Resource Reconnaissance Survey is not required because the proposed use would not disturb the ground and does not occur within 500 ft of a known archeological site.

3. Commission Rule 350-082-0620(2)(a)(D) describes when a historic survey is required. In his June 11, 2024, Cultural Resources Survey Determination letter, Mr. Donnermeyer determined that a historical survey is not required because the proposed use would not alter the exterior architectural appearance of significant buildings and structures that are 50 years old or older and would not compromise features of the surrounding area that are important in defining the historic or architectural character of significant buildings or structures that are 50 years old or older.
4. Commission Rule 350-082-0620(2)(g)(B)(in) states the cultural resource protection process may conclude when the following conditions exist:

The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 30 calendar days of the date that a notice was mailed.

The project notice was mailed on May 23, 2024, and the comment period ended on June 13, 2024. As explained above, the proposed use did not require a reconnaissance or historical survey, and no comments were received regarding cultural resource concerns. Pursuant to Commission Rule 350-082-0620(2)(g)(B)(i), the cultural resource protection process may conclude.

5. Commission Rule 350-082-0620(6) protects cultural resources discovered during construction. It requires that if cultural resources are discovered after construction begins, all construction activities within one hundred feet of the discovered cultural resource shall cease; further disturbance is prohibited, and the Gorge Commission shall be notified within 24 hours of the discovery. A condition of approval is included in the director's decision consistent with this rule.
6. Commission Rule 350-082-0620(7) has provisions addressing the discovery of human remains during construction. A condition of approval is included in the director's decision consistent with this rule.

Cultural Resources Conclusion

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

D. NATURAL RESOURCES

1. Commission Rule 350-082-0640 provides guidelines for protecting water resources in the National Scenic Area. Commission staff reviewed its natural resource inventories for nearby water resources. The closest wetland is more than three miles away from the proposed development. Review of Gorge Commission resource inventories identified one unnamed perennial stream west of the proposed development on the subject parcel and two untyped streams in the vicinity of the development. During a previous review on the subject property (C20-0013), staff visited the subject parcel and determined that the two untyped seasonal streams did not exist. Commission Rule 350-082-0640(f)

requires a 100 ft buffer for streams used by anadromous or resident fish and Commission Rule 350-082-0640(g) requires a 50 ft buffer for intermittent streams not used by anadromous or residential fish. According to the applicant's site plan, the proposal will be located over 300 ft away from the nearest perennial stream. The proposed development will not take place within any water resource or water resource buffer zones.

2. Commission Rule 350-082-0650 provides guidelines for protecting Priority Habitats and sensitive wildlife sites in the National Scenic Area. The proposed development takes place in deer and elk winter range and western gray squirrel habitat, which are Priority Habitats under Commission Rule 350-082-0690, Table 1.
3. Commission Rule 350-082-0650(3) describes the review process for development within 1,000 feet of a priority habitat. Commission Rule 350-082-580(3)(a) requires the Gorge Commission notifies the Washington Department of Fish and Wildlife (WDFW) when a new development or land use is proposed within a sensitive wildlife area, in this case, deer and elk winter range and western gray squirrel habitat. On May 23, 2024, Gorge Commission staff sent Amber Johnson, WDFW Habitat Biologist, a copy of the applicant's land use application and site plan. WDFW did not send a comment in response to the notice. Pursuant the Commission Rule 350-082-0650(3)(d), the wildlife protection process may conclude because the proposed use would not compromise the integrity of the Priority Habitats.
4. Commission Rule 350-082-580(4)(c) states:

The wildlife protection process may terminate if the Development Review Officer, in consultation with the appropriate state wildlife agency, determines: the sensitive wildlife area is not active; or the proposed use would not compromise the integrity of the wildlife area, or occur during the time of the year when wildlife species are sensitive to disturbance.

Amber Johnson did not comment on the proposal with any concerns. The proposal will not reduce the acreage of deer and elk winter range and western gray squirrel habitat nor result in changes to vegetation or accessibility of winter range habitat or western gray squirrel habitat. Staff find the proposed use will not compromise the integrity of any wildlife area.

5. Commission Rule 350-81-580(1)(c) states:

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

Notice was sent to WDFW, but staff did not receive any comments about the proposed development. Pursuant to Commission Rule 350-81-580(1)(c), staff does not believe the proposed development results in adverse effects, including cumulative effects, to the integrity of the parcel as a wildlife site due to the nature of the development and existing use of the parcel.

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

Natural Resources Conclusion:

With the conditions of approval discussed above, the proposed development is consistent with the rules in Commission Rule 350-082, Sections 0640 through 0660, that protect natural resources in the National Scenic Area.

E. RECREATION RESOURCES

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

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

The parcel is designated Recreation Class 2 according to the Gorge Commission's Recreation Intensity Class Map. No recreation sites or facilities exist on parcels adjacent to the subject parcel, therefore, no buffers are required pursuant to Commission Rule 350-082-0580.

Recreation Resources Conclusion:

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

F. TREATY RIGHTS PROTECTION

1. Commission Rule 350-082-0130 provides protection of tribal treaty rights from new developments in the National Scenic Area. Consistent with Commission Rule 350-082-0130(1)(a), notice of the proposed development was provided to the tribal governments on May 23, 2024.
2. Commission Rule 350-082-0130(1)(b) lists other notice requirements for projects in or providing access to the Columbia River or its fish bearing tributaries or for projects that may affect tribal treaty rights. The subject parcel does not adjoin the Columbia River or its fish-bearing tributaries and does not provide access to the Columbia River.
3. Commission Rule 350-082-0130(1)(c) requires the Commission to offer to meet with or consult with the tribal governments prior to making a decision on the proposed development, and to make this offer more than once. The Commission provided the first offer to meet or consult with the initial notice on May 23, 2024. No treaty tribe requested a meeting or consultation.
4. Commission Rule 350-082-0130(d) provides thirty calendar days for tribal governments to request consultation regarding tribal treaty rights. No comments were received.

5. Commission Rule 350-082-0130(i) states:

The treaty rights protection process may conclude if the Executive Director determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.

The subject parcel does not provide access to the Columbia River or its fish bearing tributaries. No known treaty rights are affected by this proposal and no treaty rights concerns were raised by the tribal governments. Because the proposed use does not affect or modify treaty or other rights of any Indian tribe, the treaty rights protection process may conclude pursuant to Commission Rule 350-082-0130.

Treaty Rights Conclusion:

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

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