

# Director's Decision

## Summary of Application

- FILE NUMBER:** C24-0007
- PROPOSAL:** The Columbia River Gorge Commission has received an application for a new 1-acre vineyard, a 1,056-square-foot agricultural building, a 180-square-foot ground-mounted solar array, and an after-the-fact review of an access road.
- APPLICANTS:** Dave Spitzer and Laurie Garber
- LANDOWNERS:** Dave Spitzer and Laurie Garber
- SIZE and LOCATION:** The subject parcel is approximately 9.42 acres in size and is located off Courtney Road in Klickitat County, Washington and described as tax lot number 03112800002800 in the SW 1/4 of the SE 1/4 of Section 28, Township 3 North, Range 11 East, Willamette Meridian, Klickitat County, Washington.
- LAND USE DESIGNATION:** Special Management Area (SMA) – Agriculture

## Decision

- (1) Based upon the findings of fact and conclusions of law in the staff report accompanying this decision, the land use application by Dave Spitzer and Laurie Garber for a new 1-acre vineyard, a 1,056-square-foot agricultural building, a 180-square-foot ground-mounted solar array, and for the after-the-fact review of an access road is not consistent with Commission Rules chapter 350, division 082, and thus not 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 **DENIED**.
- (2) The applicants must contact the U.S. Forest Service National Scenic Area Office (USFS CRGNSA) within 90 days of this Director's Decision to arrange for a Forest Service wildlife biologist or botanist to conduct an assessment of the damage from Oregon white oak tree removal that occurred during construction of the unpermitted road. The applicants shall follow the recommendations from the Forest Service for oak habitat mitigation.

DATED THIS 19 day of December 2024 at White Salmon, Washington.

Krystyna U. Wolniakowski

Krystyna U. Wolniakowski  
Executive Director

## Appeal Process

The appeal period ends on the 18 day of January 2025.

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.

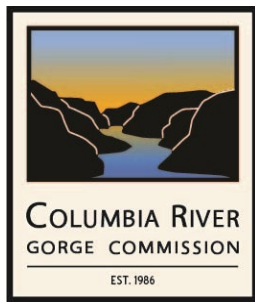
---

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 C24-0007



# Development Review Staff Report

## Summary of Application

<b>FILE NUMBER:</b>	C24-0007
<b>PROPOSAL:</b>	The Columbia River Gorge Commission has received an application for a new 1-acre vineyard, a 1,056-square-foot agricultural building, a 180-square-foot ground-mounted solar array, and an after-the-fact review of an access road.
<b>APPLICANTS:</b>	Dave Spitzer and Laurie Garber
<b>LANDOWNERS:</b>	Dave Spitzer and Laurie Garber
<b>SIZE and LOCATION:</b>	The subject parcel is approximately 9.42 acres in size and is located off Courtney Road in Klickitat County, Washington and described as tax lot number 03112800002800 in the SW 1/4 of the SE 1/4 of Section 28, Township 3 North, Range 11 East, Willamette Meridian, Klickitat County, Washington.
<b>LAND USE DESIGNATION:</b>	Special Management Area (SMA) – Agriculture

## Notice of Application Mailed to:

In accordance with Commission Rule 350-082-0110, the Gorge Commission staff mailed notice of this application to property owners within 200 feet of the subject parcel and sent email notice of this application to the following governments, agencies, and organizations:

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

## Written Comments Received From:

Friends of the Columbia Gorge (Steve McCoy, Staff Attorney)  
USFS CRGNSA (Chris Donnermeyer, Heritage Resource Program Manager)  
WDFW (Amber Johnson, Habitat Biologist)

## Findings of Fact

### A. Land Use

1. Dave Spitzer and Laurie Garber are seeking approval for a new 1-acre vineyard, a 1,056-square-foot agricultural building, a 180-square-foot ground-mounted solar array, and an after-the-fact review of an access road.
2. The subject parcel is in the Burdoin Mountain Special Management Area (SMA) and is designated Agriculture. The parcel is approximately 9.42 acres in size and is located on Burdoin Mountain and accessed off Courtney Road in Klickitat County.
3. The landowner constructed a gravel access road without a permit from the Columbia River Gorge Commission. The unpermitted road is located on the western side of the property, beginning at Courtney Road and extending to the southwest corner of the property.
4. The landowner, an architect generally familiar with land use permitting, purchased the subject parcel understanding the limitations of what may be allowed on the parcel. Mr. Spitzer conducted development activities after being told by Commission staff that he first needed a Director's Decision approving the activity before starting work. Rather than filing for a development permit, Mr. Spitzer removed at least two Oregon white oak trees<sup>1</sup> and constructed a driveway on his property without an approved permit. Subsequently, Commission staff observed a recreational vehicle and small structure on the property, which is another violation. Instead of issuing a Notice of Alleged Violation, staff ordered the removal of the unpermitted structures and offered to review the unpermitted road in an after-the-fact review to determine whether it could be approved or would need to be restored and mitigated through enforcement. Below is a timeline of Mr. Spitzer's contact with Gorge Commission staff, the unpermitted development activity on the subject parcel, and development review applications submitted to the Gorge Commission by Mr. Spitzer and Ms. Garber:
  - a. In March 2022, Mr. Spitzer contacted the Gorge Commission office about the subject parcel and to inquire about building a house on the property. Mr. Spitzer spoke with National Scenic Area planner Bryce Guske, who explained the review uses allowed in the SMA Agriculture land use designation, including that single-family dwellings are not allowed on parcels designated SMA Agriculture that are less than 40 acres in size. Staff explained that the property has very limited

---

<sup>1</sup> The applicants provided this information in the application materials. Staff cannot confirm the size or number of trees removed for the construction of the road. The assessment and mitigation plan required by the Commission's rules cited in section D of this staff report may confirm this or reveal different information.

allowed uses and that it is located in protected Western Grey Squirrel habitat. Mr. Spitzer asked if there was a way to change the property from SMA to GMA, to which Mr. Guske replied that the National Scenic Area Act does not give the Gorge Commission the authority to change the designation of the subject parcel.

- b. According to Klickitat County records Mr. Spitzer and Ms. Garber purchased the subject parcel on April 29, 2022. In May 2022, Mr. Spitzer contacted Mr. Guske confirming that they had purchased the property and planned to construct an agricultural building and plant a few acres of orchard or grapes.
- c. On July 11, 2022, Mr. Spitzer called Mr. Guske to inquire about applying for a pump house and solar array. During the call, Mr. Spitzer admitted that he had already constructed a road through the property which resulted in the removal of at least two oak trees. Mr. Guske told Mr. Spitzer to stop work on the property immediately until an application was submitted, reviewed and a decision was issued.
- d. On July 13, 2022, Mr. Spitzer applied for the after-the fact review of a road and a pump house with a solar array. Mr. Guske asked for more information and clarification regarding the application including the proposed primary use of the property, the proposed agricultural use, and an updated site plan.
- e. In October 2022, while driving along I-84 Mr. Guske observed a structure on the subject parcel. That same day, Mr. Guske visited the property west of the subject parcel, a parcel owned by the Kreps Ranch and open for public access, and observed a recreational vehicle and another small building on the subject parcel. Mr. Guske also observed that significant grading had taken place creating a flat area where the recreational vehicle and the other small building was located. Mr. Guske informed Mr. Spitzer that these buildings require a permit from the Gorge Commission and that they needed to be removed immediately.
- f. On November 3, 2022, Mr. Spitzer submitted a new application for an apple orchard and an agricultural building. Staff did not accept receipt of the application pending removal of the unpermitted structures.
- g. On November 17, 2022, staff sent Mr. Spitzer an email informing him that the Gorge Commission intended to issue a Notice of Alleged Violation the following week that stipulated the conditions necessary for resolution. Staff requested a meeting with Mr. Spitzer as soon as possible to discuss options for a resolution.
- h. On November 21, 2022, Commission staff, Mr. Spitzer, and Ms. Garber had a phone call to discuss the unpermitted development and the plan for resolution. On the call, Mr. Spitzer and Ms. Garber agreed to remove the structures and invited Commission staff to the property for a site visit.
- i. On December 12, 2022, Mr. Guske visited the property and observed that the recreational vehicle had jack stand supports, wooden stairs to enter a door, two artificial turf pads outside the vehicle, a solar panel, and a plastic water barrel with power and water lines running into it.

- j. On February 18, 2023, Gorge Commission Executive Director, Krystyna Wolniakowski sent a letter to the applicants requesting that they remove the recreational vehicle at their earliest convenience. Ms. Wolniakowski also reminded the applicants that there can be no structures on the property without permits, and that they are not allowed to park a recreational vehicle and stay in it until an application is processed and approved.
- k. On February 27, 2023, Skookum Resource Management, on behalf of Mr. Spitzer, submitted a Forest Practice consistency review application to the Forest Service. The purpose of the proposal is to enhance Oregon white oak woodland habitat for improved wildfire resilience and wildlife conditions.
- l. On April 4, 2023, Mr. Spitzer sent staff photos showing that the shed and recreational vehicle had been removed.
- m. On April 18, 2023, Joanna Kaiserman, Sr. Land Use Planner, and Ms. Wolniakowski, visited the property and met with Mr. Spitzer and Ms. Garber. They observed the unpermitted road on the property, the graded gravel pad where the recreational vehicle and shed used to be and they were shown the sites that the applicants plan to use for cultivation and for the agriculture building. They confirmed that the unpermitted shed and the vehicle had been removed from the property. In May 2023, Ms. Kaiserman sent a letter of completeness to Mr. Spitzer and Ms. Garber outlining the materials missing from their application.
- n. In June 2023, Commission staff met with Mr. Spitzer and Ms. Garber over Zoom to discuss the agricultural and business plans requested of the applicants and the siting of the proposed agricultural building. Also in June, Commission staff, Mr. Spitzer, and Ms. Garber met with Casey Gatz, Forest Service Resources and Planning Staff Officer, to discuss the applicants' questions about scenic resource protection guidelines.
- o. In November 2023, Mr. Spitzer and Ms. Garber submitted a new proposal for a one-acre vineyard instead of the previously proposed orchard, a new proposed site for the agricultural building, and a business plan for the proposed agricultural use. In December 2023, Ms. Kaiserman sent a letter of completeness to Mr. Spitzer and Ms. Garber that included additional questions and concerns about the business plan and the profitability of the proposal. Ms. Kaiserman reiterated that land designated SMA Agriculture is intended only for agricultural use for the primary purpose of obtaining a profit by raising, harvesting, and selling crops, and any structural development must be for the support of that agricultural use; thus, to justify having an agricultural building, the land would first need to be actively used for agriculture for the purpose of obtaining a profit. Staff consulted with several local vineyard owners and were advised that selling one acre worth of grapes would not be economically feasible on its own without a winery and tasting room for revenue, which is not allowed on lands designated SMA Agriculture. Staff did not recommend amending the proposal to include the

production and selling of wine, because this is not an allowed use on lands designated SMA Agriculture.

- p. On February 26, 2024, Mr. Spitzer and Ms. Garber submitted a new business plan that included estimated profits from selling wine processed off-site made with grapes from the property.
  - q. In June 2024 staff sent out the application for public notice, but informed the applicants that staff remained concerned about the economic viability of the proposed agricultural use, and reminded the applicants that the sale of wine cannot be considered when calculating the profits from the proposed agricultural use on the property.
  - r. On September 6, 2024, the Forest Service issued a SMA Forest Practice consistency determination approving the proposal for a Forest Practice on the parcel. The determination noted that the applicant stated that the unpermitted road on the parcel will not be used for the forest practice; instead, a landing will be located on the portion of the property that was developed as part of the Courtney Road realignment project, in addition to another landing in the southeast portion of the parcel accessed through a neighboring property.
5. Findings 6, 7, and 8 below address the proposed uses on the subject parcel. The subject parcel is designated SMA Agriculture. Commission Rule 350-082-0260 lists the uses and standards for the uses on land designated SMA Agriculture. Commission Rules 350-082-0260(1) and (2) refer to uses allowed without review and uses allowed through expedited procedures. The applicants do not propose uses that can be allowed without review or through expedited procedures.

Commission Rule 350-082-0260 lists review uses and states:

*The following uses may be allowed on lands designated SMA Agriculture subject to compliance with 350-082-0600 through 350-082-0720. The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.*

The applicants' proposed uses are review uses that require compliance with the standards for each use and with Commission Rules 350-082-0600 through 350-082-0720, which are the standards for protection and enhancement of scenic, cultural, natural, and recreation resources. In addition, each use must be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.

6. Commission Rule 350-082-0260(3)(a) allows:

*New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-082-0280(3)(w).*

Commission Rule 350-082-0070(12) defines "agricultural use" as:

*The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, furbearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:*

- (a) The operation or use of farmland subject to any agriculture-related government program.*
- (b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.*
- (c) Land planted in orchards or other perennials prior to maturity.*
- (d) Land under buildings supporting accepted agricultural practices.*
- (e) Agricultural use does not include livestock feedlots.*

The applicants propose to plant approximately one acre of grapes on land that is currently unused and according to county records has not been previously farmed or developed. Thus, the applicants are proposing new cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas as provided in Commission Rule 350-082-0260(3)(a). The applicants do not propose to remove any trees for their proposed agricultural use and thus the additional requirements of 350-082-0280(3)(w) do not apply.

To show that the proposed agricultural use would be “for the primary purpose of obtaining a profit,” as specified in the definition of “agricultural use” in Commission Rule 350-082-0070(12), staff requested that the applicants provide a business plan. In February 2023, the applicants provided a business plan for a vineyard of wine grapes and off-site wine production. Staff reminded the applicants that only the sale of the crop (the wine grapes) could be included in the calculation of profits. Staff reviewed the business plan with consideration solely for the proposed sale of wine grapes.

Staff consulted with three local vineyard owners and all were skeptical that selling one acre worth of grapes would be profitable. Their opinion was that growing one acre of grapes would only be economically feasible with a winery and tasting room for additional revenue.

To further investigate the economic viability of selling one acre of wine grapes, staff met with Cody R. Copp, Viticulturalist and Assistant Professor of Practice and Horticulturist at Oregon State University Extension Service. Mr. Copp advised that vineyards in the region that only sell fruit and do not have an associated winery rarely see a profit within 10 years of establishment. Mr. Copp estimated that it would take 10-12 years to establish a vineyard at the proposed site. He said that 3 tons per acre is the expected yield in the region, and that high-demand grapes would sell for a maximum of \$3,000 per ton. That would mean the estimated gross return for this one-acre vineyard after 10-12 years would be at maximum \$9,000 per year.

Staff also contacted Colleen Frei, Executive Director of the Washington Winegrowers Association and Sara Higgins, Executive Director of the Washington Wine Industry Foundation to ask for their thoughts on the potential profitability of the proposal. They both pointed staff toward the NW Grape Calculator, an online tool to estimate costs and revenue of producing grapes. This online resource was developed specifically for the Washington, Oregon, and Idaho region's winegrape growers and winery owners and is a tool for calculating and evaluating the economic feasibility of an operation. Using the information provided by the applicant in the proposed business plan, staff used the calculator to assess the financial viability of the applicant's proposed vineyard.

On August 3, 2024, the applicants asked staff if they would need to revise their proposal to two acres of grapes in order to show a greater profit. Staff offered to run the calculations again through the NW Grape Calculator with two acres to see if that would be profitable but requested that the applicants let them know if they decided to change their proposal to two (or more) acres, as this would change the analysis of the proposal. The applicants did not request to change their proposal.

Staff noted that the applicants did not include the cost of capital expenses in their business plan. These costs include the purchasing of the land, construction of the road, the proposed agricultural building to support the agricultural use, the proposed solar array, and a tractor that the applicants will need for farming the grapes. Because this information was not provided in the business plan, staff did not include it in the calculations of profit. If these expenses were included in the calculations, however, the projected profits would be much lower.

In an email sent to the applicants on September 25, 2024, staff requested information from the applicants about the input costs that were left out in the business plan, expressing concern that without the necessary information to calculate profitability, the calculation would not be accurate. The applicants replied that they were working with their accountant to better explain why the capital expenses were omitted from the business plan. At the time of issuing this Director's Decision, the applicants did not provide an explanation as to why the expenses were excluded from the business plan.

Staff used the information provided in the applicants' business plan to fill in the NW Grape Calculator to estimate the costs and returns of the proposed one-acre vineyard. The estimates are based on the maximum possible yield of 3 tons of grapes per acre and a maximum possible price of \$3,000 per ton of grapes. The results of the calculator showed that after one year, the net returns above total costs would be -\$18,932.52. This is the amount of profit remaining after subtracting all associated costs from the total revenue generated. However, as stated above, this calculation is missing key expenses and therefore does not provide an accurate projection of profit. According to the calculator, the net returns would not be positive until after year four, when the returns would be \$2,518.92. This number holds the same for years 5 through 10. The calculator only provides projections up to 10 years. If the capital expenses for this project were added to the costs in the calculation of profit, staff believes the proposal would not yield a positive net return.

Based on the information provided in the applicants' business plan, and in consulting with an OSU Extension professor, and wine grower industry associations, the Executive Director concludes that the applicant's proposal for selling one acre of wine grapes is not profitable, and therefore does not meet the requirements of Commission Rule 350-082-0070(12).

7. Commission Rule 350-082-0260(3)(f) allows agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-082-0380).

The parcel has no history of agricultural use and is currently undeveloped (the unpermitted road is not lawful development). An agricultural use is proposed, but staff concluded in finding 6 above that it does not meet Commission Rule 350-082-0260(3)(a). The agricultural use cannot be approved, and therefore the proposed agricultural building in conjunction with an agricultural use cannot be approved.

8. Commission Rule 350-082-0380 has the following requirements for proposed agricultural buildings:

*(1) Agricultural buildings may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) and (3) below.*

*(2) The size of proposed agricultural buildings shall not exceed the size needed to serve the current agricultural use and, if applicable, the proposed agricultural use.*

*(3) To satisfy 350-082-0240(3), applicants shall submit the following information with their land use application:*

*(a) A description of the size and characteristics of current agricultural use.*

*(b) An agricultural plan for any proposed agricultural use that specifies agricultural use (e.g., crops, livestock, products), agricultural areas and acreages (e.g., fields, pastures, enclosures), agricultural structures (e.g., irrigation systems, wind machines, storage bins) and schedules (e.g., plowing, planting, grazing).*

*(c) A floor plan showing intended uses of the agricultural building (e.g., space for equipment, supplies, agricultural products, livestock)*

The applicants propose a 21 ft. tall, 44 ft. x 24 ft. (1,056 sq. ft.) agricultural building to serve the proposed agricultural use. The proposed purpose of the building is to store equipment. The building cannot be used as a winery. The applicants supplied a floor plan of the proposed agricultural building as part of the application materials to address the requirements of Commission Rule 350-082-0380. The building includes an area of approximately 930 sq. ft. for equipment storage, including a tractor and parts, and approximately 125 sq. ft. for a bathroom with a shower, and closets with utilities.

The proposed agricultural use that the agricultural building is intended to serve is the cultivation and harvesting of a one-acre vineyard. The applicants have indicated that a tractor will be needed for the agricultural use, and the agricultural building will provide storage for the tractor. The applicants demonstrated the need for the horizontal dimensions of the agricultural building to store the tractor and other equipment, and for a bathroom and utilities. However, the applicants have not demonstrated a need to have the agriculture building be 21 feet tall. At the height proposed, there is enough room for at least a partial second floor or loft, and the elevation drawings provided by the applicants show windows at the second-story level. The proposed height and design would allow space for supporting a larger vineyard or other uses of the building, but exceeds the space needed for the proposed agricultural use. In order to not exceed the size needed to serve the proposed agricultural use, the building would need to be reduced in height such that no second story is possible.

9. Commission Rule 350-082-0260(3)(u) allows “Road and railroad construction and reconstruction.”

350-082-0070(160) defines “road” as:

*The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. “Road” includes, but is not limited to: Ways described as streets, highways, throughways, or alleys; Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures; and Structures that provide for continuity of the right-of-way, such as bridges.*

The applicants constructed a road on the property in 2022 without prior land use approval. In this development review application, they are seeking after-the-fact approval for their unpermitted action. The Gorge Commission reviews after-the-fact development as if the development had not already occurred. The road extends from Courtney Road, through the trees that cover most of the property, to the southwest corner of the property. The applicant graded the road and placed crushed rock on it as a driving surface. The road is approximately 600 feet long and 10 feet wide. The road provides access to the graded viewpoint area at the southern end of the property where the unpermitted recreational vehicle used to be parked. The graded viewpoint contains both cut and fill grading and is covered in crushed rock. The flattened area is approximately 10,000 square feet in size.

10. The applicants propose a 180 sq. ft. ground-mounted solar array. Stand-alone solar arrays are considered accessory structures. Commission Rule 350-82-0070(4) defines “accessory renewable energy system” as:

*A system accessory to a primary structure or allowed use on the parcel that converts energy into a usable form such as electricity or heat and conveys that energy to the allowed structure or use. An Accessory Renewable Energy System is a solar thermal, photovoltaic, or wind turbine structure, or group of*

*structures designed to offset all or part of the annual energy requirements of the primary use on the subject parcel.*

There is no current primary use on the subject parcel. The applicants propose an agricultural use, which would become the main use of the parcel. The proposed agricultural building would support the agricultural use, and the proposed solar array would support the agricultural building. However, the proposed primary use of agriculture is not permitted, as explained in Finding 6 above. Therefore, the supporting uses of the agricultural building and solar array cannot be permitted.

### **Land Use Conclusion:**

The proposed agricultural use, and the associated agricultural building and solar array do not meet the review use standards. The road on the property is a review use that may be permitted provided that it meets the standards for the protection and enhancement of scenic, cultural, natural, and recreation resources, and minimizes the loss of land suitable for the production of agricultural crops or livestock.

## **B. Scenic Resources**

1. The subject parcel is in the Oak-Pine Woodland Landscape Setting. Commission Rule 350-082-0610(1)(a)(B) states:

*Woodland areas shall retain the overall appearance of a woodland landscape. New development and land uses shall retain the overall visual character of the natural appearance of the Coniferous Woodland and Oak-Pine Woodland landscape.*

- (i) Buildings designed to have a vertical overall appearance in the Coniferous Woodland landscape setting and a horizontal overall appearance in the Oak-Pine Woodland landscape setting shall be encouraged.*
- (ii) Use of plant species native to the landscape setting shall be encouraged. Examples of native species are identified in the Scenic Implementation Handbook as appropriate to the area. Where non-native plants are used, they shall have native-appearing characteristics.*

The proposed agricultural building is approximately 21 feet tall and 44 feet wide, with an overall horizontal appearance as required by this standard. No new plantings are proposed.

2. Commission Rule 350-082-0610(2) states: “The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.”

To determine the topographical visibility of a site from key viewing areas (KVAs), Commission staff first used a Composite Seen Areas dataset mapping tool which indicates areas potentially visible from KVAs. This data indicates that the site may be visible from six KVAs. Staff then used Google Earth mapping tools to determine potential visibility of the development site from each of the identified KVAs. After getting this data, staff then conducted site visits to the subject parcel and the indicated KVAs to ground-truth the mapping tool information. Observations made during these

site visits confirmed that parts of the proposed development are topographically visible from the Columbia River, Historic Columbia River Highway (HCRH) trail, and Interstate 84. Therefore, Commission Rule 350-082-0610(2) guidelines apply.

3. Commission Rule 350-82-0610(2)(b) states, “New developments and land uses shall be evaluated to ensure that the required scenic standard is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from key viewing areas.” Commission Rule 350-082-0610 Table 1 specifies that the required scenic standard for all development and uses in the Oak-Pine Woodland Landscape Setting in SMA Agriculture is Visually Subordinate. Commission Rule 350-82-0070(202) defines “visually subordinate” as follows:

*One of the two scenic standards applicable in the National Scenic Area. A description of the relative visibility of a development, structure, or use where that development, structure, or use does not noticeably contrast with the defining landscape setting characteristics, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan) and the setting appears only slightly altered (distinctive characteristics of that setting remain dominant). As opposed to development, structures, or uses that are fully screened, structures that are visually subordinate may be partially visible but would be difficult to discern to the common viewer. Visually subordinate development, structures, or uses as well as forest practices in the SMAs shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of scale, proportion, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.*

The Columbia River is the closest KVA at approximately 1 mile from the development site to the nearest point on the Columbia River where the site is visible. The river at this point is approximately 1,450 feet lower in elevation than the development site, allowing for existing topographical features between the site and this KVA to screen most of the proposed development from view. Staff found that the top few feet of the agricultural building would be visible from this KVA. The proposed vineyard and solar array would not be visible from this KVA. The proposed agricultural building is topographically visible from the Columbia River for a stretch of approximately 5 miles from the Hood River-White Salmon Bridge to Mosier. If staff were approving the proposed development, conditions of approval would require the retention of existing vegetation, the use of dark earth-tone colors and non-reflective materials on the exterior of the agricultural building, and the planting of screening trees to ensure the proposed development would be visually subordinate in relation to its surroundings as viewed from this KVA.

The Interstate 84 (I-84) KVA is approximately 1.3 miles from the development site at its nearest point where the site is topographically visible. The site is visible from I-84 for a linear distance of approximately 4.6 miles between milepost 68 and milepost 72. I-84 is approximately 1,430 feet lower in elevation than the development site, allowing for existing topographical features and vegetation on the subject parcel to partially screen the proposed development from view. From this KVA, the top half of the proposed

agricultural building would be visible. The proposed vineyard and solar array would not be visible from I-84. To meet the scenic standard of visually subordinate, the agricultural building would need to be constructed of non-reflective or low-reflective materials that are dark earth-tone in color and all existing vegetation would need to be maintained.

The subject parcel is topographically visible from the Historic Columbia River Highway (HCRH) trail. The distance from points on the HCRH trail from which the site is topographically visible ranges from approximately 1.7 to 2 miles from the subject parcel. Starting at approximately 700 feet east of the western trailhead of the HCRH trail in Hood River, the proposed agricultural building is topographically visible. It continues to be topographically visible from the trail until approximately 900 feet from the eastern trailhead in Mosier, for a total linear distance of approximately 4 miles along the trail. However, existing topography and trees along the HCRH and existing trees on the subject parcel screen the proposed development site from view for some of this linear distance. The nearest point on the HCRH trail is approximately 1,140 feet below the development site in elevation. From this viewpoint, the existing mature oak trees to the south of the proposed development help to screen much of the proposed agricultural building from view. The proposed vineyard is topographically visible from a viewpoint on the HCRH trail that is approximately 2 miles from the subject parcel. The top half of the vineyard structures would be visible from this viewpoint, with no existing vegetation on the subject parcel nor at the viewpoint to screen the proposed vineyard from view. The proposed solar array would not be visible from this KVA. The existing vegetation on the subject parcel, along with the use of dark earth-tone colors and non-reflective materials for the proposed agricultural building and the vineyard structures would make this development visually subordinate as seen from the HCRH trail.

The proposed development would be visually subordinate as seen from KVAs within three miles due to distance, topography, vegetation, and design. The distance between the proposed development and the KVAs ensures that the development would not visually dominate the natural landscape setting as viewed from KVAs. Based on these findings, the proposed development would not noticeably contrast with the surrounding landscape, and therefore is visually subordinate as seen from KVAs.

4. Commission Rule 350-82-0610(2)(d) states, "In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development."

The adjacent natural landscape to the new development is stands of mixed oak and pine trees with oak being the dominant species. To the south of the trees are open areas of seasonally light green and brown grass, punctuated with scattered Ponderosa pine and oak trees with shadows of dark green, and dark grey/brown basalt cliffs and outcroppings. In this landscape, there is a high contrast of light and dark. The shadows of the trees and rocks are very dark and recede into the landscape, while the lighter colors of the grasses are highlighted by the sun's reflection and visually stand out in the landscape.

The design of the agricultural building is key to ensuring that it would blend well with the adjacent natural landscape elements and achieve visual subordination. The agricultural building is designed to remain visually subordinate to the surrounding trees in the landscape by keeping the height below the average tree canopy level. The nearby trees to the site are mostly Oregon white oak, with an average tree canopy height of approximately 30 feet. The top of the highest point of the roofline of the agricultural building measures 21 feet from the finished grade, keeping the structure at approximately 9 feet below the average height of the canopy. The exterior of the agricultural building would be constructed of cedar wood siding, which is non-reflective, and of colors that are as dark or darker than the shadows of natural elements in the surrounding landscape to ensure that nothing about the agricultural building would be highlighted in the landscape. The cedar wood siding would be preserved using the shou sugi ban technique. This technique involves charring the wood and finishing it with an oil or other preservative, and results in a dark brown or black color. The proposed roof is metal. If staff were approving the agricultural building, a condition of approval would be that the roof shall be a dark earth tone color and treated with a non-reflective coating to be consistent with Commission Rule 350-82-0610(2)(d).

6. Commission Rule 350-82-0610(2)(e) states, "Proposed developments or land uses shall be sited to achieve the applicable scenic standard. Development shall be designed to fit the natural topography, to take advantage of landform and vegetation screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms."

The proposed agricultural building, vineyard, and solar array are sited to be partially screened from KVAs by existing topography and trees located both on and off the subject parcel. The south end of the road does not appear to have been sited to minimize visible grading. The graded area at the southwest corner of the property where the recreational vehicle was parked is south of any screening vegetation and may be visible from the HCRH trail KVA to the south. The findings below address compliance with the scenic standard.

7. Commission Rule 350-82-0610(2)(f) addresses visual impacts of the proposed development from KVAs. It states that conditions of approval to achieve the scenic standard shall be proportionate to its potential visual impacts as seen from KVAs and lists the factors.

The proposed agricultural building, vineyard, and solar array are sited to be partially screened from KVAs by existing topography and trees located both on and off the subject parcel. The proposed materials for the structures are dark earth tone colors and are non-reflective. The road is screened by existing topography and is sited to ensure that cut and fill slopes would not be visible. However, the graded, flat area at the south end of the road was not sited to reduce visibility from KVAs. The grading of this area is

not screened by existing vegetation and may be visible from the HCRH trail to the south of the subject parcel.

8. Commission Rule 350-82-0610(2)(h) states, "Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from key viewing areas." Skyline is defined as:

*The line that represents the place at which a landform, such as a cliff, bluff, or ridge, meets the sky and is topographically visible from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). The skyline is formed where the surface of the earth meets the sky except in existing densely forested landscapes with thick, unbroken coniferous tree cover characteristic to its setting, the skyline may be formed by the top of the vegetative canopy.*

On June 14, 2023, the applicants, staff, and Casey Gatz, Resources, Planning and Lands Staff Officer at the U.S. Forest Service met to discuss the Forest Service's interpretation of the skyline definition and how it applies to development on the subject parcel. Mr. Gatz confirmed that the property is not in a densely forested landscape; therefore, the skyline in the area of the proposed development is defined by where the surface of the earth meets the sky. In November 2023, the applicants proposed siting the agricultural building near the end of the unpermitted road at the southwest corner of the property. This location was near the bluff edge, did not have sufficient vegetative screening, would break the skyline as seen from KVAs, and according to the applicants' estimate, would require cutting down six Oregon white oak trees. Staff suggested an alternative location where the agricultural building could be sited to better take advantage of screening topography and existing vegetation and would not require trees to be cut. In the application submitted in February 2024, the applicants proposed siting the agricultural building at this suggested site.

Once staff accepted the application and conducted the scenic analysis, they discovered that the proposed agricultural building in this location would break the skyline as seen from KVAs. Staff analysis shows that the proposed 21-foot-tall agricultural building in the location proposed would protrude above the topography as seen from both the Columbia River and I-84 to the south and southwest of the subject parcel.

The Columbia River is the closest KVA at approximately 1 mile from the development site and is approximately 1,450 feet lower in elevation than the development site. Staff found that the top few feet of the agricultural building protrudes above the skylines as seen from this KVA. The proposed vineyard and solar array would not be visible from this KVA. The proposed agricultural building protrudes above the skyline as viewed from the Columbia River for a stretch of approximately 5 miles from the Hood River-White Salmon Bridge to Mosier.

The I-84 KVA is approximately 1.3 miles from the development site at its nearest point where the site is topographically visible. I-84 is approximately 1,430 feet lower in elevation than the development site. From this KVA, the top half of the proposed agricultural building protrudes above the skyline as viewed from the Columbia River

for a linear distance of approximately 4.6 miles between milepost 68 and milepost 72, between Hood River and Mosier.

The agricultural building is located on a south/southwest slope and would be well below the skyline as viewed from the HCRH trail. The topography to the north of the subject parcel slopes up to a ridgeline far above the subject parcel, forming the skyline. This prevents the proposed agricultural building from protruding above the skyline as viewed from the HCRH trail KVA.

As discussed in Finding A.8 above, the applicants have not demonstrated the need for a building the height of a two-story building. If any building could be approved in conjunction with a primary agricultural use, the applicants would need to propose a different design for the building for this proposed location to comply with Commission Rule 350-082-380(2) as discussed in Finding A.8 above and Commission Rule 350-82-0610(2)(h).

9. Commission Rule 350-82-0610(2)(i) states, "Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that meeting this guideline is not feasible considering the function of the structure."

As discussed above, the agricultural building is designed to remain visually subordinate to the surrounding trees in the landscape by keeping the height below the average tree canopy height of the natural vegetation adjacent to the structure. The nearby trees to the site are Oregon white oak, with an average tree canopy height of approximately 30 feet. The top of the highest point of the roofline of the agricultural building measures 21 feet from the finished grade, keeping the structure at approximately 9 feet below the average height of the canopy, consistent with this rule.

10. Commission Rule 350-82-0610(2)(k) states, "Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape."

As stated above, the proposed exterior of the agricultural building is cedar wood siding preserved using the shou sugi ban technique, resulting in a dark brown or black color. The proposed roof is metal, but no color was proposed. If staff were approving the agricultural building, a condition of approval would be that the roof shall be a dark earth tone color.

11. Commission Rule 350-82-0610(2)(l) states, "The exterior of structures on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity."

The proposed exterior of the agricultural building is non-reflective wood siding. The proposed roof is metal. If staff were approving the agricultural building, a condition of approval would be that the roof shall be treated with a non-reflective coating.

12. Commission Rule 350-82-0610(2)(m) states, "Any exterior lighting shall be sited, limited in intensity, shielded, or hooded in a manner that prevents lights from being

highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes.”

Although no exterior lighting is indicated in the application, the Commission is aware that exterior lighting is often placed after completion of new development. If staff were approving the agricultural building, a condition of approval would be added stating that if outdoor lights are proposed on the subject parcel, the applicant shall show them on a revised site plan and submit the proposed design and placement of the lights to the Gorge Commission for the review and approval. All outdoor lights shall be directed downward, hooded, shielded, and approved by the International Dark Skies Association.

13. Commission Rule 350-82-0610(3) contains guidelines for all new developments and land uses within KVA foregrounds and immediately adjacent to scenic routes.

SR 14 is listed as a Scenic Travel Corridor in Commission Rule 350-82-0070(162). The unpermitted road and the proposed development are set back more than 1,000 feet from SR 14 and therefore not immediately adjacent to SR 14 or in the immediate foreground of a KVA. Commission Rule 350-82-0610(3) does not apply.

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

The proposed development is not consistent with Commission Rules 350-81-0610(2)(e) and 350-81-0610(2)(h) that protect scenic resources in the Special Management Areas of the National Scenic Area.

### **C. Cultural Resources**

1. Commission Rule 350-82-0630(2) states that the procedures and rules in 350-82-0620 shall be used to review all proposed developments and land uses other than those on federal lands, federally assisted projects, and federal forest practices. The proposal is in an SMA, but because it is not on federal lands, the rules of Commission Rule 350-82-0620 apply.
2. Except as specified in Commission Rule 350-82-0620(2)(a)(C), new development requires a reconnaissance survey. Commission Rule 350-82-0620(3) requires that, if cultural resources are discovered, an evaluation of the significance is conducted. Commission Rule 350-82-0620(4) states that if the cultural resources are significant, the effects of the proposed use shall be assessed. Commission Rule 350-82-0620(5) requires mitigation plans when proposed uses would have an adverse effect on significant cultural resources. Mitigation plans are required to reduce adverse effects to no adverse effect or no effect.
3. Commission Rule 350-82-0630(4) outlines the procedures for assessing potential effects to cultural resources.
4. Chris Donnermeyer, Heritage Resource Program Manager for the USFS Columbia River Gorge National Scenic Area, reviewed the land use application and determined in a Cultural Resources Survey Determination, dated July 25, 2024, that pursuant to Commission Rule 350-082-0630(4), a Cultural Resource Reconnaissance Survey is not required because the proposed use would occur on a site that has been determined to

be located within a low probability zone, is not within 100 feet of a high probability zone, and does not occur within 500 feet of a known archaeological site.

5. Commission Rule 350-82-0620(2)(a) describes when a historic survey is required. In his July 25, 2024 survey determination letter, Mr. Donnermeyer also concluded that a historic survey is not required because the development would not alter the exterior architectural appearance of significant buildings or structures that are 50 years old or older, and would not compromise other historic features in the surrounding area that are important in defining the historic or architectural character of significant historic structures. Given this information, a historic survey was not required, consistent with Commission Rule 350-82-0620(2)(a).
6. Commission Rule 350-82-0620(2)(g)(B)(i) 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.*
7. The project notice was mailed on June 27, 2024, and the comment period ended July 18, 2024. As explained above, the proposal did not require a reconnaissance survey or historic survey and no comments were received regarding cultural resource concerns. Pursuant to Commission Rule 350-82-0620(2)(g)(B)(i), the cultural resource protection process may conclude.
8. Commission Rule 350-82-0620(6) protects cultural resources discovered during construction. It requires that if cultural resources are discovered after construction begins, all construction activities within 100 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.
9. Commission Rule 350-82-0620(7) contains provisions addressing discovery of human remains during construction. A condition of approval is included in this decision requiring adherence to these measures if human remains are discovered.

#### **Cultural Resources Conclusion:**

The unpermitted road and the proposed development are consistent with the guidelines in Commission Rule 350-82-0630 that protects cultural resources in the Special Management Areas of the National Scenic Area.

#### **D. Natural Resources**

1. Commission Rules under 350-82-0670 provide guidelines for protecting water resources, wildlife and plants, and soil productivity in the Special Management Areas.
2. The Gorge Commission's natural resource inventory and National Wetland Inventory do not indicate any water resources located on the subject property. The nearest water

resource to the proposed development site is an unnamed stream, located approximately 400 feet southwest of the site.

3. Commission Rule 350-82-0670(2) includes buffers for water resources. A minimum 200-foot buffer is required for perennial or fish bearing streams and a 50-foot buffer for intermittent (including ephemeral), non-fish bearing streams.

The proposed agricultural building is located outside the buffer of any of the nearby water resources. The proposed use would not impact protected wetlands, streams, ponds, lakes, riparian areas, or buffers; therefore, it is consistent with Commission Rules 350-82-0670(2).

4. Commission Rule 350-82-0670(3) allows uses within 1,000 feet of a rare wildlife or rare plant area, subject to review under Commission Rule 350-80-0670(3). The natural resource inventory indicates that the proposed agricultural building is within 1,000 feet of the following priority habitats:

- (i) Deer and Elk Winter Range
- (ii) Oregon white oak woodlands

5. Commission Rule 350-82-0670(3)(b) states that site plans (of uses that are proposed within 1,000 feet of a rare wildlife or rare plant area or site) shall be submitted for review to the Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife for wildlife issues and by the Oregon Biodiversity Information Center or Washington Natural Heritage Program for plant issues).

In accordance with Commission Rule 350-82-0670(3)(b), staff submitted site plans for the proposed development to the Forest Service, Washington Department of Fish and Wildlife (WDFW), and the Washington Natural Heritage Program for review on June 27, 2024. No comments were received regarding Deer and Elk Winter Range.

6. Commission Rule 350-82-0670(3)(c) requires that the USFS, in consultation with state biologists review the site plan and field survey records. It states:

*The Forest Service wildlife biologists and botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:*

*(A) Identify and verify the precise location of the wildlife or plant area or site,*

*(B) Determine if a field survey will be required,*

*(C) Determine, based on the biology and habitat requirements of the affected wildlife or plant species, if the proposed use would compromise the integrity and function of or result in adverse effects (including cumulative effects) to the wildlife and plant area or site. This would include considering the time*

*of year when wildlife and plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season, and,*

*(D) Delineate the undisturbed 200-foot buffer on the site plan for rare plants or the appropriate buffer for rare wildlife areas or sites, including nesting, roosting, and perching sites.*

*(i) Buffer zones can be reconfigured if a project applicant demonstrates the integrity and function of the buffer zones is maintained, the total buffer area on the development proposal is not decreased, the width reduction shall not occur within another buffer, and the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man-made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.*

*(ii) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant, identifies the precise location of the rare wildlife or plant or water resource, describes the biology of the rare wildlife or plant or hydrologic condition of the water resource, and demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife or plant and their surrounding habitat that is vital to their long term survival or to the water resource and its long term function.*

*(iii) The Executive Director shall submit all requests to re-configure rare wildlife or plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reduced buffer zone is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.*

As stated above, staff submitted site plans for the proposed development to the Forest Service, Washington Department of Fish and Wildlife (WDFW), and the Washington Natural Heritage Program for review on June 27, 2024. No comments were received regarding Deer and Elk Winter Range. On July 11, 2024, Amber Johnson, Biologist with WDFW, inquired about the removal of oaks for the unpermitted road and the proposed development in order to determine if a field survey would be required to assess the impacts to the Oregon white oak woodlands on the parcel. Staff replied that the applicants are not proposing to remove any oak trees for the proposed development, but did remove two oak trees during construction of the road. Ms. Johnson commented that an assessment would need to be made to determine the mitigation needed for the oak removal.

7. Commission Rule 350-82-0670(3)(d) includes site plan review criteria to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse effects to the wildlife or plant areas or sites. Commission Rule 350-82-0670(3)(d) states:

*The Executive Director, in consultation with the state and federal wildlife biologists and botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed development or uses do not compromise the integrity and function of or result in adverse effects to the wildlife and plant area or site:*

- (A) Published guidelines regarding the protection and management of the affected wildlife or plant species. Examples include: the Oregon Department of Forestry management guidelines for osprey and great blue heron and the Washington Department of Fish and Wildlife guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander.*
- (B) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.*
- (C) Historic, current, and proposed uses in the vicinity of the rare wildlife or plant area or site.*
- (D) Existing condition of the wildlife or plant area or site and the surrounding habitat of the area or site.*
- (E) In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.*
- (F) The site plan is consistent with published guidance documents such as "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2008, or most recent version) and Washington's Aquatic Habitat Guidelines (2002, or most recent version).*
- (G) The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.*
- (H) The site plan illustrates that new development and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.*
- (I) Maintain, protect, and enhance the integrity and function of Priority Habitats as listed in 350-082-0690 Table 1 - Priority Habitats. This includes maintaining structural, species, and age diversity, maintaining connectivity*

*within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.*

An assessment has not yet been made to determine the effects of the construction of the unpermitted road and the proposed development on the integrity and function of the Oregon white oak woodlands on the subject parcel. On September 26, 2024, Amber Johnson, Biologist with WDFW, commented on the application stating that WDFW would need to evaluate a mitigation plan to understand the ecological function of the oak habitat post-development. The Director's Decision requires that the applicants contact the Forest Service wildlife biologist or botanist to assess the damage from Oregon white oak tree removal that occurred during construction of the unpermitted road, and to assess the potential adverse effects of the proposed development on the Oregon white oak woodlands.

8. Commission Rule 350-82-0670(3)(f) explains when the wildlife and plant protection process may conclude. The Forest Service and state officials make a recommendation, and the Executive Director makes the final decision. Commission Rule 350-82-0670(3)(f) states:

*The wildlife and plant protection process may conclude if the Executive Director, in consultation with the Forest Service and state wildlife agency or heritage program, determines the rare wildlife area or site is not active, the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife or plant area or site, or the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife and plant protection process may conclude.*

As stated above, no assessment has been made to determine the impacts of the unpermitted road and proposed development on the Oregon white oak woodlands priority habitat. Until an assessment has been completed and recommendations for mitigation made, the wildlife and plant protection process may not conclude. The Director's Decision includes a requirement that the applicants arrange for the Forest Service biologist or botanist to conduct an assessment.

9. Commission Rule 350-82-0670(3)(f) states:

*If the above measures fail to eliminate the adverse effects, the proposed project shall be prohibited, unless the project applicant can meet the practicable alternative test in 350-082-0680 and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.*

As discussed above, an assessment is required to evaluate and understand the ecological function of the oak habitat post-development of the road and for the proposed development.

10. Commission Rule 350-82-0670(4) includes guidelines for protecting soil productivity. Projects must control all soil movement within the area shown on the site plan. The soil

area disturbed by new development or land uses, except for new cultivation, must not exceed 15 percent of the project area. Within one year of completion, 80 percent of the disturbed area must be restored using effective native ground cover species.

The area of the proposed development that does not include new cultivation is approximately 0.6 acres, which is less than 15 percent of the 9.42-acre parcel. Most of the disturbed soil area of the development site is covered with the access road and would be covered with the proposed agricultural building. If the Commission were approving the proposal, a condition of approval would be included that states within 1 year of project completion, the disturbed project area that is undeveloped shall be established with native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

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

The proposed development is inconsistent with the rules in Commission Rule 350-82-0670 that protect natural resources in the National Scenic Area. The Director's Decision requires that the applicants contact the Forest Service wildlife biologist or botanist to assess the damage from Oregon white oak tree removal that occurred during construction of the unpermitted road, and to assess the potential adverse effects of the proposed development on the Oregon white oak woodlands.

#### **E. Recreation Resources**

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

*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/structure and the parcel.*

The proposed development is located over 8,000 feet from the nearest established recreation site, the Coyote Wall recreation site. From this recreation site, intervening topography blocks the subject parcel from view, and the proposed development would not be seen. The proposal would not detract from the use and enjoyment of the site.

#### **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 development in the National Scenic Area.

Consistent with Commission Rule 350-082-0130(2), notice of the proposed development was provided to the Forest Service on June 27, 2024. The Forest Service determined that this proposal would have no effects on treaty rights.

#### **Treaty Rights Conclusion:**

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

JK  
FIND0007.24