

DEVELOPMENT REVIEW

Director's Decision

APPLICANT: Alexandor & Cathy Myszkowski

FILE NO.: C06-0024-K-S-17

REQUEST: An after-the-fact review of cultivation of grapes on approximately three and one-half acres on the eastern portion of the subject property.

LOCATION: The subject parcels are located off of Cooke Road northeast of Coyote Wall in the NE ¼ and SE ¼ of Section 27, Township 3 North, Range 11 East, Willamette Meridian, Klickitat County, Washington.

LAND USE

DESIGNATION: The subject parcels are in the Special Management Area (SMA), but are designated General Management Area (GMA) Small-Scale Agriculture pursuant to Section 8(o) of the Scenic Area Act. The parcels are 19.9 and 10 acres in size.

Note: On February 23, 2001, Mr. & Mrs. Myszkowski offered to sell the subject property to the U.S. Forest Service. The Forest Service declined to purchase the property. According to Section 8(o) of the Scenic Area Act and SMA policies of the *Management Plan for the Columbia River Gorge National Scenic Area* at the time, the Forest Service designated the property Small-Scale Agriculture with an 80-acre minimum parcel size (U.S. Forest Service Final Acquisition Evaluation and Final GMA Designation Determination, February 10, 2004). The SMA guidelines no longer apply to the subject property. New development on the property must now comply with the GMA guidelines for Small-Scale Agriculture.

DECISION:

Based upon the following findings of fact, the land use application by Mr. and Mrs. Myszkowski to cultivate 3.5 acres of grapes in two sections is consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act (Public Law 99-663), Management Plan, and Commission Rule 350-81, and is hereby **approved, with conditions**.

This approval does not exempt the applicants or successors in interest from complying with all other applicable local, state, and federal laws.

CONDITIONS OF APPROVAL:

The following conditions of approval ensure that the approved project is consistent with the purposes of the Columbia River Gorge National Scenic Area Act and Commission Rule 350-81. All conditions of this decision must be satisfied within two years of commencement of construction as defined by Commission Rule 350-81-044(4).

1. Pages 1 through 2 of this Director's Decision and the approved site plan shall be recorded in county deeds and records (Klickitat County Assessor's Office) to ensure notice of the conditions to successors in interest.
2. The proposed cultivation shall be sited as shown on the revised site plan, dated December 1, 2008. Any additional cultivation shall be submitted to the Executive Director for review.
3. If cultural resources or human remains are discovered during construction, all construction activities within 100 feet of the cultural resources shall cease and the applicants shall notify the Gorge Commission within 24 hours. The cultural resources shall remain as found; further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.

DATED AND SIGNED THIS 3rd day of February, 2009, at White Salmon, Washington.



Brian Litt
Planning Manager

This decision of the Executive Director becomes void on the 3rd day of February, 2011.

As per Commission Rule 350-81-044(6), an extension of the validity of a development approval may be requested. Such a request shall be submitted in writing prior to the expiration of the approval. The Executive Director may grant an extension if it is determined that conditions, for which the applicant was not responsible, would prevent the applicant from commencing the proposed development within the original time limitation. The Executive Director shall not grant an extension if the site characteristics and/or new information indicates that the proposed use may adversely affect the scenic, cultural, natural or recreation resources in the National Scenic Area.

COMMENTS FROM OTHER INDIVIDUALS/AGENCIES/GOVERNMENTS:

Notice of the subject request was mailed to property owners within 200 feet of the subject parcel and the following individuals/agencies/governments:

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 Office of Archaeology and Historic Preservation
Washington Department of Fish & Wildlife
Klickitat County Planning Department
Klickitat County Building Department
Klickitat County Health Department
Klickitat County Assessor
Friends of the Columbia Gorge

Written comments were received from Friends of the Columbia Gorge, the Yakama Nation, and the Washington Department of Fish & Wildlife.

FINDINGS OF FACT:

A. Land Use

1. The applicant is proposing to cultivate approximately three and one-half acres of grapes in two areas on two adjacent parcels. The subject property includes three parcels identified by the County Assessor as Parcel #s 03112700001200 (SW parcel, 10 acres), 0311270001000 (North parcel, 20 acres), and 03112752000100 (SE parcel, 10 acres). Existing development on the property includes a single family dwelling, an accessory building, fencing, dirt roads, and approximately 9 additional acres of cultivation. The subject parcels are located in the SMA. As explained on page 1 of this decision, the Forest Service designated the parcels Small-Scale Agriculture with an 80-acre minimum parcel size pursuant to Section 8(o) of the Scenic Area Act. The SMA guidelines no longer apply to the subject property. New development on the property must now comply with the GMA guidelines for Small-Scale Agriculture.
2. Commission staff made two site visits in 2006 to discuss possible site for an agricultural building. During the site visits, staff identified an area of cultivation in which the grape plantings were in grow tubes. After discussion with the landowner and conducting research with an agricultural extension office, staff determined that a portion of the vineyards on the property had been planted after the property became subject to GMA rules in February 2004. The Commission office records did not indicate this cultivation had been reviewed under GMA rules. This activity was, therefore, not in compliance with Commission Rule 350-81-190(1)(a) which requires new cultivation be reviewed for consistency with guidelines protecting cultural and natural resources. This decision is an after-the-fact review of the sections of vineyards planted since 2004 to evaluate whether the cultivation is consistent with the Scenic Area land use ordinance.

According to the landowner and Commission aerial photos, the other 9 acres of grapes on the SE parcel were planted in the late 1980s or early 1990s when the parcel either was subject to the Final Interim Guidelines (under which cultivation was not reviewed) or pre-Plan Review SMA rules (under which cultivation was allowed without review). Other development on the property (e.g. dwelling, dirt road, etc.) either was constructed prior to the Scenic Area Act or was not subject to review and is not part of this decision.

3. Pursuant to Commission Rule 350-81-190(1)(a), new cultivation is allowed on lands designated Small-Scale Agriculture, subject to Commission Rules 350-81-520 through 350-81-620 that protect scenic, cultural, natural, and recreation resources. The applicant proposes to cultivate approximately three and one-half acres of grapes.

Conclusion:

The proposed cultivation is an allowed use consistent with Commission Rule 350-81-190, subject to Commission Rules 350-81-520 through 350-81-620 that protect scenic, cultural, natural, and recreation resources.

B. Scenic Resources

1. All review uses are subject to the scenic resources protection guidelines in Commission Rule 350-81-520(1). As described in Findings A.1 through A.3, the review use in this director's decision is the cultivation of approximately three and one-half acres of grapes.
2. Chapter 1, Part I of the Management Plan, titled "Scenic Resources," contains scenic resources policies that apply to proposed development in the GMA (page I-4).

GMA Policy 2 in the "Overall Scenic Provisions" in Chapter 1, Part I of the Management Plan (page I-4) states:

The goals, objectives, policies, and guidelines in this chapter shall not affect agriculture or forest practices, nor equipment or structures (other than buildings) associated with such practices, such as irrigation equipment or orchard fans.

The area of cultivation is on two parcels subject to GMA guidelines. The applicant proposes agricultural practices (i.e., cultivation and grapevines). The applicant does not propose any buildings. According to Policy 2, the scenic resources guidelines in the Management Plan and Commission Rule 350-81-520 do not apply to the proposed cultivation.

Conclusion:

The proposed woven wire fence is consistent with the scenic resource protection guidelines in Commission Rule 350-81-052(1)(a). The scenic resources provisions in the Management Plan and Commission Rule 350-80-520 do not apply to the proposed cultivation and irrigation system.

C. Cultural Resources

1. Commission Rule 350-81-540(1)(c)(A)(ii) requires a cultural resources reconnaissance survey for proposed uses causing ground disturbance. The cultivation of grapes requires ground disturbance.

Marge Dryden, Archaeologist with the USDA Forest Service National Scenic Area, reviewed the applicant's land use application. Ms. Dryden determined that a reconnaissance survey was required pursuant to Commission Rule 350-81-540(1)(c)(A)(ii).

2. Ms. Dryden conducted a reconnaissance survey of the subject parcel. In "Heritage Resource Inventory Report" dated December 8, 2008, Ms. Dryden concluded that the resource inventory for the project revealed no prehistoric or historic-period archaeological resources within the project area.
3. Pursuant to Commission Rule 350-81-540(2)(b), the Gorge Commission sent a copy of the Heritage Resource Inventory Report to the Washington Department of Archaeology and Historic Preservation (State Historic Preservation Officer) and the four tribal governments. The state and tribal governments were given 30 days to submit comments on the report.
4. Commission Rule 350-81-540(2)(c)(B) states:

The cultural resource protection process may conclude when one of the following conditions exists...

- (ii) *A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period in subsection 2(b)(B) above.*

The Heritage Resource Inventory Report demonstrated that cultural resources do not exist in the project area. The Gorge Commission received one written comment from the Yakama Nation regarding after-the-fact reviews. However, the Yakama Nation did not raise any substantiated concerns about cultural resources on this property. According to Commission Rule 350-80-540(2)(c)(B)(i), the cultural resource protection process was concluded.

5. Commission Rule 350-81-540(1)(c)(B) states:

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

The proposed use would not alter the exterior architectural appearance of any buildings or structures that are 50 years old or older, nor would it compromise features of the surrounding area that are important in defining the historic or architectural character of

buildings or structures that are 50 or more years old. Pursuant to Commission Rule 350-81-540(1)(c)(B), a historic survey was not required for the proposed use.

7. Commission Rule 350-81-540(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. A condition of approval will alert the applicant to this requirement.

Conclusion:

The proposed cultivation would not adversely affect known archaeological or historic cultural resources. With a condition protecting unknown cultural resources or human remains discovered during construction, the proposed cultivation is consistent with the guidelines in Commission Rule 350-81-540 which protect cultural resources in the National Scenic Area.

D. Recreation Resources

1. Commission Rule 350-81-086 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.

No new buildings or structures are proposed; therefore Commission Rule 350-81-086 is not applicable.

Conclusion:

The proposed cultivation is consistent with Commission Rule 350-81-086 that protects recreation resources in the National Scenic Area.

E. Natural Resources

1. Commission Rule 350-81 provides guidelines for protecting wetlands (Section 560); streams, ponds, lakes, and riparian areas (Section 570); sensitive wildlife areas and sites (Section 580); and sensitive plants (Section 590) for review uses.
2. An intermittent stream and two small ponds are located on the southwestern portion of the northern parcel. The same intermittent stream crosses the SW parcel. There are no wetlands in the vicinity of the subject cultivation. The proposed cultivation is located more than 250 feet from and well outside the buffer areas for the intermittent stream and small ponds on the western half of the property. The proposed development would be consistent with Commission Rules 350-81-560 and 570 that protect these resources.

3. Commission Rule 350-81-580(1)(a)(A) defines *sensitive wildlife areas* to include deer and elk winter range. The Gorge Commission's wildlife inventory shows that a portion of the subject parcel is located within deer winter range.
4. Commission Rule 350-81-580(4)(a) requires the Gorge Commission to notify the Washington Department of Fish and Wildlife when a new development is proposed within 1,000 feet of a sensitive wildlife area.

Commission Rule 350-81-580(4)(a) directs state wildlife biologists to determine whether a proposed development would compromise the integrity of a nearby wildlife area or site. The wildlife biologists base their decisions on the biology of the affected species, physical characteristics of the subject parcel(s), and other factors listed in Commission Rule 350-81-580(4)(b).

The Gorge Commission's staff sent a copy of the applicants' land use application to Bill Weiler, Area Habitat Biologist, WDFW.

5. Commission Rule 350-81-580(4)(c) states:

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

In an email dated January 2, 2009, Mr. Weiler provided comments related to the possible removal of oak trees on the property, but raised no concerns related to deer winter range. Commission staff informed Mr. Weiler that the subject areas of cultivation were cleared many years ago and not in relation to the cultivation. Trees were removed on the North parcel as part of a forest practices permit issued by the Forest Service in 1995. According to aerial photo records, all of the SE parcel, including the portion where the subject cultivation is located, was cleared prior to 1988 and prior to the regulation of cultivation. Consistent with Commission Rule 350-81-580, the wildlife protection process can conclude.

6. The Gorge Commission's sensitive plant inventory does not show any sensitive plants within 1,000 feet of the subject parcel. Therefore, the guidelines in Commission Rule 350-81-590 do not apply.

Conclusion:

The proposal for cultivation of wine grapes is consistent with the guidelines in Commission Rule 350-81, Sections 560 through 590 that protect natural resources in the National Scenic Area.

NOTES:

Any new land uses such as cultivation or structural development, such as garages or other accessory structures, or additions or alterations not included in the approved application or site plan will require a new application and review.

APPEAL PROCESS

The decision of the Executive Director shall be final unless a Notice of Intent to Appeal and Petition is filed with the Commission within thirty (30) days of the date of this decision by the applicant or any person who submitted comment. Information on the appeal process may be obtained at Commission offices.

The appeal period ends the 5th day of March, 2009.

Attachment:

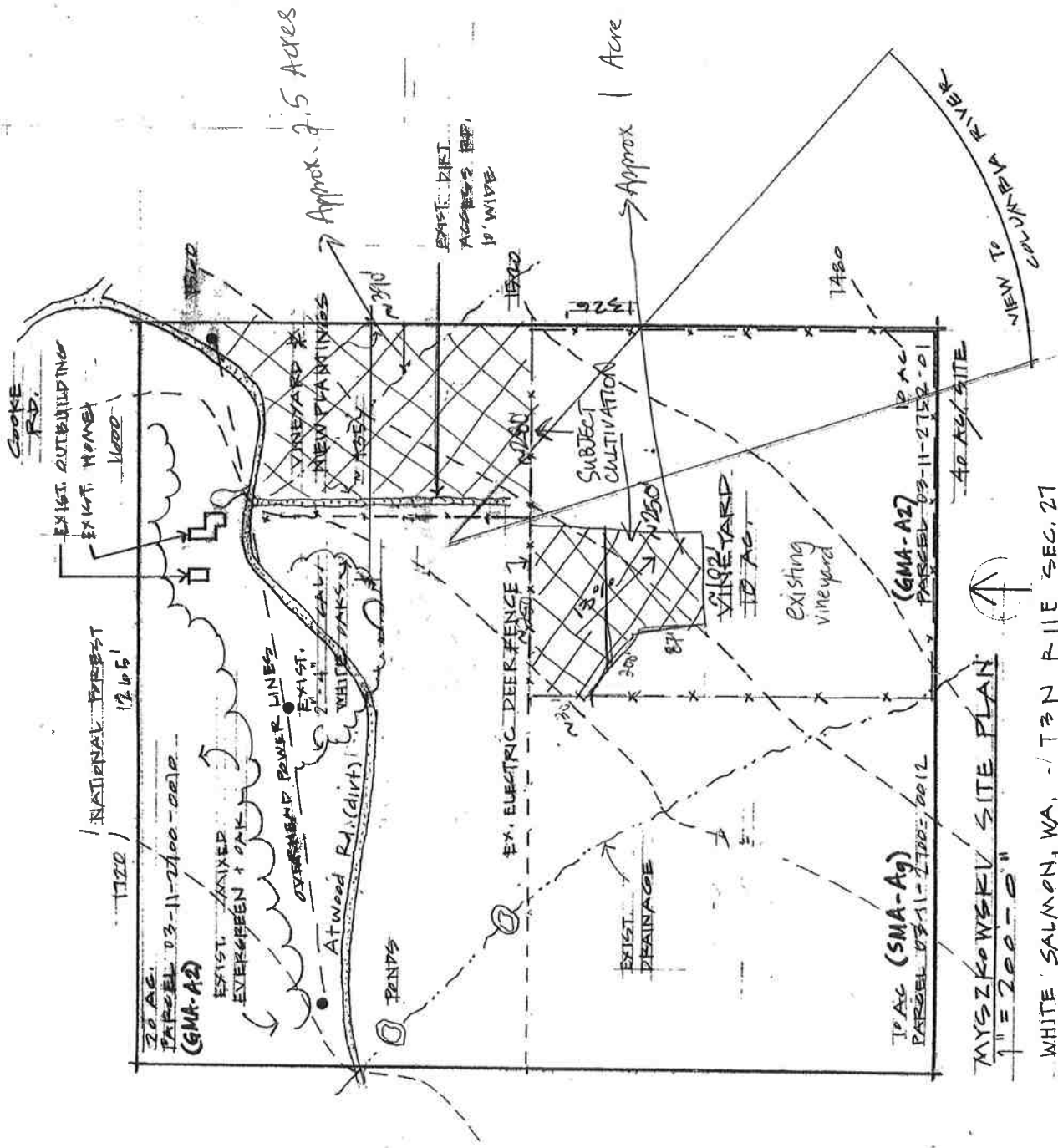
Site Plan dated December 1, 2008

cc: Confederated Tribes and Bands of the Yakama Indian Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs Reservation
Nez Perce Tribe
Klickitat County Planning
Klickitat County Building
Friends of the Columbia Gorge
Washington Department of Fish & Wildlife

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Subject Cultivation areas
Not to Scale
Revised December 1, 2008

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MYSZOWSKI SITE PLAN
1" = 200'-0"

WHITE SALMON, WA. T3N R11E SEC. 27

APPROVED

BR
4/3/09