

# Director's Decision

## Summary of Application

<b>FILE NUMBER:</b>	C22-0015
<b>PROPOSAL:</b>	The Columbia River Gorge Commission has received an application for a new winery and tasting room building and associated utilities.
<b>APPLICANTS:</b>	Dave Sauter & Stefanie Boen
<b>LANDOWNERS:</b>	Stefanie Boen
<b>SIZE and LOCATION:</b>	The subject parcels are 18 acres and 10 acres in size and located two miles west of Lyle, WA on the south side of Old Hwy 8, and are described as Tax Lot Numbers 03-12-2900-0016/00 and 03-12-2900-0011/00 in the southwest quarter of Section 29, Township 3 North, Range 12 East, Willamette Meridian, Klickitat County, Washington.
<b>LAND USE DESIGNATION:</b>	General Management Area (GMA) – Small-Scale Agriculture (40)

## 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 Dave Sauter & Stefanie Boen, for a new winery and tasting room building and associated utilities, 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. A post-completion inspection is required. Please contact the Gorge Commission office when all construction is complete to schedule this inspection. The applicant may request interim inspections and Gorge Commission staff may at its discretion conduct interim inspections.
4. 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.
5. All exterior building materials, including roof, doors, siding, trim, window casings and sashes, decks, and railings shall be dark earth-tone colors. Only approved dark earth-tone colors for exterior materials shall be used. The following colors submitted by the applicants for the exterior of the house are consistent with this condition and are hereby approved:

Exterior Walls:	<b>No Color Approved. Submit Color Sample.</b>
Exterior Trim:	Benjamin Moore, Midsummer Night 2134-20
Roof:	Black asphalt shingles
Window Casings:	Black

Any proposed changes to these colors shall be submitted to the Gorge Commission for consistency review with this condition of approval. The color of the development shall be maintained by painting and staining as necessary to maintain the approved color.

6. All exterior building materials including roofs, doors, siding, trim, window casing and sash, decks, and railings shall be nonreflective or have low reflectivity. Any exterior metal materials shall be painted with low-gloss black colored finish and maintained as necessary to ensure that the material is non-reflective.
7. All windows and glazing shall be composed of low-reflectivity glass. A reflectivity rating of 11% is required.
8. Vegetation shall be implemented as specified in the approved site plan. The vegetative buffer shall be, at a minimum, 150 ft long. The planted trees shall be ponderosa pines or other evergreen trees native to the area. At the time of planting, trees shall be three to six-feet-tall, with the root ball wrapped in burlap. Maintenance and survival of the vegetation is required, and an irrigation plan shall be submitted to the Executive Director for review before vegetation is planted. Changes to the landscaping plan must be provided to the Executive Director for review and approval.

9. The site shall be reseeded with grasses from the Recommend Seed Mixes for East Side Environments. Disturbed areas shall be revegetated immediately upon completion of the project (or as soon as possible thereafter if the project is completed during the winter).
10. The processing of any wine on the property shall be from grapes grown on the property and in the local region.
11. 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.
12. 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 24 day of July 2023 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 24 day of July 2025 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 23 day of August 2023.**

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.

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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

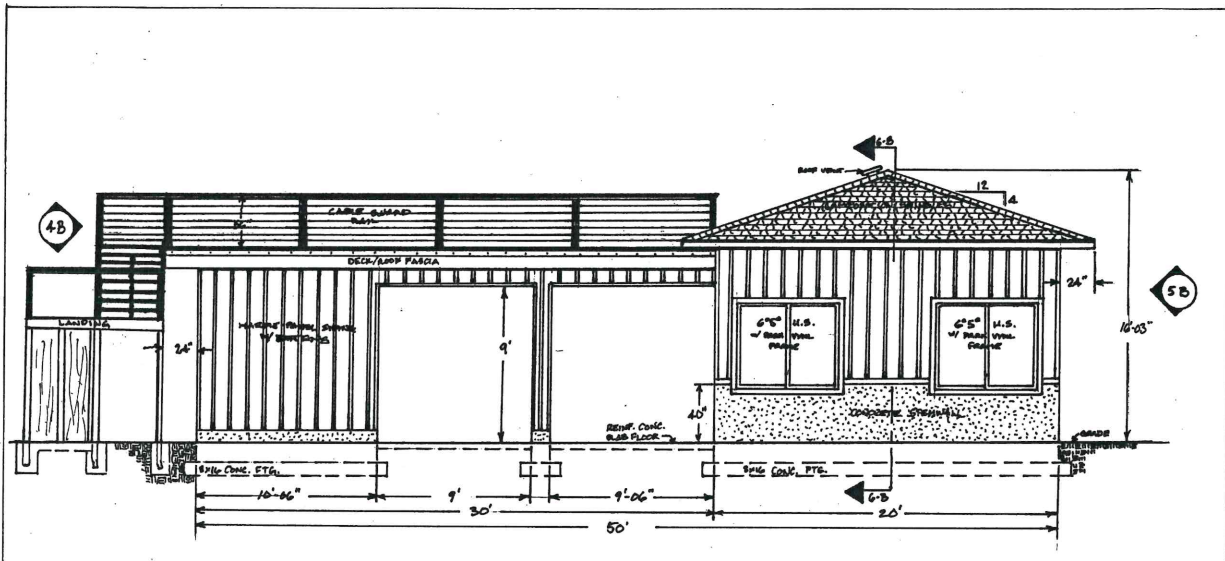
Nez Perce Tribe  
U.S. Forest Service National Scenic Area Office  
Washington Department of Archaeology and Historic Preservation  
Klickitat County Planning Department  
Klickitat County Building Department  
Klickitat County Public Works Department  
Klickitat County Health Department  
Klickitat County Assessor  
Washington Natural Heritage Program  
Washington Department of Fish and Wildlife  
Steve McCoy, Friends of the Columbia Gorge

**Attachments:**

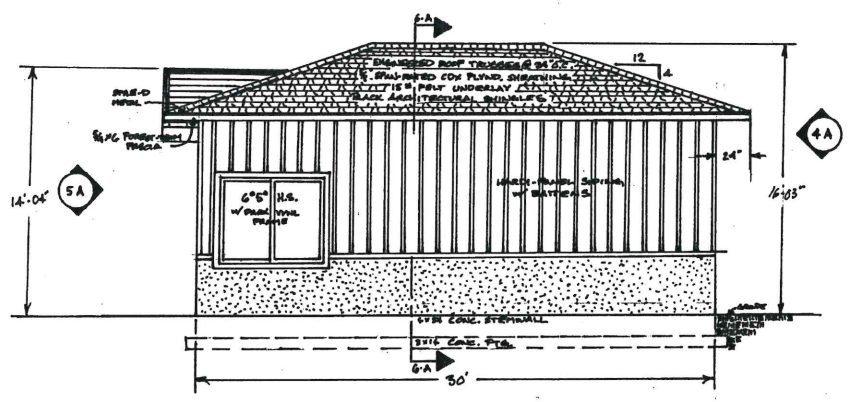
Staff Report for C22-0015  
Approved site plans and elevation drawings  
Eastern Gorge Recommended Seed Mix

APPROVED

kw



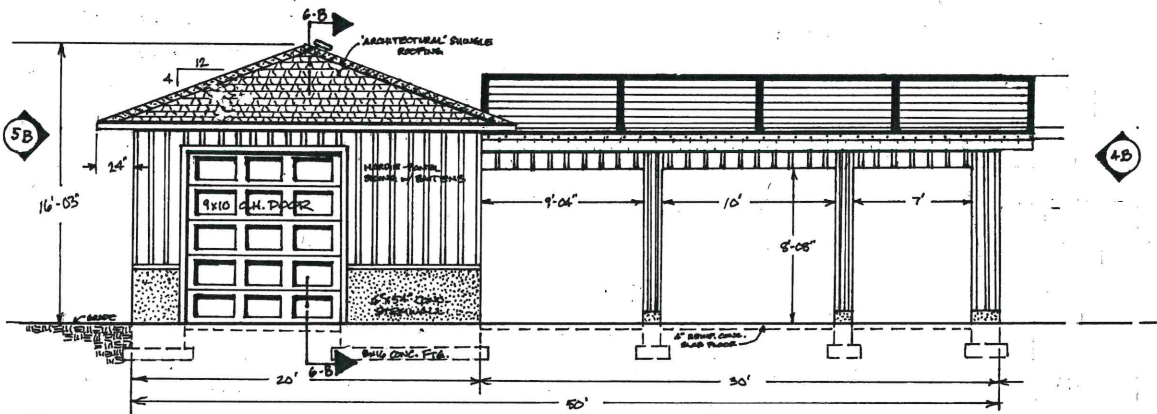
5A WEST ELEVATION  
(SCALE: 1/8" = 1'-0")



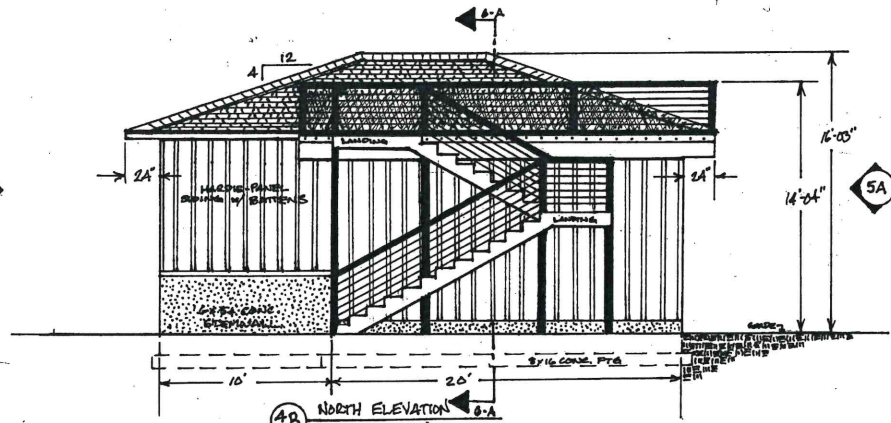
5B SOUTH ELEVATION  
(SCALE: 1/8" = 1'-0")

APPROVED

*W*



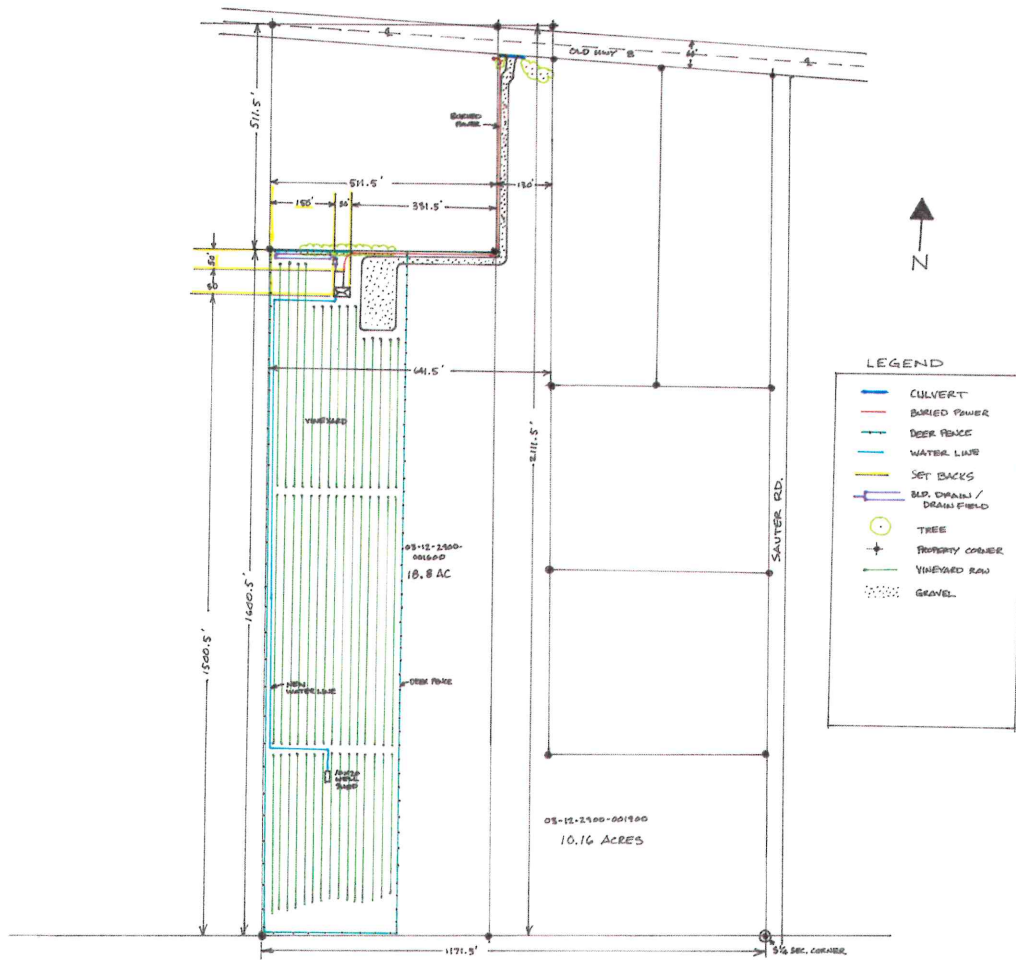
4A EAST ELEVATION  
(SCALE: 1/4" = 1'-0")



4B NORTH ELEVATION  
(SCALE: 1/4" = 1'-0")

APPROVED

WJ

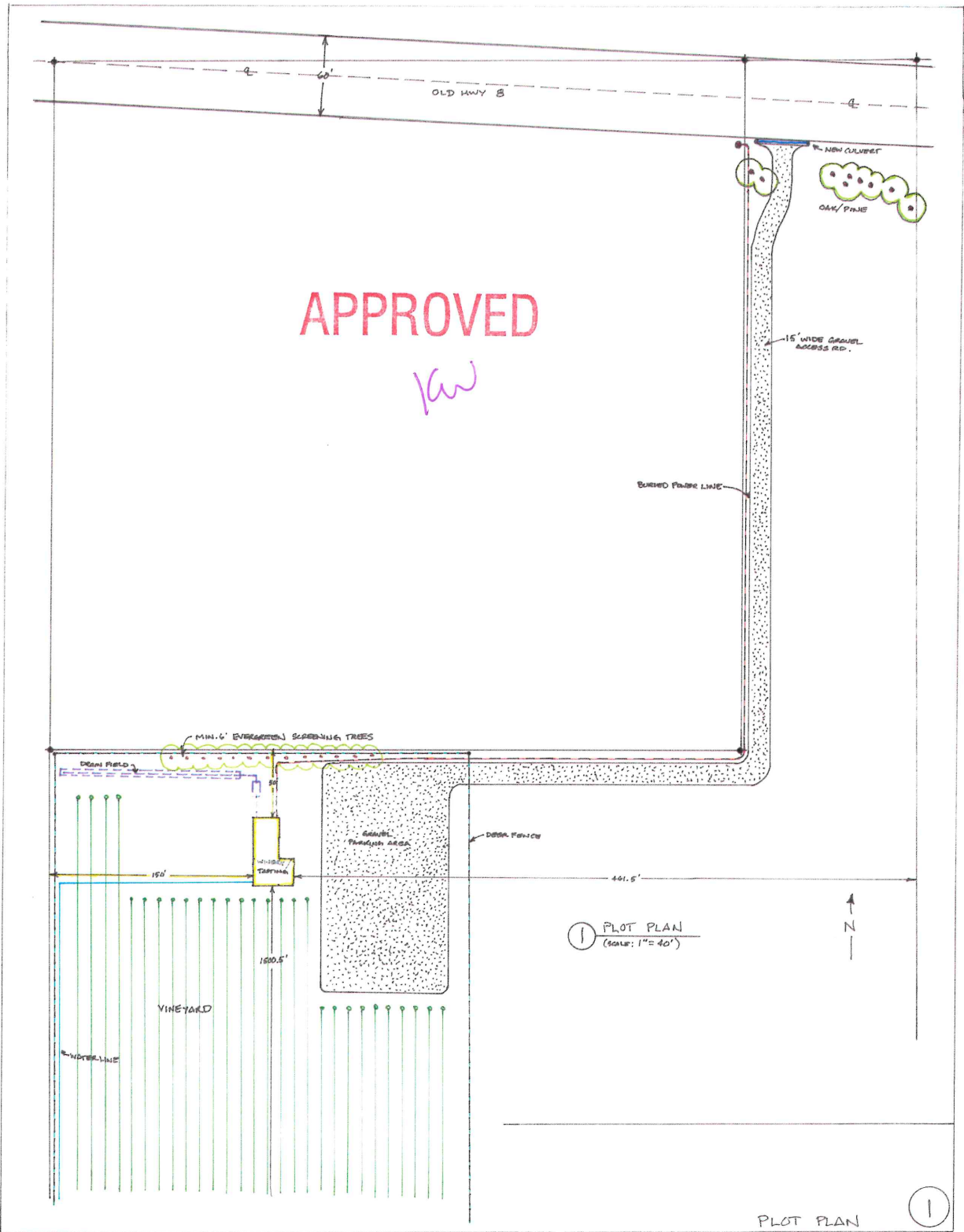


VICINITY SKETCH  
(SCALE: 1" = 160')

IN THE E 1/2 SW 1/4 SEC. 29 T. 3N., R. 12E., W.M.  
Klickitat County, Washington

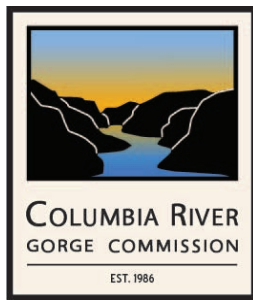
VICINITY SKETCH





APPROVED

KW



# Development Review Staff Report

## Summary of Application

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<b>LAND USE DESIGNATION:</b>	General Management Area (GMA) – Small-Scale Agriculture (40)

## 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)

## Written Comments Received From:

Friends of the Columbia Gorge (Steve McCoy, Staff Attorney)  
USFS CRGNSA (Chris Donnermeyer, Heritage Resource Program Manager)  
USFS CRGNSA (Casey Gatz, Resources and Planning Staff Officer)  
DAHP (Sydney Hanson, Local Government Archaeologist)

## Findings of Fact

### A. Land Use

1. David Sauter and Stefanie Boen proposed a new 1,200 square foot winery and tasting room, with associated utilities and improvements including a 900-foot gravel access road, 1,600 square foot gravel parking lot, a buried power line, a buried water line, and a new septic tank and drain field.
2. The application materials indicate a preference for an overhead power line that crosses the property to the north of the subject parcel. This northern property is owned by the Forest Service. A comment from Casey Gatz, Resources and Planning Staff Officer, stated that it is Forest Service policy to not allow development on federal lands where there is an option to allow that development on non-federal lands. Because an option exists to construct a power line on the subject parcels and not require development on the federal parcel, this staff report will only consider the proposal to bury the power line adjacent to gravel road and parking lot.
3. The subject parcels are in the General Management Area (GMA) and are designated Small-Scale Agriculture with a 40-acre minimum parcel size. The eastern parcel is 10 acres in size and is accessed off Old Highway 8. The western parcel is 18 acres in size, next to and accessed by the other parcel.
4. Existing development on the properties includes a 10-acre vineyard on the western parcel, agricultural buildings (including a 384 square foot hay cover on the eastern parcel), a fence (approved after the fact in C08-0025), and a gravel driveway.
5. Commission Rule 350-082-0240 describes the review uses allowed in the GMA Agricultural Land Use Designations, including GMA Small Scale Agriculture. Commission Rule 350-082-0240(3)(b) allows:

*Agricultural structures in conjunction with agricultural use, including new cultivation.*

Commission Rule 350-082-0070(11) states that an agricultural structure is:

*A structure (not including buildings) located on a farm or ranch and used in the operation. These include, but are not limited to: wind machines (orchards), storage bins, fences, trellises, and irrigation systems.*

The access road, parking lot, buried power and water lines, and the new septic tank and drain field are considered structures, per Commission Rule 350-082-0070(180). The access road, parking lot, power line, water line, and septic tank and drain field will be used in conjunction with the agricultural use of the subject properties, primarily the winery, and are allowable uses subject to compliance with the guidelines protecting scenic, cultural, natural, and recreation resources.

6. Commission Rule 350-082-0240(3)(c) 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 compliance with 350-082-0380.*

The applicants propose a new agricultural building for use as a winery and tasting room. The building will be used in conjunction with an established on-site vineyard. Commission Rule 350-082-0380 states:

*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); and*

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

The parcel is currently used for agriculture for growing both grapes and hay. The agricultural building will serve the current agricultural use by allowing for the processing of grapes into wine on the property. The applicants supplied a layout of the proposed agricultural building as part of the application materials to address the requirements of this rule. The applicants propose a 1,200 sq ft, 16 ft tall agricultural building to serve the proposed agricultural use. The barn includes one overhead door, and four open vehicle bays. The proposed floor plan for the building includes 800 sq ft for the winery and 400 sq ft for the tasting room. The building includes a 720 sq ft rooftop deck that will also be used for tasting room activities.

7. Commission Rule 350-082-0240(4)(a)(E) allows:

*Wineries and cideries, in conjunction with an on-site vineyard or orchard, upon a showing that processing of wine or cider is from fruits harvested on the subject farm and the local region.*

- Commission Rule 350-082-0240(4)(a)(F) allows:

*Wine or cider sales and tasting rooms, in conjunction with an on-site winery or cidery.*

The applicants propose to construct a new winery building and tasting room. The winery will be used in conjunction with an established on-site vineyard. The grapes harvested from the vineyard will be processed into wine in the winery, as will grapes from the local region. The tasting room will be used in conjunction with the on-site winery. A condition of approval is included in the Director's Decision requiring the processing of any wine on the property to be from grapes grown in the local region, consistent with this guideline.

8. Uses allowed under Commission Rule 350-082-0240(4) are subject to additional review criteria found in Commission Rule 350-082-0240(4)(b). Commission Rule 350-082-0240(4)(b)(A) states:

*The use is compatible with agricultural uses and would not force a change in or significantly increase the cost of accepted agricultural practices on nearby lands devoted to agricultural use.*

- Commission Rule 350-082-0070(207) defines the term winery as:

*An agricultural building used for processing fruit into wine.*

Wineries are agricultural buildings, so they are compatible with agricultural uses. Accepted agricultural practices on nearby lands include other vineyards, some of which have their own wineries, and pastures for haying. The development of winery building will only have potential impacts on the subject parcels and will not force a change in or significantly increase the cost of agricultural practices on nearby lands.

- Commission Rule 350-082-0070(208) defines wine sales and tasting rooms as:

*A facility that is accessory to a winery or cidery and used for tasting and retail sales of wine or cider, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda).*

Tasting rooms are considered accessory to wineries, so they are compatible with the agricultural use of the winery and the cultivation of grapes on site. Accepted agricultural practices on nearby lands include other vineyards and wineries, some of which have their own tasting rooms, and pastures for haying. The development of the tasting room will only have potential impacts to the subject parcels and will not force a change in or significantly increase the cost of those practices on nearby lands devoted to agricultural use.

9. Commission Rule 350-082-0240(4)(b)(B) states:

*The use will be sited to minimize the loss of land suitable for the production of crops or livestock.*

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, fur-bearing 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 one 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; and*
- (e) Agricultural use does not include livestock feedlots.*

The proposed development is an agricultural use. The proposed building will be used as a winery and tasting room. Wineries – as discussed in Finding A.6 – are agricultural buildings and associated with agricultural use. The definition of *agricultural use* includes *land under buildings supporting accepted agricultural practices*, which would include the processing of grapes into wine in a winery building. The use of the building as a tasting room is accessory to its use as a winery. Because the proposed development is an agricultural use, it cannot cause a loss of land suitable for the production of crops or livestock. The winery will contribute to the production of crops by providing a space for the storage and processing of harvested grapes on the subject parcel.

The winery and tasting room are uses allowed pursuant to Commission Rule 350-082-0240(4), subject to compliance with the guidelines to protect scenic, cultural, natural, and recreation resources.

10. Commission Rule 350-082-0580(2) provides buffer distances for all new buildings in the GMA proposed on parcels adjacent to lands designated Large-Scale Agriculture or Small-Scale Agriculture that are currently used or suitable for agricultural use. All parcels surrounding the subject parcel are designated Small-Scale Agriculture. Commission Rule 350-082-0580 Table 1 – Setback Guidelines describes the buffers for various types of agricultural uses and buffer types. Commission Rule 350-082-0580(2)(b) states:

*New buildings adjacent to lands designated Large-Scale Agriculture or Small-Scale Agriculture that are suitable, but currently not used for agriculture, shall use the open or fenced setback associated with the dominant type of agriculture in the vicinity. If a vegetation barrier, eight-foot berm, or terrain barrier exists, the corresponding setback shall apply. If more than one type of agriculture is dominant, the setback shall be the larger width.*

Commission Rule 350-082-0070(183) defines *suitability* as:

*The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; whether the land is committed by development to another land use that does not allow for agricultural use; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.*

The originally proposed location for the winery building is in the northwest corner of the subject parcel, approximately 25 feet from parcels to the north and to the west. These parcels are owned by the Forest Service and are not currently used for agricultural use. The parcel to the west (in the same ownership) is more than 500 feet away and has a hay barn and is used for grazing. The two parcels to the south are more than 1,500 feet away from the proposed building location and contain talus slopes and are not used for agricultural use. The parcels to the south contain talus slopes that preclude their capability for production; they are not appropriate for the production of agricultural products. As such, no agricultural buffer will be applied from the property boundary of those two parcels.

The parcels to the north and west of the proposed winery are not currently used for agricultural uses but could be used for agricultural uses. Most parcels in the vicinity of the proposed building location are either used for livestock grazing or for vineyards, suggesting that the soils, topography, water availability, and other features of these two adjacent parcels would be sufficient to produce agricultural products. The two parcels are not committed to any type of development or use. Surrounding uses and features associated with development are compatible with agricultural uses, such as roads, limited residential development, substantial agricultural development and use. The parcels are 5.62 and 41.76 acres in size, large enough for grazing or vineyards when compared to other parcels in the vicinity.

Cultivation of agricultural products on the two parcels to the north and west of the proposed winery would only require consistency with natural and cultural guidelines, while associated agricultural structures would require consistency with scenic, natural, cultural, and recreation guidelines. The Commission's natural resource inventories indicate streams located on both parcels, but the parcels are both large enough that new cultivation and agricultural structures could be located outside of the stream buffers. The parcels may contain cultural resources, which would similarly be avoided during the review process for new cultivation or agricultural structures. Lastly, while the subject parcels are visible from Key Viewing Areas, agricultural structures are not obtrusive and are common features on the landscape, and they would be conditioned to meet the scenic resource standards. The agricultural use of the two adjacent properties would be compatible with the scenic, cultural, natural and recreation resources.

All factors considered, the two parcels to the north and west of the proposed winery are suitable for agricultural use, and pursuant to Commission Rule 350-082-0580(2)(b), an agricultural buffer shall apply to the proposed building on the subject parcel. As the

dominant agricultural use in the vicinity is both grazing and vineyards, the larger of the two buffers shall apply, which will be the buffer for vineyards. The applicants propose planting a 250 ft long vegetative buffer along the northern property boundary that includes the use of evergreen trees. A condition of approval is included that the trees be native to the area, and that at the time of planting, the trees shall be three to six-feet-tall, and with the root ball wrapped in burlap. The vegetation shall be planted as shown on the approved site plan and planted as soon as practicable. With a condition approving the vegetative buffer and a condition requiring proper maintenance and care of the vegetation, the agricultural buffer from the property to the west shall be 150 feet, and the agricultural buffer from the property to the north shall be 50 feet.

The applicants were informed of the agricultural buffers, and submitted a new site plan showing a building location that satisfied the agricultural buffers. The new building location will be 150 feet from the western property boundary, and 50 feet from the northern property boundary. In addition to the agricultural buffers, staff determined that the proposed agricultural building would break the skyline as seen from the Columbia River KVA at the originally proposed building location. As discussed in more detail in Finding B.12, the applicants submitted a revised site plan and elevation drawings showing a reduced roof height and roof pitch that resolved the skyline break and was also compliant with Commission Rule 350-082-0580(2).

### **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. Commission Rule 350-082-0600(1) applies to all review uses. Commission Rule 350-082-0600(1)(a) states:

*New development shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.*

The existing topography at the site of the proposed winery building is level, which minimizes the need to grade the site for the proposal. Grading for the 1,200 square foot winery building will be limited to what is necessary to provide a foundation. The existing topography along the access road and parking lot is level, sloping down approximately 10 feet from east to west along the length of the road that travels east to west. Grading for the access road and parking lot will require only what is necessary to establish a flat and maintainable surface for agricultural equipment and vehicles. The buried power line and buried water line will require linear trenching.



2. Commission Rule 350-082-0600(1)(b) states:

*New buildings and expansion of existing development shall be compatible with the general scale of existing nearby development. New buildings that are 1,500 square feet or less are exempt from this guideline. Findings addressing this guideline shall include, but are not limited to:*

*(A) Application of the landscape setting design guidelines, if applicable.*

*(B) A defined study area surrounding the development that includes at least ten existing buildings, not including existing buildings within urban areas or outside the National Scenic Area.*

*(C) Individual evaluations of scale for each separate proposed building in the application and each separate building in the study area, including:*

*(i) All finished above ground square footage;*

*(ii) Total area of covered decks and porches;*

*(iii) Attached garages;*

*(iv) Daylight basements;*

*(v) Breezeways, if the breezeway shares a wall with an adjacent building; and*

*(vi) Dimensions, based on information from the application or in Assessor's records.*

*(D) An overall evaluation demonstrating the compatibility of proposed development with surrounding existing development and development approved but not yet constructed. Buildings in the vicinity of the proposed development that are significantly larger in size than the rest of the buildings in the study area should be removed from this evaluation.*

The proposed development includes one new building, the winery. The winery will be 1,200 square feet in size, in an "L" shape. The winery is exempt from this guideline.

3. Commission Rule 350-082-0600(1)(c) states:

*Landowners shall be responsible for the proper maintenance and survival of any planted vegetation required by 350-082-0600.*

The applicants propose planting a row of trees to the north of the winery building to reduce an agricultural buffer required by Commission Rule 350-082-0580. A condition of approval is included requiring the applicants to monitor the new trees each spring for five consecutive years to ensure at least 80 percent tree retention.

The applicants are required to reseed all exposed and bare soil after the development is completed, and applicants are encouraged to use a certified weed-free seed mix. The staff is providing the applicants with a list of *Recommended Seed Mixes for East Side Environments*, which is an attachment to the Director's Decision. The list supplies seed and grass mixes available locally for eastern gorge climates. Consistent with this rule, a condition is included requiring disturbed areas be revegetated at once upon completion of the project, or as soon as possible if the project is completed during the winter.

4. Commission Rule 350-082-0600(2) contains guidelines that affect developments on sites visible from KVAs. Staff determined the subject parcel is topographically visible from five KVAs: Columbia River Historic, Columbia River Highway (HCRH), I-84, Rowena Plateau, and SR-14. Because the proposed development is topographically visible from KVAs, the guidelines of Commission Rule 350-082-0600(2) are applicable. The proposed development is visible from the four KVAs at the following distance zones:

Key Viewing Area (KVA)	Distance Zone		
	Foreground	Middleground	Background
	0 - 1/2 mile	1/4 - 4 miles	Over 4 miles
Columbia River		X	X
Historic Columbia River Highway		X	X
Interstate 84		X	X
Rowena Plateau		X	
SR-14		X	

5. Commission Rule 350-082-0600(2)(a) states:

*Each development shall be visually subordinate to its landscape setting as visible from key viewing areas. New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, rare plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, new development siting shall comply with this guideline to the maximum extent practicable.*

Commission Rule 350-082-0070(202) defines *visually subordinate* as follows:

*... 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.*

This Section of the Director’s Decision contains requirements and conditions of approval to ensure the development is *visually subordinate*. As addressed in Sections C and D, the proposed development is consistent with the applicable cultural resource rules in Commission Rule 350-082-0620 and the natural resource rules in Commission Rule 350-082-0640.

6. Commission Rule 350-082-0600(2)(b) requires that a determination of potential visual effects and compliance with the visual subordination standard in subsection (a) above shall include consideration of the cumulative effects of proposed development. Commission Rule 350-082-0070(5) defines cumulative effects as:

*The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.*

To evaluate the cumulative effects of the proposal, staff analyzed existing development and development potential of the subject parcel and the adjacent and nearby land within a quarter mile of the subject parcel. As seen from KVAs, the subject property is located in an area with several buildings located along Sauter Road and Old Highway 8. Of the 31 parcels in the study area, staff identified 15 parcels with development. There are currently 46 known buildings in the study area. These buildings include 15 single-family dwellings, and 31 other buildings which include garages, agricultural buildings, and smaller accessory structures. Buildings range in size from 64 to 13,760 sq ft.

It is unlikely that there would be multiple similar developments on the same piece of ground given the nature of the development. Within the study area, staff identified two other wineries. Future tasting rooms in the vicinity of the proposal are possible. To qualify for a tasting room, a landowner must first have a vineyard and winery on the property. It is possible that there may be similar agricultural buildings on the same piece of ground given the existing agriculture use and the size of the applicant's property. Any proposal for agricultural structures would be based on existing or proposed agricultural use. No added tasting rooms are allowed on the subject property so that part proposed development cannot be repeated on the same piece of ground. Tasting rooms are typically compatible with agricultural uses and do not force a change in accepted agricultural practices.

Several factors ensure the proposed development will be *visually subordinate* as viewed from KVAs including the sitting, size, shape, dark earth-tone colors, low reflective building materials, distance from KVAs and existing topography. To mitigate other potential adverse effects that could arise, a condition of approval requires all soils and areas disturbed during development to be reseeded.

If new developments are built according to applicable Land Use Designation guidelines in the vicinity of the proposed development, and if they are designed to meet the guidelines of this chapter, they will be held to the same visual resource protection standards and required to be visually subordinate. Development designed and sited to be visually subordinate will not cause adverse cumulative scenic impacts because there will be no significant increase in visibility of new development on the landscape. If new developments are built in a comparable manner to the proposal and are visually subordinate, there will be limited cumulative effects to scenic resources. As designed and conditioned, the proposed development will not cause adverse scenic impacts, and

will not cause adverse cumulative scenic impacts, consistent with Commission Rule 350-082-0600(2)(b).

7. Commission Rule 350-082-0600(2)(b) states:

*A determination of the potential visual impact of a new development shall include written findings addressing the following factors:*

*(A) The amount of area of the building site exposed to key viewing areas;*

*(B) The degree of existing vegetation providing screening;*

*(C) The distance from the building site to the key viewing areas from which it is visible;*

*(D) The number of key viewing areas from which it is visible;*

*(E) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads); and*

*(F) Other factors the reviewing agency determines relevant in consideration of the potential visual impact.*

The site is visible from the five KVAs listed above in Finding B.5. Staff used GIS inventories and conducted site visits to verify the visibility of the development. The proposed agricultural building will be at an elevation of 780 ft, and most of the KVAs are lower in elevation than the development site. The closest KVAs from which the development is visible are all over a half mile away, and it is not visible in the foreground of any KVA. The site is most visible from KVAs to the south and southwest. As seen from KVAs from the southwest, the development site is most topographically visible because the building is set back 200 feet from the bluffs edge and the steep downward slope angles towards these KVAs. From KVAs to the south, the elevation of the bluff and the distance of the development from the bluff's edge to the south, over 1800 feet, provide topographic screening. From the southeast, the development is difficult to see because there are trees, other vegetation, buildings and existing topography between the parcel and KVAs, which help to provide screening.

Staff found that the proposed building site is visible intermittently from the Columbia River to the west of the development site in the middle ground for a mile and in the background for 3 miles at an elevation of approximately 80 ft.

From HCRH to the south, southeast and southwest of the development, the proposed building site is visible intermittently in the middle ground for five miles and in the background for two miles at an elevation varying between 360 ft and 780 ft. Because the elevation of the project site and the HCRH are similar, the building will be more visible from this KVA than other nearby KVAs and will not be screened as effectively by existing vegetation.

From I-84 to the southwest of the development, the proposed building site is visible intermittently in the middle ground for four miles and in the background for one mile at an elevation varying between 100 ft and 260 ft.

From Rowena Plateau, which is located southeast of the development, the site is visible in the middle ground from the Rowena Crest Viewpoint at 635 ft elevation. The site is only visible from one higher elevation KVA, Tom McCall Viewpoint (1,700 ft elevation)

accessed from Rowena Plateau. From this KVA, existing vegetation both on and off the subject parcel provides effective screening because the site is in the background, 3.5 miles away.

From SR-14 to the west of the development site, the proposed site is visible intermittently in the background for 1.5 miles at an elevation varying between 100 ft and 260 ft.

As explained below, the building and driveway have been designed to be visually subordinate and not noticeably contrast with the landscape. The findings in this staff report include conditions of approval in accordance with this rule.

8. Commission Rule 350-082-0600(2)(c) states:

*The extent and type of conditions applied to a proposed development to achieve visual subordination to its landscape setting shall be proportionate to its potential visual impacts as visible from key viewing areas. Conditions may include, and shall be applied using the following order of priority, with (A) being the first condition to require and (F) being the last condition to require if the prior conditions do not achieve visual subordination:*

*(A) Screening by existing topography.*

*(B) Siting (location of development on the subject property, building orientation, and other elements).*

*(C) Retention of existing vegetation on the applicant's property.*

*(D) Design and building materials (color, reflectivity, size, shape, height, architectural and design details and other elements).*

*(E) New landscaping on the applicant's property.*

*(F) New berms or other recontouring on the applicant's property, where consistent with other applicable provisions.*

Several factors ensure the proposed development will be *visually subordinate* as viewed from KVAs including the siting, size, shape, dark earth-tone colors, low reflective building materials, distance from KVAs and existing topography.

The applicants have proposed wooden siding with a dark stain, dark brown stone for the walls of the building, and asphalt shingles for the roof. These dark earth-tone colors are found within the shadows of the surrounding landscape and the building materials are nonreflective.

The proposed building is compatible in size with existing development. The applicants propose to site the building in the north end of the property on a flat portion of the parcel to reduce grading, and to site the replacement dwelling back over 1500 ft from the southern property line, and 1,900 ft from the bluffs edge to the south. The development will be most visible from KVAs in the middle ground to the southwest: the Columbia River, HCRH and I-84. As seen from KVAs from the southwest, the development site is more topographically visible because the building is set back 200 feet from the bluffs edge and the steep downward slope of the slope angles towards these KVAs. From KVAs further away, such as Rowena Plateau, the development is difficult to see because vegetation and natural topography help obscure the view.

No trees are proposed to be removed. To mitigate for adverse effects that could arise from the proposed grading and trenching, a condition of approval requires the applicants to reseed all disturbed areas.

With these conditions included in the Director's Decision, the proposal will be visually subordinate as viewed from KVAs and consistent with the design guidelines for the Pastoral Landscape Setting. Staff finds these conditions to be proportionate to the development's potential visual impact as seen from KVAs.

9. Commission Rule 350-082-0600(2)(d) states:

*New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from Key Viewing Areas. The following guidelines shall apply to new landscaping used to screen development from key viewing areas:*

*(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-082-0600 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.*

*(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction. If after five years the vegetation has not achieved a size sufficient to screen the development, the Executive Director may require additional screening to make the development visually subordinate.*

*(C) Unless as specified otherwise by provisions in 350-082-0600, landscaping shall be installed as soon as practicable, and prior to project completion.*

*(D) Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.*

*(E) The Scenic Resources Implementation Handbook includes recommended species for each landscape setting consistent with 350-082-0600(3) and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).*

No new landscaping is required to screen development from KVAs.

10. Commission Rule 350-082-0600(2)(e) states:

*Existing tree cover screening proposed development from key viewing areas shall be retained as specified in 350-082-0600(3).*

The subject parcel is in the Pastoral landscape setting. Findings for the Landscape Settings Design Guidelines are addressed below.

11. Commission Rule 350-082-0600(2)(f) states:

*The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas.*

While reviewing the original location for the proposal, staff determined the building would break the skyline as viewed from the Columbia River KVA. Staff used Google Earth to determine whether the building appeared to break the skyline. Staff used Google Earth to build a model of the proposed building to view from KVAs at surface level using Google Earth's topographic data. Staff and the applicants decided that a 150-foot setback from the western property boundary and a slight reduction in the height of the building from 19 ft to 16 ft would resolve the issue. The applicants submitted a revised site plan for the building in compliance with the 150-foot setback and with the revised roof height. The proposal is consistent with this rule.

12. Commission Rule 350-082-0600(2)(h) states:

*Unless expressly exempted by other provisions in 350-082-0600, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors approved by the reviewing agency shall be included as a condition of approval.*

The applicants have proposed Benjamin Moore, Cromwell Gray HC-103 for the exterior walls of the agricultural building and Benjamin Moore, Midsummer Night 2134-20 for the trim. The roof will be black asphalt architectural shingles. Midsummer Night and the black color of the asphalt shingles are dark earth-tone colors found within the shadows of the surrounding landscape. Cromwell Gray is not a dark-earth tone color, and the applicants are required to submit a new color for the exterior for the building. A condition of approval requires the exterior surfaces of the replacement dwelling including the walls, doors, siding, trim, window casing and sash, decks, and railings to be black or a dark earth tone color approved by the Gorge Commission to ensure consistency with Commission Rule 350-81-520(2)(l).

13. Commission Rules 350-082-0600(2)(i) states:

*The exterior of buildings on lands visible from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. Continuous surfaces of glass shall be limited to ensure visual subordination. The Scenic Resources Implementation Handbook includes a list of recommended exterior materials and screening methods.*

The applicants propose using wooden siding and masonry stone for the siding of the agricultural building. Both materials are non-reflective and are consistent with this rule. The roof will be black asphalt architectural shingles. The materials are non-reflective and are consistent with this rule.

A condition of approval requires all exterior surfaces of the proposed development, including roof, doors, siding, trim, window casing and sash, decks, and railings to be composed of non-reflective materials to ensure consistency with this rule.

14. Commission Rule 350-082-0600(2)(j) 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.*

No exterior lighting fixtures are proposed. However, a condition of approval is including in the decision in accordance with this rule.

15. Commission Rule 350-082-0600(2)(r) states:

*Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.*

The only grading will be to level the ground around the site where the winery, parking lot and road are sited. The proposal is sited on a relatively flat portion of the subject parcel reducing the need for cut banks or fill slopes.

16. The Landscape Settings Map for Columbia River Gorge National Scenic Area classifies the subject parcel as Pastoral. Commission Rules 350-082-0600(3)(a)(A) and (B) contain applicable guidelines for the proposed development in this landscape setting.

17. Commission Rule 350-80-0600(3)(a)(A) states:

*Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.*

Only one building is proposed. The building is located towards the northwest corner of the property towards the edge of the existing vineyard. The access road is located along the property boundary along the edge of the existing pastureland and vineyard.

18. Commission Rules 350-082-0600(3)(a)(B) states:

*In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:*

- (i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.*
- (ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.*



*(iii) At least half of any trees planted for screening purposes shall be species native to the setting. Examples of native species are identified in the Scenic Implementation Handbook as appropriate for the area.*

*For treeless portions or portions with scattered tree cover:*

*(iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening. Variances may be granted to this guideline when development is directly adjacent to or adjoining a landscape setting where coniferous trees are not common or appropriate (see Scenic Implementation Handbook for guidance), and tree species ultimately selected for winter screening are natives characteristic to that setting.*

No trees are proposed to be removed and no new trees are proposed for screening purposes. The only proposed landscaping is along the property boundary, which helps retain the open character of the existing fields. The proposal is consistent with this rule.

### **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 August 25, 2022, that pursuant to Commission Rule 350-082-0620(2)(a)(B) a Cultural Resource Reconnaissance Survey is required because the proposed use would occur on a site that has been determined to be located within a high probability zone, and the proposed use would occur within 500 feet of a known archaeological site.
3. Luciano Legnini, Archaeological Technician, USFS CRGNSA, conducted a reconnaissance survey on March 15, 2023, consistent with Commission Rule 350-082-0620(2)(b)(A) and (B). Mr. Legnini and Mr. Donnermeyer drafted a confidential report dated April 6, 2023, that was consistent with Commission Rule 350-082-0620(2)(b)(C) describing the requirements for reconnaissance surveys and reports for small-scale uses in the General Management Area.
4. Commission Rule 350-082-0620(2)(f) states:
  - (A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.*
  - (B) The State Historic Preservation Officer and the tribal governments shall have 30 calendar days from the date a survey report is mailed to submit*

*written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.*

Notice of the cultural resource survey report was mailed to Washington DAHP and to tribal governments on April 12, 2023. No comments were received within 30 calendar days from the date the report was mailed.

5. Commission Rule 350-082-0620(2)(g)(B)(ii) states the cultural resource protection process may conclude when the following conditions exist:

*A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 30 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 required in subsection 2(f)(B) above.*

The April 6, 2023 survey report concluded that the proposed development would have no effect to significant cultural resources. No substantiated concerns were voiced by interested persons, Washington DAHP, or tribal governments during the initial notice period that began on August 25, 2022, or by DAHP or tribal governments during the cultural survey notice period beginning April 12, 2023.

Mr. Donnermeyer was informed on June 6, 2023 that the applicants had revised their site plan to move the winery building, in order to be compliant with agricultural buffers and scenic resource protection standards. Mr. Donnermeyer responded on that same date and stated that the change to the building location did not affect the determination that the proposed development would have no effect to significant cultural resources. Pursuant to this rule, the cultural resource protection process for archaeological and traditional resources may conclude.

6. Commission Rule 350-082-0620(2)(a)(D) describes when a historic survey is required. In his August 25, 2022, 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.
7. Commission Rule 350-082-0620(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.*

The project notice was mailed on August 25, 2022, and the comment period ended on September 25, 2022. The proposed use did not require a historic survey and no

comments were received regarding cultural resource concerns. Pursuant to Commission Rule 350-082-540(2)(c)(B)(i), the cultural resource protection process for historic resources may conclude.

8. 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 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 is included in the director's decision consistent with this rule.
9. Commission Rule 350-082-0620(7) contains provisions addressing discovery of human remains during construction. A condition of approval is included in the director's decision consistent with this rule.
10. DAHP submitted a comment on September 8, 2022, requesting the preparation of an Inadvertent Discovery Plan (IDP) and to proactively prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities. A condition of approval is included in the director's decision requiring preparation of an IDP, and requiring the IDP to be reviewed by construction crews prior to any ground disturbance.

### **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 1,000 feet away from the proposed development. The closest stream is more than 400 feet away from the proposed development. Commission staff did not identify any water resources during site visits. Commission Rule 350-082-0640(6) describes the largest buffer for any water resource as 200 feet. The proposed development will not take place within any water resource or water resource buffer.
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 approximately 900 feet from identified deer and elk winter range, which is a Priority Habitat 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 notify 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 January 13, 2022,

Gorge Commission staff sent WDFW a copy of the applicant's land use application and site plan. WDFW did not submit a comment in response to the notice. The proposed development will take place outside of the Priority Habitat, and the proposed development will not cause impacts within the Priority Habitat. 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 Habitat.

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, WDFW Habitat Biologist, did not indicate any concerns with the proposal. The proposed trenching will not reduce the acreage of deer and elk winter range nor result in changes to vegetation or accessibility of winter range habitat to wildlife. The proposed water reservoirs are replacements for existing water reservoirs and will be located next to the existing water reservoir and water works facility and will not reduce the acreage of deer or elk winter range, The proposed use will not compromise the integrity of the wildlife area.

5. Commission Rule 350-082-0660 provides guidelines for protecting rare plants within the National Scenic Area. Commission staff reviewed its natural resource inventories for nearby rare plants. The closest identified rare plant is more than 1,500 feet away from the proposed development. Commission Rule 350-082-0660(5)(a) states that a 200-foot buffer zone shall be maintained around rare plants. The proposed development will be well outside does not take place within a rare plant site or buffer zone.

### **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.*

There are no established recreation sites on any adjacent properties. The nearest recreation sites are the Chamberlain Lake Safety Rest Area approximately 4,000 feet to the southeast of the development site, and the Catherine Creek trail system approximately 7,000 feet to the west. The proposed development will not detract from the use and enjoyment of any established recreation sites.

### **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(1)(a), notice of the proposed development was provided to the tribal governments on August 25, 2022.
2. Commission Rule 350-082-0130(1)(b) lists additional 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 initial offer to meet or consult with the initial notice on August 25, 2022. The Commission provided a second offer to meet or consult on May 30, 2023. No treaty tribe requested a meeting or consultation.
4. Commission Rule 350-082-0130(d) provides 30 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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