

Columbia River Gorge Commission Meeting Minutes

November 18, 2003

A complete record of this meeting is available on audio tape

Location: Columbia Gorge Discovery Center, The Dalles OR

Time: Meeting was called to order at 9:03 a.m.

MEMBERS PRESENT

Kenn Adcock

Doug Crow (9:06)

Judy Davis

Michael Farrow (10:40)

Daniel Harkenrider

Jane Jacobsen (9:06)

Joe Palena

Joyce Reinig

Dave Robertson

Katharine Sheehan

Anne Squier, Chair

Wayne Wooster

MEMBERS ABSENT

Walt Loehrke (Excused)

STAFF PRESENT

Martha Bennett, Executive Director

Brian Litt, Senior Planner

Jeffrey Litwak, Counsel

Gary Pagenstecher, Planner

Kathy Obayashi-Bartsch, Administrative Assistant

AUDIENCE PRESENT

Roger Allen, resident of Lyle, WA

Jim Gores, Oregon Department of Budget and Management

Diana Karabut

Tiffany Kenslow, Friends of the Gorge (FOCG)

Patrick Johnson, Skamania County planning

Howard and Jeanette Johnston, residents of Lyle, WA

Bob Leipper, resident of Troutdale, OR

Bobbie Miller, Columbia Gorge United (CGU)

Dave Sauter, Klickitat County

Phyllis Thiemann, Columbia River Gorge Visitors Association (CRGVA)

Joanie Thomson, FOCG

Jeremy Wolf, Confederated Tribes of Umatilla Indian Reservation (CTUIR)

The meeting was called to order by Chair Squier at 9:03 a.m.

Minutes were approved with changes on the fifth paragraph of page 8 to read "She stated however that excavation into the hillside to remove an entire rock.." and on the first paragraph of page 12, to read "The motion failed 6 to 5." Commissioner Sheehan made the motion to accept with these changes and Commissioner Adcock seconded the motion. The minutes were approved unanimously.

Chair Squier asked for public comment on issues not on the agenda.

Bob Leipper read from his letter referring to the Commission's request at the Oregon Legislature's Emergency Board (see attachment A).

Bobbie Miller asked as to the status of Plan Review. Bennett indicated that this item will be addressed this afternoon. She also inquired as to the Forest Service plans for the Ellett property. Commissioner Harkenrider indicated that he would speak to her about these questions during the break or at another time.

Martha Bennett updated the Commission about the request to the Oregon Legislature Emergency Board (see attachment B). She noted that Representative Morgan brought up the issue of trust as Mr. Leipper noted in his letter. She stated that Morgan's comments were not directed specifically to the Commission. She indicated that the members of the Emergency Board subcommittee were informed by the Oregon budget division as to the impact the current funding level has on the work plan. She stated that the Executive Committee would be meeting in early December to discuss this in more detail as well as other items.

Chair Squier explained that during the Oregon's legislative session in 2003, \$50,000 was held back in a special purpose emergency board appropriation. The Commission was given direction to request \$20,000 at the first Emergency Board in 2003 and to submit a work plan addressing six issues. Further, the Commission was directed to request the remaining \$30,000 in September 2004. The Emergency Board concurred with the work plan submitted and approved release of the \$20,000 at the November 2003 meeting.

Chair Squier indicated that the next order of business would be the public hearing on Notice of Violation E03-K-S-96 for Howard and Jeanette Johnston. Chair Squier reviewed the process and confirmed that the Johnstons' did not have an attorney representing them. She then asked Commissioners to disclose any ex-parte contacts or conflicts of interest. No Commissioner had any disclosures to make.

Chair Squier then asked the parties for a brief opening statement.

Martha Bennett, Executive Director had no opening statement. Mr. Johnston made an opening statement. He stated that they intend to comply with the conditions and the current problem was related to timing issues.

Chair Squier then asked the parties to present their arguments.

Bennett provided an overview of the staff report (see attachment C) and said Gary Pagenstecher, Planner inspected the property this morning. She stated that it looked to be nearly 90% complete. She recommended the second option, 2A in the staff report and to impose a penalty if the due date of December 15th is not met.

Jeffrey Litwak, Legal Counsel explained that the color photos were part of the record and provided these to the Johnstons. They agreed that these photos were acceptable. The photos were then distributed to the Commissioners.

The Commissioners deliberated on the issue and asked some questions of the Johnstons.

The Notice of Violation alleged illegal placement of fill on a parcel in Klickitat County.

Chair Squier asked whether Bennett had any questions to ask the Johnstons. Bennett indicated that she had no questions.

Chair Squier asked for closing statements from either party. There were no closing statements from either party.

The Commission deliberated on the issue.

Commissioner Palena stated that he supported the staff recommendation of 2A. Commissioner Crow concurred with his comments and stated that the suspended civil penalty should be effective as of September 16, 2003 at a rate of \$100 per day.

Chair Squier asked if a motion was being made at this time. Commissioner Palena made a motion to adopt option 2A as described in the staff report with a clarification that the civil penalty to be effective as of September 16, 2003 at a rate of \$100 per day.

Commissioner Robertson asked for clarification as to how the penalty would be assessed.

Commissioner Crow stated that the penalty would accrue until the condition of approval was met. He noted that he did not anticipate that there would be an issue as Mr. Johnston stated they would make the December deadline.

Chair Squier asked staff if there was a policy or procedure as to how a suspended penalty would be handled. She stated that ongoing accrual of such penalty could be problematic.

Litwak indicated that a suspended penalty has occurred in a few instances, however there has not been an issue as all parties were able to meet the deadline. He states that a penalty that accrues is legally defensible but more difficult to implement. He stated that a penalty with a due date would be simpler to implement.

Commissioner Wooster indicated that a set time was his preference. Commissioners discussed the procedures used in developing penalty fees.

Chair Squier requested that staff prepare some information as to the process for a running accrual for future discussion.

Commissioner Adcock suggested that civil penalty of \$2,000 would be due and payable on January 15th, 2004. He explained that due to weather conditions, a January due date should be considered.

Commissioner Palena accepted the suggestion to his amendment and Commissioner Crow accepted the suggestion as well.

Chair Squier summarized the motion to accept option 2A as defined in the staff report with a civil penalty of \$2,000 due and payable January 15th, 2004 if the condition of approval was not met.

Commissioner Reining asked how the \$100 per day penalty would calculate out if the due date was December 15th. It was determined that this would be approximately \$9,000 (3 months @ days/month @ \$100/day). She spoke to the issue of extending the deadline to January, noting that snow could also been an issue. She stated that we don't want to see another extension and still have this problem and asked the Commission not to lose sight of why we are at this stage in the first place.

Commissioner Sheehan stated that she prefers the \$100 per day penalty and to give an extra month to pay it but not to have the work done. She preferred the original deadline in option 2A, with the work done by December 15th.

Commissioner Davis indicated that the motion doesn't make sense with two different deadlines.

Commissioner Adcock indicated that his intent was to set a fixed penalty amount of \$2,000 and to set a deadline for compliance on January 15, 2004. The penalty

would be waived if compliance with the condition of approval was met³⁰ by January 15th.

Commissioner Robertson stated that he while understands the weather concern, he was opposed to postpone the deadline, although the fixed penalty of \$2,000 was acceptable.

Commissioner Jacobsen concurred with Commissioner Robertson's ideas.

Commissioner Wooster indicated that he supported the January 15th deadline, as he believed scenic concerns were not so pressing at this time of the year.

The motion to accept option 2A as defined in the staff report with a civil penalty of \$2,000 due and payable on January 15th, 2004 if the condition of approval was not met was voted on and failed 6 to 4.

Kenn Adcock aye
Doug Crow aye
Judy Davis no
Jane Jacobsen no
Joe Palena aye
Joyce Reinig no
Dave Robertson no
Katharine Sheehan no
Wayne Wooster aye
Anne Squier, Chair no

Commissioner Robertson then made a motion to accept option 2A as defined in the staff report with a civil penalty of \$2,000 due and payable on December 15, 2003 if the condition of approval was not met. Commissioner Palena seconded. The motion passed unanimously.

Kenn Adcock aye
Doug Crow aye
Judy Davis aye
Jane Jacobsen aye
Joe Palena aye
Joyce Reinig aye
Dave Robertson aye
Katharine Sheehan aye
Wayne Wooster aye
Anne Squier, Chair aye

Chair Squier thanked the Johnstons and advised them to contact staff if they had any questions or required any assistance.

Bennett stated that there was a typographical error on the agenda as the break should only be scheduled for 15 minutes. Chair Squier indicated that there would be a 15 minute break and would reconvene with the National Scenic Area (NSA) Manager's report, Executive Director's report and discussion of the Plan Adoption work plan and schedule.

Chair Squier called the meeting to order at 10:40 a.m. and noted that Commissioner Farrow had arrived. Jim Gores, with the Oregon Office of Budget and Management was introduced by Chair Squier and thanked for coming from Salem to attend the meeting.

Chair Squier then called for the NSA Managers Report. Commissioner Harkenrider informed the group that the proposed Scenic Management Area (SMA) forest revision was released and they had received many questions from the public. He stated that they will conduct a public workshop to address the issue. Chair Squier asked that the Commission be informed when the date for the meeting is set.

Commissioner Harkenrider provided an update on several projects and noted that the Tooth Rock project to reconstruct and pave the road to trailhead is nearly complete. Work on the Sandy River delta has been done to restore the area to a natural state. He noted that more work is needed to clear the area of non-native berry bushes and several different options, such as using goats and controlled burns are being considered. He stated that the budget for the next fiscal year appears to be reduced by approximately 10% and a final budget should be released in January 2004. He stated that Kim Titus will return in February after an assignment out of the area.

Commissioner Crow asked what permits are required when the USFS does work that creates ground disturbance. Commissioner Harkenrider indicated that they are not required to apply for special permits as the work being done is within their jurisdiction and they work closely with other agencies such as the counties.

Chair Squier then asked for the Director's Report and Bennett noted that several committee meetings were scheduled in December and January. She stated that the Oregon Department of Transportation (ODOT) notified staff that they will be working on various highway corridor projects affecting I-84 soon.

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Bennett provided the Commission with a memo (see attachment D) detailing the Plan Adoption work plan and schedule. She indicated that the schedule has been reviewed with USFS and the timeline is very tight. She stated that staff is working to meet the January 26, 2004 release date. There will be a 6 week public comment period and a February 24, 2004 public hearing on Plan Adoption. She stated that this will be a joint hearing with USFS including the General

Management Area (GMA) and Scenic Management Area (SMA). She noted that the exact time is to be determined and requested that Commissioners reserve the entire day.

She reviewed the schedule as outlined in the memo and indicated that staff recommends that the Commission not accept applications for plan amendment until 2006 due to the amount of work scheduled. She suggested that a separate meeting should be scheduled to discuss this issue with those parties that might be interested in plan amendment.

The Commissioners discussed the process involved with Plan Adoption and the importance of involving other stakeholders in this project, such as Secretary of Agriculture. Bennett suggested that the Outreach Committee could discuss this issue. Commissioner Sheehan suggested that this item should be on the 6-county meeting agenda.

Bennett indicated that staff needs direction about the schedule and various elements involved in Plan Adoption. Commissioner Reining indicated that she agreed with the Plan Adoption schedule and possibly placing a moratorium of some sort on accepting plan amendments.

Chair Squier stated that there were two separate issues, one being the Plan Adoption schedule and the other was the idea of holding plan amendments until the Plan Adoption was complete. She asked for Commission's opinion of the proposed schedule. Commissioner Sheehan expressed her agreement with the schedule and commended staff for including time for public comment.

None of the Commissioners indicated that there was any problem with the proposed schedule and instructed Bennett to proceed.

Chair Squier called for discussion as to the issue of not accepting plan amendments during this time period. Bennett indicated that there was a concern in placing a true moratorium and she wasn't suggesting that. She also indicated that staff would still be working closely with counties.

Commissioner Adcock indicated that he doesn't want to close the door on plan amendments.

Commissioners discussed the items that are driving the proposed schedule. Commissioner Reining stated that public meetings will be time consuming and all agencies, such as the counties are dealing with very full work loads.

Commissioner Wooster asked how significant were the impacts of processing plan amendments. Bennett responded that these amendments require considerable amounts of staff time and other items will be delayed. She stated that this is an area to be considered but no decision needs to be made today.

Litwak indicated that 9 plan amendments have been adopted between 1995 and 2000, approximately 2 per year and there were several amendments that were not adopted.

Commissioner Robertson stated that plan amendments may need to be reviewed case by case. Commissioner Sheehan stated that the Commission should be consistent with this item and hold plan amendments until Plan Adoption is completed.

Bennett stated that this item will be discussed at the December meeting.

Chair Squier introduced the next topic; to initiate Rulemaking on Commission Rules 350-120, 350-11, and 350-12 to amend Commission rule for economic development grant and loan certification and to update open meetings and public records rules after the states' 2003 Legislative Sessions.

Litwak indicated that the item to update open meetings and public records rules would not be discussed at this meeting as the Rules Committee needs to review first. Litwak reviewed the memo (see attachment E) on Expedited Review of Economic Development grant and loan certification. He reviewed the draft rule as outlined. He noted that the primary area of change pertains to page 5 under criteria which uses the definition of "project" and "activity" as outlined on page 2 of the memo.

Commissioner Crow stated that there should be an opportunity for public comment on all applications, even those with an expedited review process. Litwak responded that with 14 day time limit, it was determined that there was not sufficient time to gather public comment. To have more than a 14 day time period would not be an expedited process. He stated that the individual investment board could take public comment if needed and relay comments to the Executive Director.

Chair Squier asked for public comment on this item.

Bobbie Miller indicated that there should be some public comment in the process.

Litwak reviewed the rulemaking process in Oregon and Washington. He stated that after registering these rules with the states, that public comment would be a part of overall process.

Roger Allen stated that it's important to make sure public hearings are appropriately noticed and conducted in a facility of sufficient size to accommodate a large number of people.

Commissioner Davis made a motion to adopt the rule as proposed in the staff memo and Commissioner Jacobsen seconded the motion.

Chair Squier asked for clarification on the criteria on page 5 and Litwak responded.

Commissioner Adcock expressed his concern about not having a public comment period. Commissioner Reining stated there has been minimal public comment over the years and almost all has been supportive. She noted that it was the Investment Boards asking for a streamlined process to encourage a quicker response.

Commissioner Davis stated that the Oregon Investment Board did have a public comment period that may need to be better advertised and the Washington Investment board does have a public comment period except for one mini grant program that they administer.

There being no further discussion, a vote was taken and passed unanimously.

Kenn Adcock aye
Doug Crow aye
Judy Davis aye
Michael Farrow aye
Jane Jacobsen aye
Joe Palena aye
Joyce Reinig aye
Dave Robertson aye
Katharine Sheehan aye
Wayne Wooster aye
Anne Squier, Chair aye

Chair Squier called for a lunch break at 12:07 p.m.

Chair Squier reconvened the meeting at 1:10 p.m. and explained that the Gorge Commission's role was limited as to fire safety issues in the Gorge. She asked Brian Litt, Senior Planner to introduce the topic. He provided an introduction to the presentation, noting that the panel included representatives from the Washington State University Extension Service-Skamania County U.S. Forest Service, Oregon Department of Forestry, and Washington Department of Natural Resources. This panel provided information pertaining to wildfire, fuel reduction, and firewise programs in the Columbia River Gorge.

Ole Helgerson of Washington State University Extension Service-Skamania County introduced the topic and referred to two handouts that are used to educate the public (see attachment F1-F2).

Bonnie Wood of U.S. Forest Service introduced the National Fire Plan and provided an overview of this plan (see attachment G1-G2).

Rod Altig of the U.S. Forest Service provided an overview of the fire management areas within the Gorge and surrounding area. He stressed the collaborative approach that exists within the Gorge area and provided some statistics as to the number of fires in the area.

Larry Hoffman of the Oregon Department of Forestry provided an overview of the department, statewide and local fires statistics, and the National Fire Plan Fuel Management (see attachment H).

Steve Brown of the Washington Department of Natural Resources explained his agency's role in fire prevention and fire suppression.

Wade Alonzo of the Washington Department of Natural Resources reviewed the topic of fire prevention related to urban interface issues.

Chair Squier thanked all the speakers for the presentation and determined that the Commissioners had questions of for the speakers.

Chair Squier then recognized Brian Litt for 15 years of service with the Gorge Commission and provided him with a plaque. Bennett acknowledged his service and technical expertise noting his ability to work on wide range of issues. She commended him for his ability to listen and work with effectively with people.

Chair Squier thanked all the speakers for the presentation and determined that the The Commissioners had then asked questions of the speakers.presenters. Commissioner Farrow asked to how the weather forecast would affect the fire danger over the next few years. Speakers responded that the Gorge area was incredibly dry and with only 100 years of weather data to reference it was difficult to provide a meaningful forecast.

Commissioner Crow asked what the Commission can do to encourage fire prevention efforts. The speakers indicated that a one page information sheet for the local community to encourage implementation of firewise practices, from fuel management to creating defensible space would be helpful. They indicated that many property owners in the Gorge were not sure if they could remove vegetation, even for fire safety. The speakers also noted that current firewise rules may be outdated and there may be some potential conflicts with the Clean Air Act.

Commissioner Adcock asked why grazing was not used more regularly for fuel

reduction. The speakers responded that where grazing is prohibited it often is related to watershed issues and natural area preserves.

Commissioner Robertson stated that the Commission should look for opportunities to work with these agencies in terms of public outreach efforts.

Commissioner Harkenrider asked about the status of the community risk project and what is being done on a larger scale fuel break and fire management. The speakers responded that this issue will be developed with other public partners and a fuel inventory of the area would be very helpful. They hope to develop a community fuel and fire safety plan.

Commissioner Jacobsen suggested that the fire prevention has to be at a grass roots level, with individual landowners and permits.

Commissioner Reining noted that other community services are greatly impacted by fires. She stated that a major fire can result in a lack of available emergency personnel and ambulances. She suggested that the Commission consider the fire prevention issue carefully as some of the scenic decision elements of the past may impact fire prevention.

Litt indicated that planners need more training and that fire prevention has become more of an issue. Bennett indicated that meeting two goals of fire prevention and protection of scenic resources will take more time and planning.

Commissioner Palena asked for clarification as to the merits of cattle grazing in fuel reduction. The speakers responded that for a variety of reasons cattle grazing was not an effective fuel reduction tactic.

Chair Squier asked if there should be different requirements for roads and driveways that pertain to creating defensible space. The speakers indicated that this should be a consideration in any development.

Commissioner Crow asked about the area from Larch Mountain to Hood River, stating that this was an area without roads for fire suppression access. The speakers indicated that this type of problem area should be addressed with state partners and other stakeholders. They stated that the top priority will be to protect communities.

Commissioner Farrow stated that he felt that eventually people may need to choose either fuel reduction strategies or the Clean Air Act.

There being no further questions, Chair Squier thanked the speakers for their presentation. She then called for the next order of business; Committee Reports from the againAssessment Committee and Rules Committee.

Bennett indicated that the Assessment and Rules Committee met and there was no additional information at this time. Commissioner Sheehan indicated that the Assessment Committee will be considering how to look at long term monitoring.

Chair Squier asked whether there was any other business. There being none she stated there would be a short break. She noted that the Commission would reconvene with an Executive Session that would be a closed session for the Commission, staff and media only. She indicated that after the Executive Session the meeting would reconvene and would likely adjourn at that time.

The Commission met in an executive session to discuss pending litigation.

The meeting was reconvened and adjourned at 4:07 p.m.

Next meeting will be January 13, 2004 at Bonneville Hot Springs Resort, North Bonneville, WA.

Notes taken by Kathy Obayashi- Bartsch
Minutes Approved: January 13, 2004