

Columbia River Gorge Commission

Meeting Minutes

November 8, 2005

A complete record of this meeting is available on audiotape

Location: Hood River County Administration Building, 601 State Street
Hood River, Oregon

Time: 9:00 a.m.

MEMBERS IN ATTENDANCE

Harold Abbe
Kenn Adcock
Jeffrey Condit (9:05 a.m.)
Doug Crow
Judy Davis
Virginia Kelly for Dan Harkenrider
Roberta Kirk (9:10 a.m.)
Walt Loehrke
Jim Middaugh
Joe Palena
Joyce Reinig
Honna Sheffield

MEMBERS ABSENT

Jane Jacobsen-excused

STAFF PRESENT

Tom Ascher, Planner
Martha Bennett, Executive Director
Jennifer Kaden, Planner
Jeff Litwak, Counsel
Kathy Obayashi-Bartsch, Administrative Assistant

AUDIENCE PRESENT

Cornelison, Peter. Friends of the Columbia Gorge (FOCG)
DeVaney, Dotty. DeVaney Consulting
Flint, Lew. Columbia Gorge United (GLU)
Gaul, Willard. GLU
Lang, Michael. FOCG
Leipper, Bob. Troutdale, Oregon
Mazeski, Mark. Skamania County Planning
Nicolai, Tom. Portland, Oregon
Swyers, Rita. GLU
Wooster, Wayne. Klickitat County

Call to Order

Chair Davis called the meeting to order at 9:00 a.m. and roll was called.

Approval of Minutes

Chair Davis asked the Commission to review and comment on the draft minutes for October 11, 2005. Commissioner Reinig made a motion to approve the minutes as drafted. Commissioner Adcock seconded the motion. A voice vote was taken and the motion passed unanimously.

Public Comment

There was no public comment.

Opportunity for Tribal Nations to address Commission

There were no representatives in attendance.

Certification of Economic Development Loan (H05-0125)

Tom Ascher, Planner said the Mid-Columbia Economic Development District requested certification for a \$150,000 loan to a Hood River business to purchase a building in the City of Hood River. Ascher provided a review of the application and recommended the Commission certify the application (see attachment A).

Commissioner Crow asked if this building purchase would create more jobs in the area. Ascher said he was not sure how many jobs would be created but the purchase would allow for business expansion. Commissioner Crow said he believed all economic development funding should create more jobs, especially family wage jobs.

Commissioner Reinig asked about the location of the subject property. Ascher said the new site is located by the county health department in Hood River.

Commissioner Loehrke said this need to expand is a response to economic development in the area and to meet the demand of the local construction business.

Chair Davis asked for public comment and there was none.

Commissioner Condit made a motion to certify the request and Commissioner Loehrke seconded the motion. A voice vote was taken and passed unanimously.

Chair Davis introduced Roberta Kirk who was appointed by Oregon Governor Kulongoski to the Commission in October. Ms. Kirk will fill a vacant position, formerly held by Michael Farrow.

Director's Report

Bennett said Roberta Kirk was confirmed by the Oregon Senate in late October for a four year term. Commissioner Crow's reappointment was also confirmed. Crow's term will expire in 2008.

Bennett updated the Commission on the work Skamania and Clark Counties are doing to enact the Revisions to the Management Plan. She said Skamania County adopted a revised ordinance on November 7. She said the only outstanding issue relates to comments from natural resource agencies. The county is proposing that they would assume there are no natural resource issues if an agency misses the comment deadline. Staff is working with the county to make sure comment deadlines are not missed but also that all relevant information is considered. Skamania County's ordinance will be considered at the December Commission meeting.

Bennett said in August Clark County's ordinance had three items of concern: vested rights, consolidation of lots and discontinued uses. Bennett said staff and the County had resolved two of the issues, but the County still doesn't like the consolidation of lots provisions. The County Commission has asked County staff to perform legal lot determinations on the lots that could be affected by the Management Plan. Clark County currently doesn't have adoption of their ordinance scheduled.

Bennett said for the hearing on historic buildings on November 15, there is a revised staff report in the Commission packet. She encouraged Commissioners to contact staff with any concerns they have prior to the hearing.

Commissioner Crow said the Condit Dam issue is re-emerging and asked Bennett to comment on the issue. Bennett said staff believe that the consistency determination made by the Forest Service as part of the Federal Energy Regulatory Commission (FERC) decision on dam licensing is the only action that needs to be taken to ensure consistency with the Management Plan, unless PacifiCorp plans an action that wasn't reviewed.

Commissioner Adcock said he believes that the Commission should have an open forum with the Forest Service. Commissioner Reinig said the Commission spent a lot of time on this in the past. She said what was presented to the Commission did not allow for much additional action on behalf of the Commission.

Virginia Kelly said the State of Washington has issued a supplemental environmental impact statement and the Forest Service is reviewing this document.

Commissioner Adcock said the "blow and go" approach will significantly affect resources Commissioner Reinig said it may be appropriate to ask the Forest Service for an update.

Commissioner Middaugh asked for an update of air quality issue with the Department of Environmental Quality (DEQ). Bennett said the DEQ has not received a final report or signed a contract for the modeling. Once these items are determined, there will be more discussion and a public hearing in the Gorge.

Commissioner Crow asked about a violation that staff completed and how the violation was discovered. Bennett said the violation was reported by a neighbor. She said staff is

working on updating information about existing violations. She said staff will be coming with a more complete report after the first of the year.

Commissioner Reinig said there are many homes that are not painted the correct color. She expressed concern about consistency in enforcement.

Commissioner Loehrke said he believes staff is doing a great job with consistency, especially with limited resources. He said if a property owner is caught in a violation, they should be responsible and compared it to getting a speeding ticket, when other motorists are speeding as well.

Continuation of Public Hearing on Plan Amendment Application PA-05-01 (Nicolai) from July 12, 2005

Chair Davis said the public hearing is a continuation of a hearing from July 12, 2005. She noted that the rules for the hearing are found in Commission Rules 350-50-100. She said the composition of the Commission has changed since July. Commissioners Crow, Reinig, Middaugh and Kirk said they listened to the tapes of the July meeting and reviewed the material.

Commissioner Reinig said that many years ago, she was friends with Dick Roy and that he worked for the firm that Mr. Nicolai belongs to. She said Mr. Roy has left the firm and she no longer has business with that firm. She believes she can make an independent decision based on listening to the tapes and reviewing the material.

Chair Davis asked for additional ex parte contacts, and there were none. She asked if there were any objections to any Commissioner hearing this matter, and there were none.

Jennifer Kaden, Planner provided a summary of the Plan Amendment application PA-05-01. (see attachment B).

Commissioner Middaugh asked if the current designation would allow for a residence. Kaden said a residence would be allowed only if the property meets an income test for commercial agriculture.

Commissioner Reining said that when the Act and the Plan were developed Klickitat County did not have precise records of rural parcels.

Kaden said the County issued an agricultural use permit. She said what did not occur was any further permitting to change an agricultural use to a residential use. The County required permits at the time the building was converted to a residence.

Commissioner Middaugh asked about the requirements of the pastoral landscape setting. Kaden said a residence and any out-buildings would be required to be clustered

on the edges of the meadow setting. She said additional Scenic guidelines won't apply because the site is not visible from any Key Viewing Area (KVA).

Commissioner Middaugh asked about regulations that would apply – such as erosion control – to forest practices on the property. Bennett said Washington state forest practices regulations would apply because of the Savings provision in the Act.

Chair Davis asked Mr. Nicolai to address the Commission.

Nicolai said the current proposal is the result of collaborative effort of himself, Commission staff, Washington state natural resource agencies, and Forest Service. He said he agrees with the proposed boundary lines.

Commissioner Reinig said the original testimony requested five acres of open space and the current proposal as nearly nine acres. Mr. Nicolai said his proposed use of the southern quarter would be consistent with the open space designation.

Chair Davis asked for public testimony.

Michael Lang read from prepared testimony (see attachment C1) expressing the opinion that the application does not meet any of the criteria for approval. He said the Plan Amendment process should not address a single property. He also provided a copy of the section 8(o) acquisition evaluation for the property (see attachment C2) for the record.

Commissioner Condit said he believes Plan Review process is the appropriate time to consider larger policy issues. He asked Mr. Lang to comment on why FOCG believes that such an issue should be reviewed during Plan Review.

Lang said consideration of individual issues is appropriate during Plan Review because the standard of significantly changed conditions would not apply.

Commissioner Middaugh said if the current commercial forest designation is maintained, then the entire parcel could be logged and this seems to be in conflict with the interests of FOCG. Lang said they are concerned that this would lower the standards for a Plan Amendment and set a precedent for land owners who are unhappy with their property's designation to seek a Plan Amendment. A Plan Amendment should be used for broader policy issues.

Commissioner Abbe said the main thrust of FOCG's disagreement is that this application should be considered during Plan Review and should not be a Plan Amendment, even though if approved it provides better resource protection.

Chair Davis asked if anyone else wished to testify. No person wished to testify so she asked Mr. Nicolai if he wished to respond to the testimony.

Mr. Nicolai said given the unique history of the property he does not believe this application would be “opening the flood gates or lowering the bar”.

Commissioner Reinig said she agrees in a sense with Mr. Lang as far as the precedent that may be set with potential section 8.(o) applicants that are unhappy with the designation of their property, however the Plan itself is fairly clear about who can apply for a Plan Amendment. She said it’s not a perfect world and that the Commission could not accomplish all of the proposed work in Plan Review, due to lack of Commission funding. The Commission may need a better system but the Commission needs to look at the merit of the application, rather than wait for Plan Review. The revised alternative provides a better level of protection. This application will not necessarily open the flood gates on Plan Amendments. She said this is a win-win situation and supports this proposed alternative.

Commissioner Sheffield said the property owner is following the process, and it’s the Commission’s responsibility to determine whether there is a significant change in conditions. She concurred with Commissioner Reinig’s comments.

Commissioner Condit said he’s concerned with the significant change criteria. He said the Commission had to put these applications on hold during Plan Review due to lack of funding with the promise they would be reviewed later. He said he supports the modification because it actually provides a greater level of protection.

Commissioner Loehrke said the Commission put hundreds of issues on hold. He said this is the only process available to the applicant and supports the proposed alternative.

Commissioner Abbe said he believes the Plan Amendment process should not be used for such minor issues but supports the proposed alternative.

Commissioner Palena said he supports the proposed alternative. Palena said Mr. Nicolai should not bear the burden of lack of funds for the Commission's work during Plan Review or the lack of funds for the Forest Service's section 8(o) program.

Kelly said any Plan Amendment must be concurred by the Secretary of Agriculture, who has delegated this authority to the Regional Forester. She said Dan Harkenrider, Scenic Area Manager supports this revised alternative as it would support protection of Major Creek Canyon and still allow residential use of the property. Mr. Harkenrider will recommend that the Regional Forester concur with this Plan Amendment.

Commissioner Reinig moved to approve the revised alternative, which would designate approximately 11.1 acres as Small-Scale Agriculture with a landscape setting of Rural Residential/Pastoral and 8.9 acres as GMA Open Space with a landscape setting of Gorge Walls, Canyonlands, and Wildlands subject to the applicant surveying the property to establish the boundary between the two land use designations and landscape settings. The survey should be completed by a professional surveyor in consultation with the Forest Service and subject to review by a Forest Service surveyor.

The criteria for approval are those in the Director's Report Addendum. Commissioner Adcock seconded the motion

Commissioner Davis said according to the Commission rules, the motion must pass with a majority as well as three Commissioners from each state.

A vote was taken and the motion passed because it received both a majority of votes and also three votes from Commissioners from each state as required by the Scenic Area Act.

Harold Abbe-aye
Kenn Adcock-aye
Jeffrey Condit-aye
Doug Crow-aye
Judy Davis-aye
Roberta Kirk-aye
Walt Loehrke-aye
Jim Middaugh-aye
Joe Palena-aye
Joyce Reinig-aye
Honna Sheffield-aye

Jeff Litwak, Counsel said there will be a written order on this action.

Chair Davis recessed for a break at 10:50 a.m. and called the meeting back to order at 11:05 a.m.

Briefing on Draft Scenic Resources Implementation Handbook

Bennett provided a summary of Management Plan language requiring a handbook. Bennett said staff contracted Dotty DeVaney to provide the technical work for the project. She said the handbook is intended to provide a user friendly guide to developing property in the Scenic Area. Bennett said all Scenic Area regulations would apply to development.

Kaden presented a "final draft" of the *Scenic Resources Implementation Handbook* (Scenic Handbook) for Commission feedback (see attachment D).

Kaden said the 2004 *Revisions to the Management Plan for the Columbia River Gorge National Scenic Area* requires a *Scenic Resources Implementation Handbook*, to be approved by the Executive Director and Scenic Area Manager and completed by the end of 2005. The Handbook will be a guidebook for applicants developing lands that are visible from key viewing areas. It will not be a regulatory document, and applicants must prove their plans meet Scenic Area guidelines. She said Commissioners and the public can provide comments on the handbook to staff by phone, email or letter, through November 11, 2005.

Commissioner Reinig said she thought the handbook was well done and is exactly what she had envisioned. She asked if there would be a cost for the handbook as it looks like printing will be costly.

Commissioner Bennett said we won't charge for the handbook and initially 1,000 copies will be made. The document will be posted on the website and there will be a condensed version that will be available.

Commissioner Sheffield asked if fire safe plants would be included in the list of recommended plants and why metal roofing must be pre-weathered.

Dotty DeVaney said the plant list could note the plants which are fire-resistant. She said most factory painted metal roofs are treated to prevent oxidation and these are too shiny.

Commissioner Loehrke said there are some other metal materials that are less reflective and he would provide some samples. He said while some materials might meet certain design criteria, the materials must also meet the needs of property owners such as performance of the product, availability and cost.

Commissioner Adcock said the guidebook is great and suggested the handbook stress that this is not a regulatory document and the standards would still apply. Bennett agreed with Commissioner Adcock that this message should be very prominent in the document. Jeff Litwak, Counsel said it was reviewed very carefully to make sure people understand that it is just a guideline and does not imply automatic approval.

Chair Davis praised staff and thanked Dotty DeVaney and all those involved in developing the handbook.

NSA Manager's Report

Virginia Kelly said Kim Titus has been promoted and will be going to Bureau of Land Management in Portland in January.

Kelly said the Forest Service has been working with the Washington State Parks staff to develop a management agreement for the Klickitat Trail, and there will be a public meeting in January.

Kelly said there will be a November public meeting in Troutdale to discuss various issues related to the Sandy River Delta, including off-leash dog management, The Confluence project, traffic, parking and other issues. Commissioner Kirk asked about the cultural site at the property and Kelly said the new parking area will not affect the cultural site.

Rules Committee Report

Litwak said the rules committee reviewed the legislation in Oregon and Washington and its effect on the Commission. Litwak said the Commission's financial disclosure rule was

also reviewed as there was a lot of concern about the rule. He said the Committee proposes that each Commissioner would file their disclosure in their state only. This rule would not be in effect for this year and Commissioners should maintain the current practice for now.

Litwak said the Committee reviewed the Plan Amendment rule and recommends the following items:

- Eliminate the two step process. The Commission would not have to determine whether it has the resources to process an application and then process the application. They propose requiring a pre-application conference.
- Make a distinction between quasi-judicial amendment and a legislative amendment. A quasi-judicial amendment would be processed and a legislative amendment would be considered in context of the Commission's biennial work plan.
- Allow the Executive Director and Scenic Area Manager to correct typographical errors and corrective changes.

Litwak reviewed the rule making process and explained that all proposed rule changes would be brought to the Commission at the same time. He said the first step would be that the Commission agree to initiate a rulemaking process.

Other Business

Chair Davis asked for other business and there was none.

Lunch

Chair Davis recessed for a lunch break at 12:15 p.m. and called the meeting back to order at 1:30 p.m.

Executive Session to Consult with Legal Counsel pursuant to Rule 350-11-006(1)(g)

Chair Davis called an executive session to order pursuant to Commission Rule 350-11-006 (1) (g) at 1:32 p.m. Jeff Litwak, Counsel provided a review of pending litigation.

Chair Davis closed the executive session at 2:05 p.m. and returned the Commission to open meeting. Chair Davis noted that no deliberation or decisions occurred in the executive session, and that no follow-up actions were needed

Adjourn

Chair Davis adjourned the meeting at 2:10 p.m.

The next regular meeting is scheduled for 12/13/05

Minutes taken by Kathy Obayashi-Bartsch

Minutes approved on 12-13-05