

Columbia River Gorge Commission

Meeting Minutes

December 13, 2005

A complete record of this meeting is available on audiotape

Location: White Salmon Community Library, #5 Town and Country Square,
White Salmon, WA

Time: 9:00 a.m.

MEMBERS IN ATTENDANCE

Harold Abbe

Kenn Adcock

Doug Crow

Judy Davis

Jane Jacobsen (10:25 a.m.)

Virginia Kelly for Dan Harkenrider

Roberta Kirk

Walt Loehrke

Jim Middaugh

Joe Palena

Honna Sheffield

MEMBERS ABSENT

Jeffrey Condit-excused

Joyce Reinig-excused

STAFF PRESENT

Martha Bennett, Executive Director

Jennifer Kaden, Planner

Jeff Litwak, Counsel

Kathy Obayashi-Bartsch, Assistant

AUDIENCE PRESENT

Andersen, Steven. Cascade Planning Associates

Baker, Nathan. Friends of the Columbia Gorge (FOCG)

Flint, Lewis. GLU

Hollatz, Nicole. Skamania County Planning Department

Leipper, Bob. Troutdale, Oregon

Miller, Bobbie. Columbia Gorge United (GLU)

Simione, Angelo. GLU

Swyers, Rita. Hood River, Oregon

Thompson, Geoff. GLU

Williams, Jackie. The Dalles, Oregon

Witherspoon, Karen. Skamania County Planning Department

Call to Order

Chair Davis called the meeting to order at 9:05 a.m. and roll was called.

Approval of Minutes

November 8, 2005

Commissioner Sheffield made a motion to approve the minutes as drafted, Commissioner Palena seconded the motion, a voice vote was taken and unanimously approved.

November 15, 2005

Commissioner Middaugh made a motion to approve the minutes as drafted, Commissioner Sheffield seconded the motion, a voice vote was taken and unanimously approved.

Corrections to October 11, 2005

Chair Davis said the minutes have been corrected to reflect a change on page 19. She said the first sentence on the page should read "Commissioner Condit made a motion to table the original motion and was seconded by Commissioner Middaugh. "The words "original motion" should replace "motion to reconsider". Commissioner Sheffield made a motion to approve the minutes as corrected. Commissioner Palena seconded the motion, a voice vote was taken and unanimously approved.

Public Comment

Geoff Thompson thanked the Commission for their decision on historic building preservation that will affect the Viewpoint Inn. He asked if the final order was drafted. Martha Bennett, Executive Director, said she anticipates the final order will be issued today.

Mr. Thompson asked for the Commission's assistance in moving the process forward. He commented on the plan amendment process and said it was not only a lengthy process but a costly one for the applicant.

Bob Leipper said he sent four pages of comments on the Scenic Area Handbook and asked that these comments (see attachment A) be distributed to the Commissioners and to be a part of the record of today's meeting.

Angelo Simione thanked the Commission for their decision on historic building preservation that will affect the Viewpoint Inn. He asked the Forest Service and the Commission to support moving the process forward.

Bobbie Miller thanked the Commissioners for their help with private property owners in the Gorge and asked the Commission for their help to speed up the process with the county.

Opportunity for Tribal Nations to address Commission

No representatives of Tribal Nations were present.

Director's Report

Martha Bennett, Executive Director, provided a copy of an e-mail from the Southwest Washington Clean Air Agency about the air quality project (see attachment B) stating their work is one to two months late. She said she has asked them to provide an update at the March meeting and to conduct public meetings.

Commissioner Crow asked if more Gorge Commission meetings could be scheduled in Troutdale or the West end of the Gorge. Bennett said meetings are now scheduled in approximately six locations throughout the Gorge and there is difficulty finding facilities that can accommodate Commission meetings. She said the Troutdale facility does not have air conditioning and so meetings aren't scheduled there in the summer. She said Commission by-laws require meetings to be held in the Gorge, and Troutdale is outside the boundaries of the Scenic Area. Commissioner Crow inquired about using the Bonneville Dam facility and Bennett said staff had looked into that facility.

Commissioner Crow asked about the conditions of approval on a specific permit. Bennett said the details are in the written decision and urged all the Commissioners to review any decision that they may have questions about.

Crow asked staff to post budget data on the Commission website. Bennett said staff is working on this item.

NSA Director's Report

Virginia Kelly provided an update on concurrence findings on the land use ordinances submitted to the Forest Service. She said four ordinances were received in early October, so the deadline for a finding is early January. She said the Hood River County ordinance was found to be concurrent by the Regional Forester, and she expects the Skamania County section 8(o) and Wasco County ordinances will be approved today. The plan amendment for the Nicolai property was received by the Regional Forester in late November, so the deadline is February and may be found concurrent by the end of the month.

Kelly said the Forest Service is working on an interpretive strategy for the Gorge and the Multnomah Falls water tank was successfully installed.

Commissioner Crow asked Kelly to speak to Dan Harkenrider about a specific date for an Assessment Committee meeting.

Consistency Determinations for Skamania County Ordinance to implement the Revisions to the Management Plan

The Commission held a public hearing and deliberated on ordinances adopted by Skamania County to enact the Revisions to the Management Plan. Jennifer Kaden, Planner provided a summary of the item (see attachment C).

Commissioner Crow asked her to comment on the rules pertaining to ground disturbance. Kaden said Skamania County has decided to require grading plans for all land use permits, and staff found this to be more restrictive than the Management Plan. She said further questions would be better answered by the Skamania County Planning Director.

Chair Davis opened the public hearing.

Karen Witherspoon, Skamania County Planning Director, said Skamania County chose to implement more restrictive ground disturbance rules for ease of use for the applicant and the reviewer. This rule was less confusing than having several tiers or circumstances that would apply to ground disturbance rules.

Virginia Kelly said the Skamania County had addressed the Forest Service comments and concerns. She said the Forest Service recommends that the Commission make a tentative finding of consistency for the Special Management Area (SMA).

Bennett said this action requires three votes from each state to pass.

Commissioner Sheffield moved to approve the staff recommendation as follows:

1. Find those portions of the amendments to Skamania County's Scenic Area Ordinance (as contained in Skamania County Ordinance No. 2005-07) affecting lands in the General Management Area (GMA) consistent with the Management Plan;
2. Make a tentative finding of consistency with the Management Plan for those provisions of Skamania County Ordinance Nos. 2005-07, 2005-10, and 2005-11 affecting lands in the Special Management Area (SMA) and transmit those provisions to the Secretary of Agriculture for concurrence; and
3. Order that should any provision contained in the Management Plan be found inconsistent with the Scenic Area Act as the result of litigation, Skamania County shall amend the corresponding provision in Ordinance No. 2005-07.

Commissioner Adcock seconded the motion. The motion passed unanimously, with the required three votes in favor from each state.

Harold Abbe-aye
Kenn Adcock-aye
Doug Crow-aye
Judy Davis-aye
Robert Kirk-aye
Walt Loehrke-aye
Jim Middaugh-aye

Joe Palena-aye
Honna Sheffield-aye

Chair Davis said the action will be documented in a final order, and the ordinance will be sent to the Regional Forester for concurrence.

Commissioner Abbe asked staff for an update on the Clark County ordinance adoption. Bennett said now that the county elections are over, staff will follow up with the county. She said Clark County is concerned about the consolidation of lots provisions.

Commissioner Abbe said the Commission should send a message to Clark County about this issue. Commissioner Loehrke asked how significant this issue is and how many lots are affected. Bennett there may be between 18-40 lots affected. Clark County is performing legal lot determinations to see if these lots would be affected by these provisions. Bennett said the regulation is designed to apply to future lots as well. Commissioner Loehrke said a person may own property but that property may not necessarily be developable. Bennett said Clark County has in the past stated that all lots are developable.

Initiate Rulemaking for Commission Rules 350-11 (Open Meetings), 350-12 (Public Records), 350-13 (Financial Disclosure), 350-16 (Administrative Procedures), and 350-50 (Plan Amendments)

Jeff Litwak, Counsel said each year the states make legal changes and the Commission rules must reflect those changes and there have been requests to revise the financial disclosure rules and plan amendment rules. He reviewed the staff report including the estimated adoption schedule (see attachment D). He said if the Commission chooses to initiate rulemaking today, then a public hearing will be held on the proposed changes in March 2006, and any new rules adopted would be in effect approximately May 1st.

He said the most significant rule change is on the plan amendment rule. He said staff met with current applicants, attorneys, Friends of the Columbia Gorge, county Planning Directors and the Forest Service. He said what is before the Commission today is the compilation of the Rules Committee deliberations and the suggestions.

Commissioner Crow referred to 350-50-035. He asked whether the decision to make these technical changes should be made by the Commission instead of the Executive Director. Litwak said Commission action on these items, would resemble more of a plan amendment rather than a minor correction. Litwak said these rules would only allow very minor changes such as typographical, grammatical or cross referencing errors, and this way changes can be made without the plan amendment process.

Litwak said the Scenic Area Manager and Executive Director would report any proposed changes to the Commission. Should anyone feel these changes are substantive, the date of reporting would be effective date for the purpose of judicial review. Bennett said by reporting these proposed changes to the Commission, the Commission may determine if these items constitute substantive changes. If the Commission felt that the

changes were not merely technical fixes, then the Commission could overrule the Director and Area Manager. Commissioner Crow said he wanted this information to be very explicit in the record as legislative history.

Commissioner Middaugh suggested that the rules could be modified to allow a person who felt a change was not really "technical" to seek a Commission action rather than having to use the courts. He said this would be preferable but wasn't sure how the 60 day timeframe would be affected.

Litwak explained the proposed rules create a distinction between a legislative change and a quasi-judicial amendment. He said anyone can request a legislative change which could be put on a work plan. A quasi-judicial amendment would be processed as soon as possible like an application. He said the pre-application conference will essentially replace the preliminary review and commencement of review processes.

Litwak said all new rules include language about the potential to charge fees in the future. There would be a public hearing about a proposed fee and how setting the fee will be determined.

Commissioner Middaugh expressed concern that the consultation with the Tribes is proposed to be changed. Litwak said the current rule appears to require that the Tribes make a comment on an issue even if they are not interested in it. Bennett said there are distinctions between working with the counties and states and the tribes, and the current rule lumps all of these groups together.

Commissioner Adcock expressed his concern that the plan amendment process allows the Commission to change or alter the applicant's original application. He said this was done when the Columbia River Gorge Economic Development agency submitted a plan amendment requesting that the Gorge would not be considered a "Class 1 air shed" and more recently with the Viewpoint Inn application.

Commissioner Adcock said the Commission mishandled these issues and asked how the new rules would affect such applications. Bennett said the air quality issue is actually a legislative issue and under the proposed rules would not be considered as an application. The Viewpoint Inn application had elements of both legislative and quasi-judicial. She said during the proposed pre-application and consultation phase these issues would be discussed and the applicant would choose how the application would be handled, either as a legislative matter or quasi-judicial application.

Commissioner Adcock asked if the Executive Director has the authority to make a determination that an application is a legislative or quasi-judicial. Bennett said the before the application is submitted, a pre-application conference would be held to work through any issues. She said it's intended to be a process that helps the applicant.

Commissioner Loehrke said he understands Commissioner Adcock's concern, however there will be more opportunities to discuss specific issues if the Commission initiates rulemaking.

Commissioner Crow said an applicant must be able to contest an Executive Director's determination. Bennett said that every decision of the Director can be appealed to the Commission.

Chair Davis asked for further questions on the staff report from the Commission and there were none. Davis opened the public hearing on whether the Commission should initiate rulemaking.

Steven Anderson of Cascade Planning Associates and Gorge Land Owners United said he was pleased that the Commission is willing to consider changes.

Angelo Simione asked if rule changes were worked on by staff only or if the Commissioners participated in the process. Chair Davis said the Rules Committee worked on these with staff and this is the first time the proposed changes have been brought before the full Commission. Mr. Simione said all the Commission members might want to discuss the plan amendment process rather than just the Rules Committee members.

Bob Leipper said all information should be available to the public, such as the comments from Mr. Nicolai. He said some definitions are needed to clarify phrases in the rules, such as a definition of "affected properties."

Nathan Baker of Friends of the Gorge read from prepared testimony (see attachment E), which said they have no concerns with the Commission to initiate rulemaking for proposed amendments to Divisions 11, 12, 13 and 16 but they do not recommend the Commission initiate rulemaking to Division 50.

Geoff Thompson said he supports the Commission to move ahead with the rulemaking process. He said the Commission should be aware of the legal fees involved for an applicant with a plan amendment.

Chair Davis asked for further testimony and there was none. She closed the public hearing.

Virginia Kelly said the Forest Service supports initiating rulemaking on rules pertaining to plan amendments. Commissioner Middaugh said more work is needed on the plan amendment rules. Commissioner Adcock said he supports moving ahead with the rulemaking process and there will be some lively discussion on these issues.

Commissioner Loehrke made a motion to initiate rulemaking on 350-11, 350-12, 350-13, 350-16 and 350-50 and Commissioner Jacobsen seconded the motion. A vote was taken and passed unanimously.

Harold Abbe-aye
Kenn Adcock-aye
Doug Crow-aye
Judy Davis-aye
Roberta Kirk-aye
Jane Jacobsen-aye
Walt Loehrke-aye
Jim Middaugh-aye
Joe Palena-aye
Honna Sheffield-aye

Break

Chair Davis recessed for a break at 11:00 a.m. and called the meeting to order at 11:15 a.m.

Briefing on Sandy River Delta Project

Virginia Kelly, USDA Forest Service briefed the Commission on past, current, and future plans for the Sandy River Delta (see attachment F).

Commissioner Adcock asked if fees would be charged to offset the expense of this project. Kelly said fees may be charged in the future but there are no specific plans to do so.

Bennett asked about the number of dog owners and dogs using the area. Kelly said the use varies but it's not unusual for there to be 20+ cars in the parking area and over half of these vehicles have dogs. Kelly said the dog daycare businesses that were using the facility for dog walking were notified that a permit was needed for such use.

Other Business

Bennett said there is an Executive Committee meeting in the conference room in the Gorge Commission office at 2:00 p.m. and the Commission and staff will be meeting for a social lunch at Viento Restaurant. She said no Commission business will be discussed.

Commissioner Abbe said he was concerned about the Clark County ordinance as it sounds as if negotiations are stalemated. He said the Commission should invite the Clark County Commissioners to discuss this issue with the Gorge Commission.

Commissioner Sheffield said if Clark County does not provide an ordinance that is consistent, then the consequence will be that Clark County will be managed as Klickitat County is. This means they would not implement a land use ordinance for their portion of the Scenic Area and would not be eligible for funding through the Scenic Area Act.

Commissioner Crow suggested that Chair Davis meet with Clark County chair and a few staff to discuss this issue. Bennett said staff and Commissioners have met with them

and worked through issues, but of the negotiated settlement, the Clark County Commission adopted all issues except one item.

Commissioner Jacobsen said she thought it would be beneficial and helpful to meet with each Commissioner individually and explain the issues one on one.

Commissioner Palena said with Commissioner's Jacobsen experience with the Confluence project, she knows how the consensus building process works. He supports her idea to meet with the county commissioners individually. He said a follow up letter needs to be sent within a few days after the meeting if the meeting is not productive.

Bennett said she would have the agency Secretary schedule meetings with the Commission. She will follow the meetings with a letter, depending on the results of the meetings.

Adjourn

Chair Davis adjourned the meeting at 12:20 p.m.

The next regular meeting is scheduled for 1/10/05 at the Hood River Best Western Inn in Hood River, Oregon

Minutes taken by Kathy Obayashi-Bartsch

Minutes approved on 2-14-06