

Columbia River Gorge Commission

Meeting Minutes

February 08, 2005

A complete record of this meeting is available on audiotape

Location: Columbia Gorge Discovery Center, 5000 Discovery Drive
The Dalles, Oregon 97058

Time: 9:00 a.m.

MEMBERS IN ATTENDANCE

Harold Abbe
Kenn Adcock
Jeffrey Condit
Doug Crow
Judy Davis
Jane Jacobsen
Dan Harkenrider
Walt Loehrke
Kathy Sheehan
Anne Squier

MEMBERS ABSENT

Joe Palena (excused)
Joyce Reinig (excused)

STAFF PRESENT

Martha Bennett, Executive Director
Brian Litt, Senior Planner
Jeff Litwak, Counsel
Kathy Obayashi-Bartsch, Administrative Assistant

AUDIENCE PRESENT

Andersen, Steven. Cascade Planning Associates
Barclay, Michael. Troutdale, Oregon
Casseseka, Clifford. Yakama Nation
Davis, Rich. Corbett, Oregon
Elward, Rebecca. Yakama Nation
Franz, Jan. Corbett, Oregon
Groen, John. Groen, Stephens and Klinge
Gussman, Dick. City of The Dalles, Oregon
Hessel Jim. Friends of Vista House
Johnson, Patrick. Skamania County Planning Department
Lang, Michael. Friends of the Columbia Gorge (FOCG)
Leipper, Bob. Troutdale, Oregon
Ligget, Keith. Stevenson, Washington
Mepshon, Clarence. Crown Point Country Historical Society
Mershon, Collen. Crown Point Country Historical Society

Motley, Jean and Frank. Corbett, Oregon
O'Diermo, Shawn. Corbett, Oregon
Pederson, Lisa.
Rickert, Stephanie. Crown Point Country Historical Society
Simione. Angelo. Gorge Landowners United (GLU)
Swensen, Judy. Corbett, Oregon
Swyers, Rita. GLU
Thompson, Geoff. GLU

Vice Chair Sheehan called the meeting to order at 9:02 a.m. and said Chair Squier was delayed. Role was called and Chair Squier arrived.

Approval of Minutes- January 11, 2005

Vice Chair Sheehan asked the Commission to review and comment on the draft minutes. Commissioner Adcock moved to adopt the minutes and Commissioner Abbe seconded the motion. A voice vote was taken and passed unanimously.

Public Comment

Vice Chair Sheehan noted there were many people who wished to speak and asked that comments be limited to 3-4 minutes.

John Groen, representing Geoff Johnson, said his client submitted a Plan Amendment application for the Viewpoint Inn asking that the property be designated to allow commercial activities as a visitors' center.

Angelo Simione thanked the supporters of the Viewpoint Inn for attending the meeting and told the Commission that all of the immediate neighbors are here to support the Plan Amendment application. He said some of the people who have testified before the Commission in opposition to allowing the Viewpoint Inn to host commercial activities are not immediate neighbors.

Geoff Thompson thanked the supporters of the Viewpoint Inn and John Groen for his assistance. He said in June of 1925, the Viewpoint Inn opened and he hopes the Inn will re-open in June 2005 to celebrate its 80th birthday.

Mike Barclay expressed his support of the Viewpoint Inn as a visitors' center.

Jim Hessel, president of Friends of Vista House supports use of the Viewpoint Inn as a visitors' center.

Clarence Mershon expressed his support of re-opening the Viewpoint Inn and said he grew up in Corbett, Oregon. He said the cultural importance of the facility can't compare to any facility in the Corbett area. He provided a review of Corbett area roadside inns and facilities that were in operation over the years. He said if you did a survey of small businesses in the area, you'd likely find that 75% of them are operated by women and by limiting such entrepreneurial effort, the Commission and the law may inadvertently discriminate against women. He has written six books about the Gorge and said his latest one is about Japanese families that were uprooted by the United States

government in 1942 and reminded the Commission that not everything the government does is wise. He also provided the Commission with a copy of the information about these roadside inns.

Stephanie Rickert, President of the Crown Point Country Historical Society, said the group is concerned about maintaining historical resources in the area. She expressed the group's support of opening the Viewpoint Inn as a visitors' center. She said there are over 200 members that support the Plan Amendment application.

Shawn O'Diermo said she is an immediate neighbor of the Viewpoint Inn and expressed her support of use of the property as an inn.

Frank Motley said in over 30 years of living next to the Viewpoint Inn, the property has been an eyesore until Geoff Thompson purchased it. He also expressed his support for using the facility for weddings and said we seem to have two choices: either tear the building down, or take care of it. He expressed his support of taking care of the building and allowing Geoff Thompson to operate the facility as an inn.

Jean Motley said it's a beautiful building that needs a lot of care and Geoff Thompson has truly taken care of the property. She supports the idea of restoring the use of the property as an inn.

Rich Davis said he lives across the street from the Viewpoint Inn. His home was built by his grandparents and said it has been great when the Inn was open for commercial use. He said it is a historical facility that should be allowed to operate for commercial use as the upkeep for such property is significant and there are not many historical facilities left in the Portland area.

Bob Leipper read from prepared testimony (see attachments A1-A2). He said the Commission does not necessarily have inadequate funding to perform its work but needs to better prioritize its work. He provided a list of items that he would like the Commission to address and expressed his support of the Viewpoint Inn.

Rita Swyers read from prepared testimony (see attachment B) urging the Commission to support a beautiful Gorge that is economically viable for residents rather than a beautiful Gorge wilderness for visitors.

Clifford Casseseka of the Yakama Nation expressed his concerns including the following:

- Development in the Gorge by people who do not understand the Scenic Area Act or the Management Plan. He said there is an influx of people moving to the Gorge from metropolitan areas and getting "after the fact" permits and into situations because they do not understand the Scenic Area provisions.
- According to the Scenic Area Act (Act) there is not supposed to be any commercial industry in the Scenic Area (Area), and yet there is a commercial fish processing business in the Dodson area. He hasn't heard if this is going to be closed down or

whether the environmental people are checking on water quality issues and is very concerned about this situation.

- There is no tribal representative on the Commission as Michael Farrow's position has not been filled. He believes having only one tribal representative representing four different treaty Tribes is not right. He plans to write to the Governors of Oregon and Washington about this and hopes the Commission will support his request for each tribe to be represented on the Commission.

Chair Squier said Commissioner Farrow's position has not been filled from Oregon and they welcome any recommendations for this position. Commissioner Crow said his appointment has expired and he has called Oregon to indicate his interest in being reappointed, reminding them that the tribal position should also be filled.

Michael Lang of Friends of the Columbia Gorge (FOCG) commented on the use of the Viewpoint Inn, saying its use as a restaurant and inn ceased around 1965 and it was used as a private residence until 1997. In 1997, Multnomah County issued a permit allowing it to be used as a training facility for mentally challenged adults to serve in the hospitality and food service industry, restricting it to breakfast and lunch on weekends only. It hasn't legally operated as a full restaurant since 1965. He also said there are issues with noise from other neighbors and feared that the application was an example of "spot zoning" which sets a dangerous precedent.

He provided a brief summary of Measure 37, Oregon's newly adopted land use measure. He said FOCG support the Commission's stance that Measure 37 does not apply to properties within the National Scenic Area. He urged the Commission to notify any landowner who has filed a Measure 37 claim within the Scenic Area of this stance, as Hood River County has received a few applications. He said it would be appropriate for the Commission to take this step and notify these property owners.

Jan Franz said she has lived next to the Viewpoint Inn for over 20 years and the building has been an eyesore until Geoff Thompson purchased the property. She also said there have been few noise issues associated with events and when issues occurred, Mr. Thompson has responded promptly. She expressed her appreciation of the work the Commission does to protect the Gorge.

Commissioner Jacobsen thanked her for testimony and for recognizing that the Commission works to protect the Gorge and to be as fair as possible.

Judy Swenson said she has known Geoff Thompson and his partner for many years and attested to their integrity. She expressed her support of the Viewpoint Inn as it provides a wonderful gift to visitors and is a shame that the facility was not included in the inventory of commercial facilities. She expressed her appreciation of the work the Commission does to protect the Gorge.

Chair Squier thanked everyone for their comments.

Approval of Federal Fiscal Year 2006 Appropriations Request and Proposed Outreach Strategy

Bennett provided a summary of the request (see attachment C) and briefed the Commission on a proposed strategy for outreach for this request from a coalition of other agencies and groups who also request federal funds for Scenic Area implementation. The coalition included representatives from the Oregon and Washington Investment Boards, Recreation Coalition, Oregon and Washington State Parks, and Friends of the Gorge. She said in the past, a coalition of interest groups supported all the same items for the Gorge and this strategy seemed to be effective. All of the items on the list implement the Act and are supported by each group. She explained there are other groups that will be approached for support of the request, such as local cities and the Washington and Oregon Governor's offices.

She said the list of recreation needs continues to grow, and after the appropriation request is submitted, the recreation coalition will meet again to list and rank all proposed recreation projects, using project readiness as one of the criteria. There are different groups that have not traditionally been a part of the coalition but will be added to the group.

Commissioner Harkenrider said the amount needed by the Forest Service for acquisition of the last high value properties in the Section 8(o) program is not the same amount that is listed in the President's FY06 budget. This is largely due to the way the Forest Service filters funds to each area. There is a national pot of property acquisition funds, which are then distributed to different areas. The amount detailed in the appropriation request would support the final acquisition of Section 8(o) properties.

The Commission discussed the annual request to Congress for appropriation of the funds authorized in the National Scenic Area Act for Gorge projects. Commissioner Crow asked what has been authorized for recreation projects in the past. Bennett provided a summary of the projects that have been authorized.

Commissioner Jacobsen supports this collaborative and "big picture" approach saying it seems to work the best with Congress.

Commissioner Adcock asked if the Washington State Parks and Recreation Commission approached staff about the Columbia Hills State Park project in Klickitat County. Bennett said she has worked with Washington State Parks but they cannot receive National Scenic Area funds for projects in Klickitat County because they don't implement a land use ordinance. Washington State Parks projects in Skamania and Clark County would be eligible for these funds.

Chair Squier asked Bennett to notify the Commissioners when the recreation coalition was ready to meet again, asking each Commissioner for their project ideas and for other interest groups that should be invited to participate.

There being no further commission discussion, Commissioner Jacobsen made a motion to authorize the Chair and Vice Chair to sign an appropriation request letter for the

items detailed in attachment C. Commissioner Condit seconded the motion. A voice vote was taken and passed unanimously.

Chair Squier called for a break at 10:15 a.m. and reconvened the meeting at 10:25, asking for the Area Manager's report.

National Scenic Area (NSA) Area Manager's Report-

Commissioner Harkenrider said the only item to share with the Commission is the federal appropriation request for Section 8(o) properties. As discussed earlier, the amount identified by Scenic Area staff as necessary for completion of the Section 8(o) program is not exactly the same as the Forest Service's appropriation request. This discrepancy is due to the process the Forest Service uses for land acquisition requests. Chair Squier welcomed Commissioner Harkenrider back from Washington D.C. and said it was a pleasure to work with Chris Knopp, who worked as the Acting Area Manager in Commissioner Harkenrider's absence.

Commissioner Crow asked for more information about the Forest Service's project to reintroduce Mountain Goats in the Columbia River Gorge. Bennett said because this meeting is a short one, she has asked Commissioner Harkenrider to provide a presentation on this issue at a later meeting.

Status Report and Schedule for Processing Plan Amendments

Bennett briefed the Commission on the applications received to date for amendments to the Management Plan and a preliminary schedule for processing these applications. Bennett said there are five plan amendments. Two have been determined to be complete and will be processed in the order received. Three applications are being reviewed for completeness. Many of these are quasi-judicial in nature, so please be cautious of ex-parte contacts.

Commissioner Abbe asked for clarification regarding the timeline involving the Anderson application. Bennett said in January 2004, the Commission directed staff to put all Plan Amendment applications on hold until January 2005. The actual date that the "door was opened was January 29th or 31st 2005, based on when we could all determine that this work is part of the work plan". There is a two week period from the time an application is received to when a completeness check is due.

Commissioner Crow asked for the location of the first application. Staff indicated it is located on the east end of the Underwood bluff area. Commissioners asked where the property is located in the fourth application. Brian Litt, Senior Planner, said this is by the Major Creek area and accessed from Snowden. Bennett said as we get into the actual process you will get a full packet of information with maps.

Jeff Litwak, Counsel, said these are quasi-judicial in nature, so Commissioners should avoid ex-parte contacts; questions about location of the subject properties are okay because this information might help Commissioners recognize potential ex-parte contacts. Litwak noted that the Commission did the right thing by listening to the testimony on the Viewpoint Inn and not commenting or discussing. Commissioners should avoid visiting any subject site and should contact staff with any questions.

Brian Litt, Senior Planner, provided a review of the Plan Amendment process and referred to Commission rule 350-50. He said once an application for a Plan Amendment is received, staff has 10 working days to review it for completeness. If an application is incomplete, then staff sends a letter that explains what additional information is needed.

Complete applications are scheduled for preliminary review as soon as Commission schedules and agendas allow. The purpose of the preliminary review is to allow Commissioners an opportunity to ask questions of the staff and applicants and to decide whether to proceed with the review process.

Fifteen working days after the Commission decides to commence the review, the application is sent out for a four-week public comment period. Commission rules also require consultation with the Forest Service, both states, and the Tribal governments.

Within 30 working days after the public comment period, the Executive Director must issue a report on the application, which may include recommendations. Staff must analyze consistency with Plan Amendment review criteria. The application then moves to a public hearing before the Commission, and Commission rules require that the hearing be noticed 30 days in advance.

At the public hearing after the applicant has an opportunity to speak, all interested parties may comment. If there are no changes or only changes to provide clarification, the Commission may vote at the hearing to approve or reject the proposed Plan Amendment. If substantive changes are made, the Commission may provide additional public comment on those changes at the hearing and proceed to a vote or may continue the matter to a future meeting to allow for additional public comment.

To approve a proposed Plan Amendment, a majority of Commissioners must vote in favor of the change, with at least three members from each state voting in favor. The fastest possible processing of a Plan Amendment will take four months, and the longest time should be no greater than six months.

Approved Plan Amendments must be transmitted to the Secretary of Agriculture for concurrence, which can take up to 90 days. Once the Secretary of Agriculture Acts, each affected Gorge County has to amend their land use ordinance. The only exception is Plan Amendments that affect federal lands go into effect immediately.

Bennett said there is an error on the flow chart and preliminary review step actually takes place before public notice of application. She said that the preliminary review step is not a public hearing.

Litt provided a review of the criteria for Plan Amendment approval. Commissioner Crow asked if all three conditions must be met and Litt responded all three conditions must be met.

Bennett assured the Commission that these applications will be brought to the Commission as soon as possible, based on available agenda time.

Director's Report- Bennett provided a review of the following items:

Summary Guide to Revisions in the Draft Land Use Ordinance

A memorandum was prepared to provide a reference to the revisions in the Draft Land Use Ordinance. This is in lieu of a full strike out and highlight copy of the Draft Land Use Ordinance as this turned out to be a significant amount of work.

The Draft Land Use Ordinance hearing location was rescheduled from Troutdale to The Dalles, but Counsel has noted that this change creates a noticing issue, which may result in a two month delay. Staff is working to make arrangements to have the meeting in Troutdale as originally planned.

Measure 37

The Oregon Senate committee on Environment and Land Use is holding a hearing on Friday at 10:00 at Hood River County offices about Measure 37. The intent is not to discuss lands in the Scenic Area but there may be public testimony about the Scenic Area.

Hood River County has received two Measure 37 claims in the Scenic Area and staff will be discussing this with the county this week. Staff will be looking for an approach that will work in all Oregon Gorge Counties.

Air Quality

At last month's meeting there was a request from the Yakama Nation for an update on air quality. There is no formal report, but there is a meeting of the technical committee on February 10 to discuss what they have learned from their data collection and how they will present this information. The Department of Environmental Quality will be hosting a public meeting this spring to get feedback from the public and discuss progress made. Staff will advise the Commission as soon as more information is available.

Legislative Contacts

An updated handout with the budget talking points is now available and will be used to facilitate discussion with legislative contacts.

Commissioner Crow said there are many new Gorge County commissioners and asked what is planned to speak to these new commissioners. Bennett said she contacts county planning or administrative staff to coordinate county commissioner outreach efforts. Commissioner Jacobsen suggested the Public Outreach Committee could work on this effort and Bennett agreed this is a good idea to discuss at the next Outreach Committee meeting.

Chair Squier called attention the Oregon Department of Administrative Service award for accounting practices and thanked staff for their effort.

Briefing on Interstate Compact Projects

Jeff Litwak, Counsel, briefed the Commission on several national projects that are looking at issues that affect interstate compact (see attachment E1-E2). He said there are three major efforts occurring, including a national center for interstate compacts organized by the Council of State Governments -- a member organization that is well funded and has been in existence for over 70 years. There are two projects to develop uniform administrative procedures for interstate compact entities such as the Gorge Commission. He provided a review of recent and upcoming compacts and the relevance of these developments to the Gorge Commission.

Commissioner Adcock asked how these programs are funded. Litwak said the Council of State Governments is funded by a grant for the first few years and then will be more of a membership organization. They have already done an economic study, finding that this can be sustained for some time.

Commissioner Jacobsen asked if Washington and Oregon were members. Litwak said Washington and Oregon are members of the Council of State governments.

Chair Squier thanked Litwak for the presentation and update of the issue.

Other Business

Commissioner Crow said he met with Bennett and Litt to discuss his concern regarding the clear-cuts in the General Management Area (GMA) of Skamania County. It was decided since it has been about 10 years without a liaison to the Washington Department of Natural Resources (DNR), staff would contact the agency at some appropriate time in the next 6 months when in Olympia to discuss what was decided in 1994.

Commissioner Sheehan said a six county coalition meeting will be held in Stevenson on February 18th. Bennett said she hopes Commissioners attend as she cannot attend the meeting and would like to update the counties on the federal appropriation request and status update of the budget.

Commissioner Abbe said that he and Commissioner Jacobsen met with three members of Washington Governor's staff and well as the legislature about the Commission's budget. He said we had very positive reactions from the Governor's staff about the Commission. He has a meeting with the Chair of the Senate Ways and Means Committee next week and will continue with an outreach effort.

Chair Squier announced the Commission would conduct an executive session and return to open session after the executive session. Bennett said the Assessment Committee would be meeting in this room after the lunch break.

Executive Session to consult with legal counsel

Chair Squier called an executive session to discuss pending litigation with Commission's Counsel pursuant to Commission Rule 350-11-006 (1) (g) at 11:35 a.m.

Chair Squier closed the executive session at 12:15 p.m. and returned the Commission to an open meeting. Squier said there was discussion on several matters including

potential pending developments associated with Measure 37 and if the Commission would like to take follow up action, this is an appropriate time to discuss that.

Litwak said if the Commission would like to take action, he has a proposed motion for their consideration. He read the proposed motion to "authorize Executive Director to participate in or initiate litigation as necessary to determine the applicability of Measure 37 to the Scenic Area land use guidelines".

Commissioner Jacobsen made a motion to approve the motion as read by Litwak. Commissioner Sheehan seconded the motion.

Commissioner Crow said he opposes the motion and would like staff to initiate discussions with the county. He would like more feedback from the counties and the state. He is willing to participate in a conference call after getting more feedback to decide what the next step should be. He would like to hear from them how quickly we need to act. The county received this 30 days ago and they don't want to do anything for 180 days, so we have a window of 150 days to take some action.

Chair Squier said the motion as read does not compel the Executive Director to act and gives her the option to report to the Commission in March. The motion gives her flexibility if something comes up quickly. The motion is not specific to any county and because the Commission does not know what will transpire in any county in the next 30 days.

Commissioner Sheehan said she supports the motion in recognition that in most instances an Executive Director has the authority to make such decisions to proceed as needed. There is a certain element of trust built in and if the Director wants feedback, she can bring it to the Commission. The motion allows the Executive Director some flexibility and the authority to participate.

Commissioner Condit said he supports the motion because it behooves everyone to get the issue clarified as soon as possible. If that means we have to file proactive litigation, then that's something we ought to authorize the Executive Director to do. This is with the understanding that she will do those things that we have asked her to do before making a decision to initiate. He said he is willing to delegate that authority.

Commissioner Abbe said he understands Commissioner Crow's concern but there is a sense of urgency that we don't get buried in a lot of cases early and then have to fight an uphill battle.

Commissioner Adcock said he is on the other side of this whole issue and supports Measure 37 applying to Gorge Commission as well. He said this relates to our federal constitution and he cannot support the motion.

Commissioner Crow said while he does not change his view, there is no question of trusting the Executive Director but it's a question of how far we go. Based on Litwak's information, the Commission could prepare our case and within a few weeks have a decision. Crow said the Commission could look into the issue more carefully.

As there was no further discussion Chair Squier said the motion by Commissioner Jacobsen and seconded by Commissioner Sheehan is to "authorize Executive Director to participate in or initiate litigation as necessary to determine the applicability of Measure 37 to the Scenic Area land use guidelines".

A vote was taken and passed 6 to 3.

Harold Abbe-aye
Kenn Adcock -no
Jeffrey Condit-aye
Doug Crow-no
Judy Davis-aye
Jane Jacobsen-aye
Walt Loehrke-no
Kathy Sheehan-aye
Anne Squier-aye

Chair Squier adjourned the meeting at 12:25 p.m.

The next regular meeting is scheduled for 3/8/05 at the City of Troutdale Conference Center in Troutdale Oregon at 9:00 a.m.

Minutes taken by Kathy Obayashi-Bartsch

Minutes approved on 3-8-05