

Columbia River Gorge Commission

Meeting Minutes

March 14, 2006

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
Doug Crow
Judy Davis
Virginia Kelly for Dan Harkenrider
Jane Jacobsen (to 12:50 p.m.)
Roberta Kirk (to 3:15 p.m.)
Walt Loehrke
Jim Middaugh
Joe Palena (to 2:45 p.m.)
Joyce Reinig (to 12:50 p.m.)
Honna Sheffield

MEMBERS ABSENT

Jeff Condit (excused)

STAFF PRESENT

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

AUDIENCE PRESENT

Baker, Nathan. Friends of the Columbia Gorge (FOCG)
Cassese, Clifford. Yakama Nation
Collier, David. Oregon Department of Environmental Quality (DEQ)
Cornelison, Peter. FOCG
Cox, Greg. USDA Forest Service
Davenport, Jessica. Skamania County Planning Department
Durbin, Kathy. *The Columbian*
Elliott, Bob. Southwest Regional Air Quality (SWCAA)
Enz, Donna. Lyle, Washington
Fruburg Mark. Portland General Electric (PGE)
Green, Mark. Desert Research Institute
Hawk-Elwood, Rebecca. Yakama Nation

Hess, Jurgen. Hood River, Oregon
Imperati, Sam.
Jewell, Paul. Tidewater Barge
Koprowski, Paul. US Environmental Protection Agency (EPA)
Lewis Flint. Gorge Landowners United
Lang, Michael. FOCG
Leipper, Bob. Troutdale, Oregon
Leo, Greg. Lake Oswego, Oregon
Marshall, Amy. The Dalles, Oregon
Meldore, Linda. Hood River, Oregon
Nichols, Rodger. *The Dalles Chronicle*
Nicolai Tom. Portland, Oregon
Norton, Dennis. PGE
Pierce, Glenn. Wasco County Health Department
Pitt Jr., Lewis. Confederated Tribes of the Warm Springs
Robinson, Barbara. Mosier, Oregon
Smith, Paul. No Gorge Casino!
Treleaven, Michael. Gonzaga University
Whittaker, Carol. Georgia Pacific
Wooster, Wayne. Klickitat County

Others were present during the day

Call to Order

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

Approval of Minutes-February 14, 2006

Chair Davis said the Commission will review the draft minutes at the next Commission meeting as the minutes were not included in the Commissioner packets.

Public Comment

Bob Leipper said there is a property in Multnomah County that will be auctioned on March 30th (see attachment A). He said it was approved as a single story house and there are many significant discrepancies between the building permit and the house as is evident from the sales advertisement. He also commented on the recent Commission discussion on enforcement and code compliance. He said whatever differences exist between enforcement in the counties is not apparent as Multnomah County was not included in the report.

Paul Jewell of Tidewater Barge thanked the Commission for their support and assistance with the Tidewater grant proposal to reduce diesel emissions of Tidewater barges.

Opportunity for Tribal Nations to address Commission

There were no representatives present.

Director's Report

Martha Bennett, Executive Director said staff will be submitting notice of rulemaking on Commission rule 350-81 and will conduct the public hearing at the Commission's May meeting. She asked if any of the Commissioners had concerns and none were expressed.

Bennett said staff received notice from five of the six Gorge counties of their intent to include the plan amendment pertaining to uses of historic buildings in their land use ordinance.

Bennett said the Commission received the Washington and Oregon state audits of the agency and is pleased to report that the agency had no management or audit findings.

Bennett reviewed the budget preparation schedule for submittal to Washington and Oregon. She said an Executive Committee meeting will be scheduled in late March to discuss the budget and the agency's Strategic Plan which is a document that must be submitted to Washington by May 1st.

Jeff Litwak, Counsel provided the Commission with a brief update of three legal issues: Murray v. State of Oregon, Friends of the Gorge and several property owners appeal of the Commission Plan Amendment pertaining to uses of historic buildings and Scenic Area Measure 37 petitioners in Hood River County. He said any questions could be raised during the Executive Session scheduled for the end of today's meeting.

Commissioner Crow asked about the forums project. Bennett said after more review of the proposed project, staff will be revising the project and the Assessment Committee will meet again to review the project.

Commissioner Crow asked about the approval of the Heuker property to build an addition. Bennett said this is a house addition and is not related to fish processing. Commissioner Crow requested that staff contact Multnomah County for an update on the fish processing issue.

Scenic Area Manager's Report

Virginia Kelly introduced Greg Cox, Assistant Area Manager who replaces Kim Titus. She said the Forest Service will be issuing a report on invasive weed species which includes separate reports for Mount Hood and the Gifford Pinchot areas. The reports will include different ways to control weeds.

Commissioner Crow asked about the Longview Fiber property that was referenced in a Forest Service letter and whether this property can be clear cut. Kelly said this property has been in the General Management Area (GMA) for some time and this letter provided a specific GMA designation. In regard to clear

cutting, she said this property could be cut but is not as scenically sensitive as the properties that were clear cut in the Carson, Washington area.

Report on Columbia Gorge Air Quality Project

Brian Litt, Senior Planner introduced Sam Imperati, Project Facilitator, Bob Elliott of the Southwest Washington Clean Air Agency, Dave Collier of the Oregon Department of Environmental Quality and Dr. Mark Green of the Desert Research Institute. Litt provided a brief summary of the project (see attachment B) and outlined the tasks ahead for the Commission related to this project.

The representatives of the Southwest Washington Clean Air Agency, Oregon Department of Environmental Quality and Desert Research Institute presented and summarized the findings of the draft *Causes of Haze in the Gorge* ("CoHaGo") Report and the final *Haze Gradient Report* (see attachment C1-C2). These studies focus on the results of recent Gorge air quality monitoring efforts conducted by the agencies. These agencies will also hold a public meeting to present this information on the evening of March 14th, from 6:30 pm to 8:30 pm at the Best Western Hood River Inn.

Break

Chair Davis called for a break at 10:30 am and called the meeting to order at 10:45 a.m.

Report on Columbia Gorge Air Quality Project - Continued

Mr. Imperati asked if any Commissioners have questions about the data provided by the study and presented by Dr. Green.

Commissioner Crow asked why the commercial dairy in the Boardman, Oregon area was not mentioned in the report. Dr. Green said this is an oversight as dairies have high nitrate emissions, which can be an issue in the winter.

Commissioner Sheffield asked if the wood burning referred to in the report is from home heating or other sources. Dr. Green said it's a combination of home heating, wild fires and agricultural uses.

Commissioner Middaugh asked him to comment on how significant the haze issues are in the Gorge compared to other areas in the country. Dr. Green said the area is in the middle of the spectrum, which is reasonable to expect in an area having a combination of rural areas and metropolitan areas affecting the Gorge.

Commissioner Adcock said there is a mining operation near the Wishram site which creates significant amounts of dust and asked if this might skew the readings from the site. Dr. Green thanked him for the information and said he would check on this possibility.

Bob Elliott said due to budget constraints, the \$50,000 originally earmarked for public advisory efforts will be reprogrammed for “what-if” scenarios, which would include additional scientific study and modeling.

Dave Collier provided a summary of several other programs benefiting the Gorge such as those related to regional haze, Clean Air Mercury Rule, Oregon Diesel Initiative and others.

Commissioner Middaugh asked what assumptions will be considered that may have the most significant impact on recommendations or conclusions. Dave Collier said the population growth scenario and different state and federal regulations that will affect industrial and agricultural uses and some of the older and bigger industrial sources will be considered.

Chair Davis said as there were no further questions, the Commission would hear public comment.

Public Comment

Michael Lang of Friends of the Columbia Gorge provided background of the recent Washington state funding of air quality work brought forth by Senator Craig Pridemore. He said the focus of the discussion with Pridemore’s staff was to provide support of the advisory or public outreach portion of the project and Friends does not approve of reprogramming \$50,000 for work other than public outreach efforts. He said the Tidewater effort to retrofit one barge is commendable and representatives from Tidewater, Friends and the Yakama Nation will work together in this effort. He said the Management Plan calls for an air quality plan and strategy and hopes the study will provide this. Commissioner Crow asked if Friends of the Gorge is willing to fund efforts to support these air quality programs. Lang said Friends of the Gorge has worked with Washington State legislators and others to support air quality programs.

Clifford Casseska of the Yakama Nation said it is a federal mandate to protect the Gorge, including the air which affects all things, including the health of people and the ecosystem. He said the report provided considerable information but doesn’t indicate what the impact is on the health of people and the ecosystem. He said the project was designed with funding for an advisory group and not additional studies. The advisory group was intended to keep the project on track and meaningful as to the impact of air quality on people and ecosystems. He said it’s important to keep this jewel of an area in a condition to be enjoyed and appreciated by future generations.

Rebecca Hawk-Elwood of the Yakama Nation said the Native American phrase that describes air quality also includes the concept that the air is precious. The term air quality does not convey this concept. She said it seems there is a disconnection between government agencies and the general public and that is a problem. She said the public outreach and education components of this project

are critically important. She said the Friends of the Gorge, Columbia River Keeper and several private individuals have assisted the Yakama Nation in their efforts. She said they are currently involved in a study related to Native American rock art and would like the Commission to make a commitment to protect air quality.

Wayne Wooster of Klickitat County commended the Air Quality project and its progress. He said the county supports good science to provide the information that will lead to good decisions. He said there was not a technical review of the study and the county wants this to occur. He said the county supports reprogramming of funds for additional studies if this is deemed necessary. He said it was important that the Forest Service is involved as well as there seems to be a disconnection between the Forest Service efforts such as the Fogwater Study and this project.

Ken Norville of Earth Sciences commended Dr. Green for the study but pointed out certain areas of the study that may need further review and analysis. He said it was important that these results are viewed as a draft study.

Paul Smith of the "No Gorge Casino!" group said it was very unfortunate that the Washington State Department of Ecology dropped out of the air quality study as this is a very significant issue for the Gorge. He said the proposed casino in Cascade Locks will affect the air quality of the Gorge and should be considered as well.

Commissioner Loehrke asked if this issue could be discussed at a future meeting as there considerable information to review.

Commissioner Middaugh said he supports further technical study and public involvement and education and would like staff to draft a letter stating this.

Commissioner Sheffield said the Commission should request additional funding from the states and to support the efforts of PGE, Tidewater Barge and other companies which are voluntarily attempting to reduce emissions.

Commissioner Crow said these reports should be forwarded to the Governors of Oregon and Washington and the legislators in each state.

Commissioner Abbe said the Commission does not have regulatory authority over the matter but can act as a catalyst and facilitate outreach efforts to improve air quality in the Gorge.

Bennett said staff will draft a letter to the states requesting additional funding for technical work, public involvement and strategy development as well as support of the voluntary participation from likely emission contributors.

Commissioner Loehrke said the states should offer incentives to support companies which voluntarily take steps to reduce emissions.

Chair Davis directed staff to draft a letter to the states and to schedule time at the next Commission meeting to discuss the issue and review the draft letter.

Commissioner Adcock said Klickitat County wants to be sure that there will be time to review the data and provide feedback on the study. He said this report is what the county would have expected to be released in August. Bob Elliott said there will be time and opportunity for the county to review the report and make comments.

Lunch

Chair Davis called for a lunch break at 12:50 pm. and called the meeting to order at 1:50 p.m.

Public Hearing on Proposed Commission Rules 350-11 (Open Meetings), 350-12 (Public Records), 350-13 (Financial Disclosure), 350-16 (Administrative Procedures), and 350-50 (Plan Amendments)

The Commission conducted a public hearing for draft amendments to Commission Rules 350-11 (Open Meetings), 350-12 (Public Records); 350-13 (Financial Disclosure), 350-16 (Administrative Procedure), and 350-50 (Plan Amendments) (see attachment D1-D2).

Jeff Litwak, Counsel said the Commission voted to initiate rulemaking at its December meeting, and published rulemaking notices in the Oregon State Bulletin and Washington State Register. The Commission also held a work session on amendments to Commission Rule 350-50 in February. The Commission considered alternative language based on discussion at the work session and Litwak prepared a draft of the revised draft amendment (see attachment D2).

Commissioner Loehrke asked if most of the plan amendments would be county specific. Litwak said most of the quasi-judicial amendments will be parcel specific not just county specific.

Chair Davis said as there were no additional questions for staff, the Commission would hear public comment.

Public Comment

Nathan Baker of Friends of the Columbia Gorge (FOCG) commented (see attachment E) on the proposed amendments to Division 35-50 of the Commission Rules (Plan Amendments). He said (1) the Commission should not adopt "demonstrable mistake" language or should clarify the application must still meet the threshold requirement of showing "significant change", (2) the Commission should not authorize "quasi-judicial" plan amendments and (3)

should not adopt provisions that would allow only the applicant to comment on proposed conditions of approval. He offered suggestions for alternate language as well.

Tom Nicolai said he did not agree with the FOCG comment on the "demonstrable mistake" language and this criteria should be allowed as a reason to consider a plan amendment. He said the issue of whether there is a practicable alternative that is more consistent with the standards of the practices and purposes of the Act is one that requires more review. He believes that the standard should be whether a proposed action does not materially affect resource protection not whether it is more consistent with the standards of the practices and purposes of the Act. He said this threshold is inherently slanted in favor of no development.

Chair Davis asked for additional comments as there were none, she closed the public hearing.

Commissioner Crow said he was not entirely happy with the rule as drafted and asked Litwak to take the comments brought forth and prepare revised language.

Commissioner Middaugh said he agrees with Commissioner Crow. He said the complex issue raised by Mr. Nicolai of whether the "more consistent with the practices and purposes of the Act" criteria is a fair application may require further review. He said he agrees with FOCG's concern that more parties than just the applicant should be allowed to comment. Litwak said in a quasi-judicial process, it is traditional to allow the applicant the last word and that is the reason for that language.

Commissioner Loehke said he is happy with the current draft but would support further discussion if other Commissioners feel this is necessary.

Bennett said in regard to the "demonstrable mistake" language, there are other types of mistakes rather than just land use designations, such as when various sections of the Management Plan are not consistent or reconcilable.

Litwak said of the past 11 plan amendments that were approved by the Commission, 3 were for a single property that concerned land use designation.

Commissioner Middaugh said he feels that the standard of issuing notice to those property owners within 200 feet of a proposed action is not great enough. He referred to page 4-5 of the alternative, section titled *Processing of Application 350-50-060 (1)* and said the Commission should have the ability to prioritize plan amendments as needed.

Chair Davis asked if the Commission was ready to make a motion on 350-11, 12, 13 and 16 as there had been no discussion on these items.

Commissioner Middaugh made a motion to adopt the rules as drafted for 350-11, 12, 13 and 16, with an effective date of May 1, 2006. Commissioner Loehrke 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
Walt Loehrke-aye
Jim Middaugh-aye
Honna Sheffield-aye

Commissioner Sheffield made a motion to adopt rule 350-50 as drafted with the suggested wording provided by Litwak, an effective date of May 1, 2006 and the recommendation #1B from the FOCG comments:

"a demonstrable mistake in the Management Plan that has resulted in significant impacts or that involves significant issues, such as, but not limited to, a land use guideline that is less protective of Gorge resources than the policies the guideline was intended to implement; a land use designation that does not conform to the corresponding designation policies; or two or more guidelines that cannot be reasonably reconciled.

Commissioner Loehrke seconded the motion.

A vote was taken and passed seven to one.

Harold Abbe-aye
Kenn Adcock-aye
Doug Crow-aye
Judy Davis-aye
Roberta Kirk-aye
Walt Loehrke-aye
Jim Middaugh-no
Honna Sheffield-aye

Commission discussion of USDA Forest Service Lands Proposed for sale as part of the President's Fiscal Year 2007 Budget

Martha Bennett, Executive Director said at the February meeting the issue of whether the Commission will provide comments on the possible sale of nearly 730 acres in the National Scenic Area was discussed. Jennifer Kaden, Planner provided a review of the parcels that have been identified for possible sale (see attachment F). She said staff identified 6 of the total 23 parcels where sale or transfer is consistent with the purposes and standards of the Scenic Area Act. She said 5 of the parcels are within urban areas and would actually promote the second purpose of the Act by encouraging growth in urban areas. She said one parcel if purchased by the adjacent landowner would promote agricultural use but this may not be the case if purchased by another party.

Virginia Kelly said comments on this proposal should be made to the federal government. Kaden said the Commission is determining whether to comment and what comments if any to offer about the proposal.

Chair Davis said as there were no questions for staff, the Commission would hear public comment.

Public Comment

Michael Lang of FOCG expressed opposition to the sale of federal lands and referred to the federal register page #100005 (see attachment G). He said the sale of these properties would provide meager funding for rural schools and the sale of Scenic Area lands should not be included in this program.

Clifford Casseska of the Yakama Nation read from the Yakama Nation's Tribal Council resolution, dated March 13, 2005 expressing their view that public lands should not be sold and that the Tribal Nations have rights on "unclaimed lands" as reserved in the Treaty of 1855.

Lewis Pitt, Jr. of the Confederated Tribes of the Warm Springs read from prepared testimony (see attachment H) which expresses their opposition of the sale of public lands, the Tribal rights on "unclaimed lands" and that the Confederated Tribes of the Warm Springs Reservation of Oregon have not been consulted on this sale of lands, an action that they believe would clearly affect and modify treaty rights in a negative way. He said consultation of these lands must occur as per the Scenic Area Act and Management Plan.

Commissioner Middaugh asked Mr. Pitt what he would like the Commission to do. Mr. Pitt said he would like the Commission to comment in accordance to the views expressed by FOCG.

Jurgen Hess said the entire proposal should be eliminated and the Scenic Area lands are the most glaringly obvious ones that should not be included in such a proposal. He said the one exception is the small parcel in The Dalles but believes there are other mechanisms available to the Forest Service to sell this property. He said even if the lands are transferred into Tribal ownership, there is no guarantee that these lands will be protected. He urged the Commission to express their lack of support of the sale of public lands.

Commissioner Loehrke and Sheffield said while they support funding for the Secure Rural Schools and Community Self Determination Act, this land should have nothing to do with funding for this program. They pointed out the funding would only support five additional years for the program and is simply a "band aid" not a solution.

Commissioner Adcock said the Forest Service was originally created to supply a steady source of timber which can be achieved without owning property. He said the Forest Service should not manage trails or other recreation resources.

Peter Cornelison of FOCG said he is opposed the proposed sale of public lands in the Scenic Area and urged the Commission to protect the Scenic Area.

Barbara Robinson said she is opposed to the sale of public lands. She said the proposed sale of Scenic Area lands does not seem to be consistent with the Scenic Area Act or the Federal Register. She also said the process used to develop the list of parcels did not include public meetings. Virginia Kelly said the process was set up was to allow public comments now that the proposed parcels have been identified.

Paul Smith of "No Gorge Casino!" agreed with comments of previous speakers and said funding for rural schools should be provided from other sources and the sale of these lands would significantly weaken the National Scenic Area Act.

Chair Davis asked for additional public comments and as there were none, she closed the public hearing.

Commissioner Crow said he did not support the sale of public lands.

Commissioner Adcock said most of these properties have relatively low scenic value and are difficult for the Forest Service to maintain. He said the Forest Service should be allowed to sell these properties. He said 55% of all the land in Oregon is owned by the federal government and that is too much. He suggested that the Commission not take any official stand and allow the regional Forest Service office make comments about the Scenic Area properties.

Virginia Kelly said each Forest Service office was requested to provide information about parcels but individual offices do not make or issue opinions about the policy issues.

Commissioner Sheffield said after reviewing the Federal Register as provided by Mr. Lang, the Scenic Area should not be included at all.

Commissioner Loehrke said he feels that the federal government has not really thought through this program and does not support it. It seems that they have not reviewed all the issues and implications, such as the Tribal treaty rights. He said funding for Secure Rural Schools and Community Self Determination Act should not be tied to land sales.

Commissioner Abbe said he believes the proposal is locked up by all eight Northwest legislators and made a motion to oppose the sale of the Scenic Area lands because it violates the Scenic Area Act, the National Register and Tribal

Treaty rights. The funding for Secure Rural Schools and Community Self Determination Act is a separate issue that should not be tied to land sales.

Commissioner Crow seconded the motion and a voice vote was taken. The motion passed with one dissenting vote by Commissioner Adcock.

Chair Davis said as several Commissioners must leave, the Executive Session to consult with legal counsel will be rescheduled for another meeting.

Other Business

Chair Davis asked for any other business and there was none.

Adjourn

Chair Davis adjourned the meeting at 3:45 p.m.

The next regular meeting is scheduled for 04/11/05 at the Troutdale Community Center at 9:00 a.m.

Minutes taken by Kathy Obayashi-Bartsch

Minutes approved on 4/11/05