

# **Columbia River Gorge Commission**

## **Meeting Minutes**

**June 13, 2006**

***A complete record of this meeting is available on audiotape***

Location: Hood River Best Western Inn, 1108 East Marina Way, Hood River OR

Time: 9:00 a.m.

### ***MEMBERS IN ATTENDANCE***

Harold Abbe

Kenn Adcock

Jeffrey Condit

Doug Crow-9:15 a.m.

Judy Davis

Dan Harkenrider

Roberta Kirk-1:00 p.m.

Walt Loehrke

Jim Middaugh

Joe Palena

Joyce Reinig

Honna Sheffield

### ***MEMBERS ABSENT***

Jane Jacobsen

### ***STAFF PRESENT***

Tom Ascher, Planner

Angie Kenney, Planner

Brian Litt, Senior Planner

Jeff Litwak, Counsel

Kathy Obayashi-Bartsch, Administrative Assistant

Al Wright, Interim Executive Director

### ***AUDIENCE PRESENT***

Curran, Claudia. Corbett, Oregon

Curtis, Lee. Oregon Investment Board

Flint, Lewis. Columbia Gorge United (GLU)

Gaul, Willard. GLU

Groen, John. Viewpoint Inn

Hollatz, Nicole. Skamania County Planning Department

Lang, Michael. Friends of the Columbia Gorge (FOCG)

Leipper, Bob. Troutdale, Oregon

Miller, Bobbie. GLU

Pizanelli, Phil. Corbett, Oregon

Repar, Mary. Stevenson, Washington

Russell, Aubry. FOCG

Simione, Angelo. GLU  
Swyers, Rita. GLU  
Thompson, Geoff. GLU  
Tokos, Derrick. Multnomah County Planning Department  
Williams, Jackie. GLU  
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. She introduced Al Wright who is serving as the Interim Executive Director.

### **Approval of Minutes-May 9, 2006 and May 12, 2006**

Chair Davis asked the Commission to review and comment on the draft minutes.  
May 9, 2006- Commissioner Palena made a motion to adopt the draft minutes and Commissioner Condit seconded the motion. A voice vote was taken and unanimously approved.

May 12, 2006- Commissioner Condit made a motion to adopt the draft minutes and Commissioner Sheffield seconded the motion. A voice vote was taken and unanimously approved.

**Public Comment** Bob Leipper of Troutdale, Oregon spoke about enforcement issues in the National Scenic Area (see attachment A) and suggested that a Commission staff is dedicated to work on enforcement issues. He said most agencies are not interested in performing enforcement because there is no incentive to do so and uses agency resources. He suggested that fines from enforcement actions are used to help fund agencies, thereby creating an incentive for enforcement work.

Commissioner Loehrke said he believes that revenue collected from enforcement actions cannot be appropriated directly back to the agency but would become part of the states' general fund.

Commissioner Adcock said he would like to have the issue of enforcement on a future agenda.

Commissioner Middaugh thanked Mr. Leipper for his comments and said Multnomah County is working on enforcement issues and believes progress is being made.

Bobbie Miller of The Dalles, Oregon said she believes there will be a staff person to work on enforcement in Wasco County. She asked how each county is incorporating the amendment pertaining to historic properties in their ordinances.

Chair Davis said the counties are still in the process of submitting their ordinances for a consistency review and over time that comparison may be made.

Willard Gaul of Portland, Oregon said there are double standards on certain aspects of developing property in the Gorge. He cited examples of situations that illustrate his opinion. He said it was important that staff and Commissioners are impartial and without personal or professional ties that may influence their opinion. Commissioner Reinig said she is aware of inconsistency of enforcement in the Gorge but that is not the same as a double standard.

Commissioner Adcock said he is aware of oversight hearings in Oregon about the Gorge Commission and suggested it would be appropriate to have such a hearing in Washington.

Commissioner Crow said it is important to follow up on the concerns brought forth by the public, such as Mr. Gaul's.

Al Wright, Interim Executive Director agreed with Commissioner Crow and said staff would follow up on Mr. Gaul's comments.

#### **Opportunity for Tribal Nations to address Commission**

There were no Tribal members present.

#### **Economic Development Certification of Grant W06-0132**

Tom Ascher, Planner recommended the Gorge Commission certify a \$10,050 National Scenic Area Act grant to the Columbia Gorge Discovery Center (see attachment B). The grant will fund a marketing project for the center's catering services. He said Lee Curtis of the Oregon Investment Board (OIB) is present to answer any questions about the project. Ascher said the project is consistent with the standards and purposes of the Act.

Commissioner Adcock asked to hear from a representative of the Discovery Center Board. Commissioner Harkenrider said both he and Commissioner Jacobsen are representatives on the Board and he knows that the restaurant operation is a very important revenue source for the center.

#### **Public Testimony**

Geoff Thompson of the Viewpoint Inn expressed his opinion that the Discovery Center is very well funded and hopes that this grant is not a short term solution to a larger marketing or operations issue.

Bobbie Miller of The Dalles, Oregon concurred with Mr. Thompson's comments.

Lee Curtis of the Oregon Investment Board (OIB) said the application was reviewed in detail, including the impact on other caterers and businesses in the area. She said the OIB reviewed the economic aspects very carefully.

Commissioner Adcock said the Commission's job is to certify the request but the OIB is responsible for review of the economic issues.

Commissioner Adcock made a motion to certify the grant and Commissioner Reinig seconded the motion. A voice vote was taken and unanimously approved.

**Hearing on Multnomah County's Land Use Ordinance to incorporate provisions of Historic Buildings Plan Amendment**

Chair Davis said the Gorge Commission will conduct a hearing to determine consistency of amendments to Multnomah County's Scenic Area Ordinance with the Management Plan. The amendments incorporate provisions of the Historic Buildings Plan Amendment (PA-05-02).

Brian Litt, Senior Planner provided a review of the issue (see attachment C). Commissioner Crow asked for clarification on the issue of adequacy of private services. Litt said Derrick Tokos of Multnomah County is present to answer questions on specific items.

Derrick Tokos of Multnomah County said the county generally agrees with the staff report with the exception of issue of the subject property being eligible for the National Register. He said the County believes these provisions should apply only to those properties that are listed on the National Register of Historic Properties (Register).

**Break**

Chair Davis called for a break at 10:15 a.m. and called the meeting back to order at 10:30 a.m.

**Hearing on Multnomah County's Land Use Ordinance to incorporate provisions of Historic Buildings Plan Amendment (continued)**

Chair Davis said the Commission will take public testimony on the item and asked testimony to be limited to 5 minutes or less.

Bob Leipper of Troutdale said the Commission should make it clear to Multnomah County that this is the Commission's ordinance and does not support the county's preferred alternative. He said the County should not make parking so prohibitive that a commercial operation cannot be viable.

Bobbie Miller of The Dalles said she agrees with Mr. Leipper and feels that the limitation on parking is a concern.

Michael Lang of FOCG and Gary Kahn, Counsel for FOCG and Corbett, Oregon residents. Mr. Kahn referred to written testimony (see attachment D) and said the Commission's amendment consists of two parts one part is written as "shall" which implies a mandatory directive and one part is written as "may" which does not imply a mandatory directive. He said the Multnomah County's ordinance and preferred alternative is consistent with the Act and the Plan. He said he believes the preferred alternative is more protective of resources and urges the Commission to adopt Multnomah County's preferred alternative.

Michael Lang said Multnomah County's ordinance will allow the Viewpoint Inn to open and the Multnomah County Commission followed the direction of the Commission's ordinance. He urged the Commission to adopt Multnomah County's preferred alternative.

Commissioner Condit asked Jeff Litwak, Counsel to address the issue brought forth by Mr. Kahn. He asked if the Commission erred by not expressing the Commission's intent. Litwak said Mr. Kahn is expressing an opinion but the Commission's intent was clear. He said the term "may" has the same practical effect as the word "shall" as is evidenced through the application of the Management Plan for the past 14 years. He said if the Commission chooses to make a change today there will likely be a larger impact on the Management Plan.

Mr. Kahn said that "may" and "shall" do not mean the same things in this particular ordinance. He said if the Commission meant the same thing, the Commission would use the same language.

Commissioner Reinig asked Litt if he recalled a similar situation in the past. Litt said he cannot recall the specifics of the situation.

Commissioner Sheffield asked for clarification as to what is considered more restrictive. Litt said the issue is not more restrictive but whether it is more protective and if it provides a greater standard of resource protection.

Commissioner Reinig said part of the concern when this issue was discussed by the Commission is that a comprehensive inventory of properties was not available. Since the inventory was not available, the Commission wanted to provide greater protection by including those structures that are not on the Register but are eligible.

Mr. Kahn said based on the Donovan Report, many potential buildings were identified as being eligible for the Register and only those owners who take the steps to list their property on the Register should be granted the option of commercial use.

Chair Davis asked what is involved in evaluating a property for eligibility for the Register. Litt provided a summary of the requirements to be found eligible to be on the Register and said an applicant would need a professional historian or archeologist to issue a report, which would then go through both a state review and local government determination. Litt said there are only 15 buildings in Multnomah County identified in the Donovan Report that are potentially eligible for the Register. There was not sufficient information to make a determination on most other properties mentioned in the report.

Geoff Thompson of the Viewpoint Inn expressed his opinion that everyone should be working together and urged the Commission to allow the Viewpoint Inn to open. Mr. Thompson shared some photos of the Inn and Governor Kulongoski (see attachment E-photos).

Angelo Simione of the Viewpoint Inn expressed his opinion that Multnomah County's preferred alternative is not more protective of resources and urged the Commission to support the staff recommendation.

Claudia Curran read from written testimony (see attachment F) expressing opposition to the Amendment of the Management Plan that includes the Historic Buildings provision.

Phil Pizannelli of Corbett Oregon and said he agreed with the comments of Mr. Kahn and Ms. Curran. He said when Congress passed the Scenic Act, it was determined that commercial activities should be restricted to urban areas. He said allowing commercial activity on properties eligible for the National Register is not fulfilling the intent of the Scenic Act.

John Groen, Counsel for the owners of the Viewpoint Inn said several people have testified that by adopting Multnomah County's preferred alternative, this will not affect the Viewpoint Inn. He said he believes this is not the case as the entire Management Plan will be challenged in court and this will impact the Viewpoint Inn. He said the Multnomah County "springing" clause was not a result of public testimony and deliberation but was drafted and brought forth at the County Commission meeting.

Rita Swyers of Hood River said she supports the Viewpoint Inn and urges the Commission to do what needs to be done to allow the Inn to open. She said the Scenic Act can be implemented without harming people and understands the Gorge Commissioners are trying to do what they are charged to do.

Aubrey Russell said he supports Multnomah County's preferred alternative and does not prefer the very broad approach of protecting properties eligible for the Register.

Chair Davis asked if there was any additional public comment. There was no additional public testimony and she asked Mr. Tokos if he had any final comments.

Derrick Tokos, Multnomah County provided a review of the process used by the county in developing their preferred alternative. He said the preferred alternative is the result of public testimony and deliberation.

Commissioner Crow asked Mr. Tokos to comment on the nuisance issues, such as noise and traffic. Mr. Tokos said Multnomah County conducted two public meetings to elicit citizen feedback to address these issues. He said the bulk of the issues were addressed but there it is always a challenge to balance all the issues that are raised.

Chair Davis closed the public hearing and called for deliberation of the issue.

Commissioner Condit said he supports the staff recommendation to adopt the Multnomah County's ordinance and believes Multnomah County's intent was not to subvert the Commission's amendment. He said the issue of the words "may" and "shall" brought forth by Mr. Kahn have been satisfied by the information provided by staff and the manner in which these terms have been used for 14 years in the Management Plan. He said the Commission's intent was to include resources that are eligible for the Register because it is more protective of resources. He agrees with the point that FOCG made that the use of the words "may" and "shall" is not as clear as using a single word. He said he will make a motion to support the staff recommendation.

Commissioner Crow said he supports the Multnomah County ordinance but is concerned about excessive development in the Gorge.

Commissioner Harkenrider asked if a property is on or eligible for the Register, whether there are additional requirements for development. Litt said there are additional requirements for these properties such as maintaining the integrity of the structure.

Commissioner Middaugh said the issue of balancing economic development and resource protection is a critical issue in the Gorge and he believes that commercial use of historic properties should be restricted to properties on the Register. He said the wording "may" and "shall" is not clear and does allow some flexibility even if this was not the intent of the Commission. He said he supports the Multnomah County preferred alternative.

Commissioner Condit made a motion to adopt the staff recommendation on Multnomah County's Scenic Area Ordinance with the Management Plan. The amendments incorporate provisions of the Historic Buildings Plan Amendment (PA-05-02) and Commissioner Crow seconded the motion.

Commissioner Adcock expressed his opinion that the Viewpoint Inn Plan Amendment application was hijacked and he has never supported this action. He said by voting on this issue he believes he'd be validating this action. He said he supports the Viewpoint Inn but because of the situation he will abstain from voting.

Chair Davis said in order for the motion to be approved, there must be a majority vote with at least three Commissioners from each state voting to approve.

The motion passed with 7 ayes, 2 noes and 1 abstention.

Harold Abbe-aye

Kenn Adcock-abstain

Jeffrey Condit-aye

Doug Crow-aye

Judy Davis-aye

Walt Loehrke-aye

Jim Middaugh-no

Joe Palena-aye

Joyce Reinig-aye

Honna Sheffield-no

Litwak said staff will prepare a written order for Chair Davis to sign and then the ordinance will take effect.

### **Lunch**

Chair Davis called for a lunch break at 12:00 p.m. and called the meeting back to order at 1:10 p.m.

### **Hearing on Amendments to Gorge Commission's Land Use Ordinance to incorporate provisions of Historic Buildings Plan Amendment**

Chair Davis said the Gorge Commission will conduct a hearing to adopt amendments to the Commission's land use ordinance and to determine consistency of these amendments to the Management Plan. The amendments incorporate provisions of the Historic Buildings Plan Amendment (PA-05-02).

Angie Kenney, Planner provided a review of the issue (see attachment G). She said there were no changes except to correct two minor reference errors and no written comments have been received.

There were no questions from Commissioners.

### **Public Comment**

Michael Lang of FOCG said they do not support the land use ordinance as drafted and read from prepared testimony (see attachment H). He said one of the Commission's goals is to resolve issues through mediation and alternative

dispute resolution and hopes the Commission will work with FOCG to resolve these issues.

Commissioner Loehrke asked Mr. Lang what would be the preferred language for the ordinance. Mr. Lang said FOCG provided a written offer to find common ground and settle the appeal to the Commission in May.

Mary Repar of Stevenson, Washington asked for a definition of the acronym "SHPA". She said there was no mention of aesthetics or integrity of the site mentioned in the ordinance. She also asked for clarification as to what buildings over 50 years old may be demolished. She asked whether the Commission has considered historic areas as well as historic buildings.

Litt said SHPA is an acronym for State Historic Preservation Agencies (SHPA). He said the issue of aesthetics and site integrity is implied in the ordinance. He said the demolition of structures, 50 years or older is a review use, which means it is reviewed by the SHPA.

Commissioner Middaugh asked if there is any planned follow up action to Mr. Lang's testimony. Litwak said the FOCG offer of settlement was addressed in Executive session at the May Commission meeting. He said conversations are continuing but there is no specific plan or process.

Commissioner Condit asked if the words "may" and "shall" should be addressed in the ordinance. Litwak said staff would need additional time to review this issue and does not feel it is necessary at this time.

Commissioner Crow asked how often the question of the words "may" and "shall" have been brought forth as a problem. Litwak said for the past 8 years, since he has been Counsel for the Commission; it has not been an issue. Litt said he could not remember that this has ever been an issue.

Commissioner Adcock said he believes this ordinance is tied to the hijacking of the original Viewpoint Inn Plan Amendment application and does not support it. He said he would abstain from voting on the issue.

Commissioner Palena made a motion to adopt the ordinance and find the ordinance amendment is consistent with the Management Plan as detailed in the staff report. Commissioner Reinig seconded the motion.

The motion was approved 10 ayes and 1 abstention.

Harold Abbe-aye

Kenn Adcock-abstain

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

Litwak said a final order and the filing the rule will be completed by staff and the effective date of the amendments will be August 1, 2006.

### **Director's Report**

Al Wright, Interim Director provided an update of the following items:

#### 07-09 budget request-

The agency request has been discussed with the Executive Committee and a public hearing on the budget request will be on the Commission's July meeting agenda. Several county and stakeholder meetings have been conducted to elicit feedback on the Commission's budget request.

#### Executive Director recruitment-

The Commission received 51 applications and the Commission will conduct an executive session today to discuss the candidates.

#### Tribal consultation process-

The Tribal Committee will be meeting today to discuss a consultation process.

#### Other issues-

Dalles urban boundary expansion discussions are occurring and will likely be brought before the Commission in the near future.

Broughton Landing Project applicants continue with their plan development as a result of the consultation meeting and report.

Commissioner Middaugh asked how the Commission's work plan will be incorporated with the budget. Wright said the Commission has a baseline budget issued from the states and this is not a programmatic budget. He said at this point there may be one program item related to the Indicators Project that may affect the budget request but everything else in the request is to maintain a status quo budget.

Commissioner Middaugh asked for an update on the air quality issue. Wright said the Commission's letter requesting support was sent to both WA and OR governors but there has been no response. He said staff will follow up with the governors' offices.

Commissioner Adcock asked if the application for a Lyle urban boundary expansion has moved forward. Litt said Klickitat County was notified last year that the application was incomplete but there has been no response from the county that he is aware of. Commissioner Adcock asked that he be notified of such activity in the future.

Commissioner Adcock asked for an update on the Burlington Northern double track project. Litwak said that there is an appeal of an Executive Director's decision, so he cannot discuss details. He said there was a mediation process and the parties are still working on settlement discussions.

Commissioner Adcock asked if construction work should be occurring since the item is under appeal. Litwak said there is no prohibition for the construction work, however if the appeal is successful, Burlington Northern would be responsible at their cost for the work that they have completed on the site.

### **NSA Manager's Report**

Commissioner Harkenrider provided an update of the following items:

#### Trails on Coyote Wall and Syncline area-

The trails in this area are on public and private lands. A focus group will be working on a solution to preserve the rights of private land owners and provide public access.

#### Fuel Reduction Programs-

Fuel reduction programs in the Rowena area are underway and the Forest Service will be working on Catherine Creek and Major Creek areas.

#### Federal Land Sales-

The proposed land sale of several parcels in the National Scenic Area (NSA) will likely be exempt. The land sale was to provide funding for the Secure Rural Schools program but it seems the NSA parcels will be exempt.

#### Invasive Species-

Mount Hood and Gifford Pinchot National Forests have issued Environmental Impact Statements related to the treatment of invasive species in the area.

### **Executive Committee Report**

Commissioner Condit said the Committee met to discuss the 07-09 agency budget request and the Executive Director recruitment. He said the Committee directed staff to draft a policy option request with some flexibility as the final outcome of the budget will not be known for some time. The progress of the recruitment will be discussed during the executive session.

### **Other Business**

Chair Davis reminded Commissioners to submit their end of year requests for reimbursement and said the election of the Chair and Vice Chair will occur at the July meeting.

**Break at 2:00 p.m.**

Chair Davis said the Commission would take a 10 minute break.

**Executive Session to consider employment of the permanent Executive Director (pursuant to Commission Rule 350-11-006(1) (a))**

Chair Davis said the Commission closed the meeting to the public at 2:10 p.m. to conduct an executive session to discuss the employment of the permanent Executive Director and schedule for interviews.

**Adjourn**

Chair Davis closed the executive session at 2:50 p.m. and opened the meeting to the public. She said the Commission took no action during the executive session. Chair Davis adjourned the meeting at 2:51 p.m.

The next regular meeting is scheduled for 07/11/06 at the Gorge Discovery Center in The Dalles, Oregon.

Minutes taken by Kathy Obayashi-Bartsch

Minutes approved on 7/11/06