

Columbia River Gorge Commission

Meeting Minutes

July 12, 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
Judy Davis
Jane Jacobsen
Dan Harkenrider
Walt Loehrke (9:15 a.m.)
Joe Palena
Honna Sheffield
Anne Squier

MEMBERS ABSENT

Doug Crow (excused)
Joyce Reinig (excused)

STAFF PRESENT

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

AUDIENCE PRESENT

Andersen, Steven. Cascade Planning Associates
Baker, Nathan. Friends of the Columbia Gorge (FOCG)
Carlson, June. Oregon Department of Transportation (ODOT)
Cassesecka, Clifford. Yakama Nation
Davenport, Jessica. Skamania County Planning Department
Gaul, Willard. Columbia Gorge United (GLU)
Hawk-Elwood, Rebecca. Yakama Nation
Karsmizki Ken. Columbia Gorge Discovery Center
Miller, Bobbie. GLU
Murray, Georgia. The Dalles, Oregon
Nicolai, Thomas. Portland, Oregon
Pitt, Jr. Louie. Confederated Tribes of the Warm Springs
Simeone, Angelo, Corbett, Oregon
Swyers, Rita. GLU
Thompson, Geoff, Corbett, Oregon
Trapani, Ralph. OTAK

Van Sickel, Kay. OTAK
Witherspoon, Karen. Skamania County Planning Department
Wooster, Wayne. Klickitat County Planning Department
Others were present during the day

Call to Order

Chair Squier called the meeting to order at 9:00 a.m. and welcomed Commissioner Sheffield to the Commission. Commissioner Sheffield is the Washington state appointee and replaces Commissioner Sheehan.

Election of Officers

Chair Squier said the first order of business is the election of officers for the upcoming year and as her appointment was over, she should not be considered for nomination. She asked for nominations for Commission Chair. Commissioner Jacobsen nominated Judy Davis for Chair and Commissioner Condit seconded the nomination. There were no other nominations. A voice vote was taken and the motion passed 7 to 1, with Commissioner Adcock voting no.

Chair Davis then asked for Vice-Chair nominations. Commissioner Adcock nominated Joyce Reining and Commissioner Abbe seconded the motion. A vote was taken and the motion failed by a vote of 1 aye, 4 nay, and 3 abstentions:

Harold Abbe-no
Kenn Adcock-aye
Jeffrey Condit-abstain
Judy Davis-no
Jane Jacobsen-no
Joe Palena-no
Honna Sheffield-abstain
Anne Squier-abstain

Commissioner Jacobsen nominated Jeff Condit for Vice-Chair and Commissioner Palena seconded the motion. This motion failed because it had to pass with a majority of the quorum present. The vote was 4 aye, 1 nay, and 3 abstentions.

Harold Abbe-aye
Kenn Adcock-no
Jeffrey Condit-abstain
Judy Davis-aye
Jane Jacobsen-aye
Joe Palena-aye
Honna Sheffield-abstain
Anne Squier-abstain

Commissioner Sheffield asked for more information about the candidates. Commissioner Adcock said Joyce Reining has served four terms and will likely serve a fifth term. He said she has served as Vice-Chair in the past and is the senior member of the Commission, serving since the Commission started and has the experience to do the job. Her work demands are not as great as they have been in the past and after speaking with her, he knows she would like to serve as Vice-Chair. She has a wealth of land use experience as well. Her daughter is undergoing an operation, and that is why she's absent today.

Commissioner Jacobsen said she nominated Jeff Condit because he's brought land use knowledge and professional experience to the Commission. While he's one of the newest Commissioners, he brings a fresh and balanced perspective. Commissioner Palena said he supports nomination of Jeff Condit because of his experience in land use planning.

Commissioner Jacobsen made a motion for reconsideration of the Vice-Chair and Commissioner Palena seconded the motion. A voice vote was taken, and the motion passed unanimously.

A vote nominating Joyce Reinig for Vice-Chair was taken and failed by a vote of 1 aye, 5 nay, and 2 abstentions:

Harold Abbe-no
Kenn Adcock-aye
Jeffrey Condit-abstain
Judy Davis-no
Jane Jacobsen-no
Joe Palena-no
Honna Sheffield-no
Anne Squier-abstain

A vote nominating Jeff Condit for Vice-Chair was taken and passed with 5 ayes, 1 nay, and 2 abstentions.

Harold Abbe-aye
Kenn Adcock-no
Jeffrey Condit-abstain
Judy Davis-aye
Jane Jacobsen-aye
Joe Palena-aye
Honna Sheffield-aye
Anne Squier-abstain

Approval of Minutes

Chair Davis asked for Commission consideration of the draft minutes for June 14, 2005. Commissioner Squier moved to approve the minutes as drafted and Commissioner Adcock seconded. A voice vote was taken, and the motion passed unanimously.

Public Comment

Chair Davis called for public comment.

Angelo Simione of Corbett, Oregon asked that a letter (see attachment A) dated July 11, 2005 and faxed today from attorney, John Groen be distributed to the Commissioners.

Bobbie Miller of The Dalles, Oregon referenced the Viewpoint Inn and said economics are a part of the Scenic Area Act. Chair Davis asked that Ms. Miller restrict her comments about the Viewpoint Inn to avoid creating ex parte contact. Ms. Miller also referenced the Bea Case and said she hopes the Commission does not make the same mistakes as previous Commissions. She said Wasco County has taken the Management Plan, making it even more restrictive and this is currently creating problems for property owners wishing to build a home in Wasco County. A certain portion of a proposed home site would be visible from Tom

McCall Point. This has created an issue, because the approved site requires the owners to pump their septic uphill.

Georgia Murray of The Dalles, Oregon said Tom McCall Point is owned by the Nature Conservancy (see attachment B), which is a private, non-profit group. Because McCall Point is a Key Viewing Area, the Commission is enriching this group. A photographer wishing to take pictures from the Tom McCall Point must have the Conservancy's permission. She said the Commission treats people unfairly and wants information about private contributions dating back to the Commission's inception. She said she's not interested in funding from the states but in private contributions. Commissioner Sheffield asked how the KVA enriches the Nature Conservancy? Ms. Murray said because the landscape stays pristine, it benefits their group because they can raise money.

Commissioner Adcock asked if the home that is visible from Tom McCall Point is in the development review process and if so, this is something that the Commission shouldn't be deliberating on. Bennett said that testimony today was acceptable but the development Ms. Miller and Ms. Murray referenced is currently still in the appeal period. Bennett said she would provide more information to the Commission after the appeal period is concluded, assuming the decision is not appealed. Commissioner Adcock asked about the designation of Tom McCall Point as a Key Viewing Area (KVA). Bennett said during Plan Review the Scenic Committee discussed KVAs, and they recommended leaving Tom McCall Point on the list. Bennett said that the full Commission did not discuss KVAs because they terminated Plan Review at the direction of the Oregon Legislature. Thus, there were no changes to the 26 KVAs.

Commissioner Palena said he built a few years ago and understands how costly it can be to accommodate certain conditions, such as wetland mitigation or pumping sewage uphill. Palena added that when he considered the effect of such development on future generations, that changed his perspective on these requirements, and he came to support them.

Commissioner Loehrke asked Ms. Murray to clarify why she feels the Nature Conservancy is benefiting. Ms. Murray said although it's got a non-profit status, it is a private organization. All other KVA's are on public land.

Willard Gaul of Columbia Gorge United said there is a double standard in the Gorge and people are not being treated fairly by the Commission. He described several examples of situations that he was aware of and said if you are a member of the Friends of the Gorge, you have a better chance of doing what you want in the Gorge.

Rita Swyers of Hood River County, provided a report based on a 2003 survey of gorge residents (see attachment C) and asked that a packet of letters in support of the Viewpoint Inn be distributed to the Commission members. She urged the Commission to respect property owners' rights and to work to resolve past errors.

Opportunity for Tribal Nations to address Commission

Clifford Casseseka of the Yakama Nation said he was concerned about kiteboarding in the Gorge. He is aware of illegal river access and the safety issues as vehicles are parked on the side of the road. There are archeological resources and fishing rights to be protected. He said in the past, the Tribes worked with the Washington State Parks and Rich Davis to work with

the windsurfers, which was very effective. Designated areas for these activities are needed. He said the fish processing business in Dodson should be dismantled, as there are not supposed to be commercial businesses like this in the Scenic Area.

Louie Pitt Jr. of the Confederated Tribes of the Warm Springs provided an update of intertribal projects and said he appreciated the working relationship that has been developed with the Commission. He said the casino project proposed for Cascade Locks is within the urban area and is consistent with the Scenic Area Act. Pitt said the tribes are trying to work with the counties and develop partnerships for enhancements. There are over 20 in-lieu projects in and out of the Scenic Area. He mentioned the White Salmon fish processing project and an intertribal housing restoration project. He said July 16th will be the dedication of the Ceilio Village long house. The Tribes have also been involved in the Lewis and Clark events, noting the Native American people were in the area long before the Lewis and Clark expedition. He said he will continue to encourage the Warm Springs people to become more actively engaged with the Commission.

Commissioner Adcock asked about the Avery boat ramp. Mr. Pitt said the priority use for the site is tribal fishing but it is a shared site. Mr. Casseseka said the difference between recreational and commercial use sometimes creates these issues.

Rebecca Hawk-Elwood of Yakama Nation said she's gave a summary of environmental projects. She said all of these items will come together in 18 months, with a "heads up" that information on air quality is forthcoming. A lot of the projects and information will be posted on the internet over the next two years. She encouraged the Commission to use a holistic approach in their work.

Break

Chair Davis recessed the meeting for a break at 10:05 a.m. and called the meeting to order at 10:24 a.m.

Public Hearing on Plan Amendment Application PA-05-01 (Nicolai)

Chair Davis said as this is a quasi-judicial process and asked the Commissioners if they had any ex parte contacts or conflicts of interest to disclose. No Commissioner indicated any contacts or conflicts to disclose.

Thomas Nicolai, a prospective buyer acting with the support of the landowner (Olsen Family Survivor's Trust), submitted an application to amend the Management Plan for a specific 20-acre parcel in Klickitat County. The applicant proposes to amend the land use designation from GMA Commercial Forest to GMA Small-Scale Agriculture and to amend the landscape setting from Gorge Walls, Canyons, and Wildlands to Rural Residential/Coniferous Woodlands.

Jennifer Kaden, Planner presented the staff report and recommendation (see attachment D1). She reviewed the review criteria for Plan Amendments.

Commissioner Loehrke asked if the applicant doesn't get the amendment he proposes, will he have the use of the existing dwelling. Kaden said it would only be allowed to be replaced as part of an agricultural operation. Kaden noted that the parcel is not particularly conducive

to extensive agricultural use. Commissioner Loehrke asked if an open space designation would allow public access. Kaden said it would still be private property.

Commissioner Condit asked whether small scale agricultural designation allows for a dwelling. He also asked for more information about a conservation easement. Kaden said the small scale agricultural use would allow a dwelling, subject to review. Jeff Litwak, Counsel, said while the Commission can hold an easement, it has never done so and cannot compel the applicant to grant an easement as a condition of approval. Commissioner Condit asked whether the Forest Service would be interested in a conservation easement. Commissioner Harkenrider said while the Forest Service has held easements, the agency is shying away from this practice as it created many tracking and enforcement issues over time.

Thomas Nicolai said overall he is in agreement with the resource goals outlined in the staff report. He said the existing house does not appear to have all the permits but whether it's legally established is a question that hasn't been fully answered.

Nicolai said because the staff report was issued around the 4th of July holiday period, he hasn't really had enough time to address all the issues brought up from the alternative. He said the current (June 2005) Department of Fish and Wildlife recommendation for land use designation changed from the letter issued in May 2005. He said he's marginally supportive of designating a limited area on the north side of the parcel as open space. He said he has contacted Washington Department of Fish and Wildlife and Washington Department of Natural Resources about a conservation easement. He said donating an easement would strike a more balanced approach with his intended agricultural plans than the open space designation. He said a conservation easement would allow for a more fine tuned approach as the parcel consists of many different physical characteristics.

Commissioner Squier asked Mr. Nicolai if he felt he needed more time to respond to the staff recommendation. Squier asked whether he is asking the Commission to defer the matter to another meeting. Mr. Nicolai said he would like a continuance because he'd like more time to pursue the possibility of a conservation easement.

Commissioner Sheffield asked for clarification as to the ratio of agriculture to open space. Mr. Nicolai said he believes that 5 acres or 1/4 of the property would appropriately be open space. He also said because of the restrictions to open space, he is concerned that he would not be allowed to remove brush.

Commissioner Loehrke said the conservation easement sounds like a contract between the property owner and the Washington state, using an agency such as the Department of Fish and Wildlife to enforce the contract. He asked whether Mr. Nicolai has entered into negotiations for a conservation easement. Mr. Nicolai said he has not had enough time to do so but would if the item was continued.

Commissioner Adcock asked him if wine grapes are a part of his plan. Commissioner Adcock said the parcel might be very conducive to wine grape production.

Commissioner Jacobsen asked about the history of the property, when it was logged or farmed. Mr. Nicolai said he wasn't sure, many trees were removed about 50 years ago. She asked whether he'd considered land trust groups for a conservation easement and he

responded that a state agency seemed to be a more reliable way to ensure the protection of the property.

Commissioner Harkenrider asked if he preferred a commercial forest designation with a conservation easement as opposed to the open space designation. Mr. Nicolai said he prefers a conservation easement as opposed to a designation of open space.

Commissioner Condit asked what the Management Plan indicates for an open space designation. Litwak referred to the Management Plan for GMA open space policies, part II-45, policy #4. Litwak said it would be consistent with past Commission practice to allow split designation.

Commissioner Sheffield asked about the tax implications of a conservation easement. Mr. Nicolai provided some information.

Commissioner Abbe asked for clarification about the dwelling being legally established. Mr. Nicolai said that this property has been substantially permitted, with water and septic and taxed as a residence since the 1980's, even though there is not a permit for conversion to a residence. He said there was an inventory error when the Plan was first developed and should not have been zoned the way it was but should have considered the residential use of the property.

Commissioner Condit asked when evaluating the issue of changed circumstances, do staff go back to the beginning or go back to the most recent amendment. Bennett said staff used the Forest Service designation at the end of the Section 8(o) time period as the point of reference.

Commissioner Squier asked for clarification. She said the staff report has two circumstances addressing the change in conditions, one was the fact of the new information that might have changed the Forest Service process and the fact of the legal status change. Bennett said that is correct.

Commissioner Adcock asked about the types of trees on the property. Mr. Nicolai said he was not aware of any oak trees or grey squirrels on the property. Commissioner Adcock said he believes that Bill Weiler of Washington Department of Fish and Wildlife indicates that both oak and pine forest are necessary for grey squirrel habitat. Commissioner Adcock said perhaps Mr. Weiler should be challenged on this item.

Chair Davis said as there are no further questions, the public hearing would commence.

Public testimony

Steven Andersen of Cascade Planning asked about clarification of the contour interval. Kaden said she thought it was a 40 foot interval. Mr. Andersen read from prepared testimony (see attachment D2) expressing support of the application.

Commissioner Condit said there is a stream that goes down to the river and that would raise concerns about wildlife habitat or riparian corridor as indicated by Bill Weiler of Washington Department of Fish and Wildlife. Mr. Andersen said there is a very wide buffer for the riparian area of Major Creek.

Commissioner Adcock said it looks like an additional three acres of suitable agriculture land may be added based on the contour map provided. Mr. Andersen agreed with this observation.

Nathan Baker of Friends of the Gorge said the Commission should take a big picture of the Plan Amendment process. He said if the Commission revisits a section 8(o) re-designation, this will create more issues throughout the Gorge with people who are dissatisfied with their property designation. There is the question of whether a section 8(o) re-designation constitutes a significant change. He said the dwelling wasn't legally established, otherwise the issue would not be here. As to the issue of whether the Forest Service erred in the designation, it would not have been proper for the Forest Service to provide a residential zoning as the dwelling wasn't legally established. He also addressed various environmental concerns and said split zoning may be appropriate as it has been applied on other properties. He also said brush removal would be allowed in an open space area for safety purposes. He said Friends does not support reviewing section 8(o) re-designations at all, but if the Commission chooses any action, Friends would support the staff recommendation.

Chair Davis said as there was no further public comment, the Commission should deliberate. Commissioner Abbe said he would like to address the issue of a continuance before any further deliberation takes place.

Bennett said if the Commission grants a continuance, the Commission should continue the item to a date certain. She added that the item cannot be scheduled for August. The September meeting would be the soonest the Commission could consider the item, and the agenda for September already includes another Plan Amendment Application and additional public comment will be allowed if there are any options developed other than what has already been presented.

Mr. Nicolai said he would appreciate the extra time to work on the issue.

Commissioner Abbe asked if November 8th would be acceptable, and Mr. Nicolai said that it would.

Commissioner Adcock asked whether the reason for the continuance is to consider a conservation easement. Commissioner Condit said there are two issues to be considered: a conservation easement and the issue of how the proposed open space line was drawn. Condit recommended that Mr. Nicolai contact a tax professional to be sure of the pros and cons of an easement and to be sure that any easement is granted to an agency with active enforcement capability. He said he would like the contour issue to be addressed by both staff and Mr. Nicolai.

Commissioner Squier said she doesn't support a continuance as she is prepared to move ahead with the staff recommendation with some changes and clarifications.

Commissioner Abbe moved to continue the hearing on the Plan Amendment application PA-05-01 to the November 8th meeting. Commissioner Condit seconded the motion and the motion passed 5 to 4.

Harold Abbe-aye

Kenn Adcock-aye
Jeffrey Condit-aye
Judy Davis-aye
Jane Jacobsen-no
Walt Loehrke-aye
Joe Palena-no
Honna Sheffield-no
Anne Squier-no

Bennett said any Commissioner who was not present at today's meeting must listen to the tapes and read the minutes in order to participate in the November hearing.

Chair Davis recessed the meeting for a lunch break at 12:40 p.m. She called the meeting to order at 1:35 p.m.

Briefing on I-84 Corridor Strategy

Brian Litt, Senior Planner introduced Kay Van Sickel and Ralph Trapani of OTAK. They provided a presentation (see attachment E1-E2) on draft vision, goals, objectives and guidelines for the I-84 Corridor Strategy, with a focus on design guidelines for bridges and related features. The consultants solicited feedback from Commissioners on the draft Strategy elements and June Carlson, ODOT, was also present to answer questions. They requested any comments to be submitted to Brian Litt. Chair Davis thanked the consultants for their presentation and asked the Commissioners for questions.

Commissioner Adcock asked whether designated "gateway signs" would be adopted. Ms. Carlson said it's in the process, with development for signs that are compatible in design and a sign and post that will work in the clear zone. Commissioner Squier thanked the people involved in the project and said it will provide significant improvements for the public. Mr. Casseseka asked if the Tribes could comment at this time. Casseseka said there should be direct contact with the tribes, not merely public meetings. Chair Davis said this presentation today was to get an update on the project and not for public comment. Ms. Van Sickel said OTAK will be providing presentations to the Tribes as well and soliciting their feedback.

Report on Enforcement Processes in Gorge Counties

Bennett provided a report of enforcement processes in Gorge Counties (see attachment F). She said there are not a lot of commonalities among the counties except all jurisdictions will identify and investigate a complaint, focus on voluntary compliance by the property owner and if voluntary compliance efforts fail, more formal enforcement through a civil penalty and/or court order. The larger counties (larger population) have dedicated code enforcement officers while other counties rely on their planning department staff for enforcement work. Half of the counties are actively tracking enforcement cases and for counties without a civil process, it takes much longer to achieve compliance.

Bennett said conclusions that can be drawn from this information are enforcement efforts take considerable agency resources, counties with code enforcement staff initiate enforcement action more quickly than those without code enforcement staff, each jurisdiction has different criteria for prioritizing compliance issues and different administrative processes. She called attention to potential discussion questions on page two of the report and asked the Commissioners for their feedback.

Commissioner Adcock thanked Bennett for the report and said he'd spend more time reviewing the report.

Commissioner Loehrke said he's interested in further discussion of a single set of criteria for prioritizing compliance/enforcement cases. Commissioner Jacobsen said she believes it's critical that we establish a uniform policy for all jurisdictions to follow. Commissioner Condit expressed his support of the previous comments and said each county needs a civil process for such violations.

Commissioner Squier said once we have GIS capability, it would be ideal for the public to check this database any time there is a development occurring that they are concerned about. This would allow the public to access information about what has been approved for a particular parcel. Hopefully, this would catch any unauthorized development.

Chair Davis said there is interest for future discussion and would like this item to be put on the Commission's draft work plan for consideration for the 2005-07 time period.

Director's Report

Bennett said that she was sad to report that Sally Duncombe, Commission volunteer for many years, died on Saturday. Sally was a wonderful person and spent a great deal of time and energy assisting the Commission in the office. There is a memorial service in Hood River on Saturday. The Duncombe family has requested that in lieu of flowers, donations can be made to charities, which are listed in the Commission packet.

Bennett said the new land use ordinance 350-81, is in effect as of July and will be part of your August packet. Please keep the old ordinance (350-80), until Litwak instructs the Commission that it should be discarded.

Bennett gave an update on agency staffing. She said Mark Garner is the new GIS Coordinator and started work July 5, 2005. She expressed her gratitude to the Forest Service for continuing their support of the position and the GIS program. She said 41 applications for the Planner position have been received and she hopes to have someone on board in September.

Bennett said she would be providing more information on an appeal for a Wasco County decision as soon as the appeal period has ended.

Bennett said Oregon has not yet adopted a budget for 2005-07.

Bennett referred to a memo (see attachment G) in regard to the Viewpoint Inn Plan Amendment and staffing. She said the applicants have brought up concerns that Mr. Litwak cannot be impartial in this matter due to his history as an employee of Multnomah County. Bennett said she has no reason to conclude that Litwak's past work on an enforcement case would jeopardize his neutrality, but it is best to hire outside legal help. This will protect the integrity of the Commission's action and eliminate any public concern - by the applicant or any other party - of a lack of neutrality or fairness. Bennett said that the applicants disagree with her decision, as outlined in the letter from John Groen (attachment A)

Bennett said the cost estimate for outside counsel is \$5,000 to \$7,000, provided the Commission's decision is not appealed. If the decision is appealed this may incur an additional 100 hours of legal time and the impact on the budget cannot be gauged at this time. The cost was not included in the staff analysis of the Plan Amendment Application for the Commission's Preliminary Review discussion. She said the Commission does not need to take action on this report, unless it wishes to modify its May 10, 2005 direction to staff.

Chair Davis invited Bobbie Miller to continue with her public comment. Ms. Miller said in reference to the Viewpoint Inn, there is supposed to be economic development in the Gorge as mandated in the Scenic Area Act. She supports the efforts of the owners to operate this business in the Gorge. She said there are many new Commissioners on the Commission that should be aware of the conditions related to the Bea Case. She said when the house was nearly finished, the Commission became involved and with all the legal issues, it took seven years for the Bea's to build the house. She said in the Bea Case an outside attorney represented the Commission and that was a mistake. She said things fell through the cracks on the Bea house but should have been handled differently.

Commissioner Condit said he agreed with Bennett's decision to hire an outside attorney.

NSA Manager's Report

Commissioner Harkenrider said he has nothing new to report.

Other Business

Commissioner Squier said she knew Sally Duncombe and what a wonderful person and dedicated volunteer she was. She asked that everyone take a moment in remembrance of her. She said there will be a stone setting and memorial for Michael Farrow who died about a year ago.

Commissioner Condit thanked Commissioner Squier for her service on the Commission. The Commissioners recognized Commissioner Squier's hard work and dedication.

Chair Davis said as new Commissioners are appointed, there will be revised committee assignments as well. There being no further business, Chair Davis adjourned the meeting at 2:50 p.m.

The next regular meeting is scheduled for 8/9/05 at the Hood River Inn, Hood River, OR at 9:00 a.m.

Minutes taken by Kathy Obayashi-Bartsch
Minutes approved on August 9, 2005