
COLUMBIA RIVER GORGE COMMISSION

Meeting Minutes

June 11, 2002

The Discovery Center, The Dalles, Oregon

COMMISSIONERS IN ATTENDANCE

Doug Crow	Don Dunn
Michael Farrow (9:00 a.m.)	Virginia Kelly (for Dan Harkenrider)
Walt Loehrke	Joe Palena
Joyce Reinig (9:00 a.m.)	Dave Robertson
Kathy Sheehan	Anne Squier

COMMISSIONERS EXCUSED

Kenn Adcock Jane Jacobsen Wayne Wooster

STAFF IN ATTENDANCE

Martha Bennett, Executive Director
Allen Bell, Senior Planner
Keith Fredrickson, Public Outreach Coordinator
Jeff Litwak, Counsel
Bob McIntyre, Administrative Assistant

AUDIENCE IN ATTENDANCE

Sauter, Dave. Klickitat County, Washington
Grichel, Steve. Skamania County Planning Department. Stevenson, Washington
Thiemann, Phyllis. Corbett, Oregon.
Miller, Bobbie. Columbia Gorge United. The Dalles, Oregon.
Davis, Judy. League of Women Voters. Portland, Oregon.
Karabut, Diana. Portland, Oregon.
Hall, Priscilla. Portland, Oregon.
Carlson, June. Oregon Department of Transportation.
Cornett, Todd. Wasco County Planning Department. The Dalles, Oregon.
Wertz, Clint. Wasco County Planning Department. The Dalles, Oregon.
Newton, Tiffany. Friends of the Gorge. Hood River, Oregon.
Torgerson, Adam. Dept. of Administrative Services. Salem, Oregon.
Neff, Mike. Portland, Oregon
Kahn, Gary. Friends of the Columbia Gorge. Portland, Oregon.
Fullilove, Glenn. Friends of the Columbia Gorge. Portland, Oregon.
Lynch, Michael. Friends of the Columbia Gorge. Portland, Oregon.

Gorman, Kevin. Friends of the Columbia Gorge. Portland, Oregon.
Tom and Casey Heuker. Residents, Cascade Locks, Oregon.

Roll Call

The meeting began at 8:45 a.m. Roll was called.

Review of Minutes

The minutes of the May 14 and March 26 meetings were reviewed. Commissioner Sheehan moved to accept both minutes as written. Commissioner Loehrke seconded the motion. Both sets of minutes were approved as written.

Public Comment

None.

Scenic Resources Committee Report

Chair Squier provided the Scenic Resources Committee Report. She noted that the Committee is moving fairly rapidly now, and the report explains not only the group's recommendations, but also their rationale.

She noted that the Committee's most recent meeting recommendations are not included in the handout. She said at that meeting the group discussed the issue of siting to minimize visibility to achieve visual subordination. She added that the Committee discussed areas to be exempt from the visual subordination standards and historic properties. She encouraged Commissioners to review the handout and ask questions.

At the fourth meeting the guideline that currently requires new development to be sited to minimize its visibility from "Key Viewing Areas" was reviewed.". The committee will be recommending revision of the guidelines to require new development be sited to reduce visibility to achieve visual subordination, and to apply siting requirements before turning to other guidelines for achieving subordination. The committee also addressed application of the retention standard, exemptions for developed settings that are not in visually sensitive areas, and other issues. Chair Squier encouraged commissioners to review the handout and ask questions.

Commissioner Palena asked Chair Squier if the group discussed the need to defend the idea that safety does not need to take second priority to scenic protection on road projects. Chair Squier said the idea that scenic protection and safety are at conflict is unsupported in current thinking. There are installation

techniques and building materials available, which make safety and visual subordination both achievable.

Proposed Resolution through Agreement, Denise Barker

A contested case hearing had been scheduled to address alleged violations by Denise Barker. Because Ms. Barker and the Executive Director had entered into a Proposed Resolution by Agreement late the previous day, the Commission instead held a hearing on the proposed resolution pursuant to Commission rule 360-30-060. Ms. Barker was not physically present for the hearing but participated by telephone. Chair Squier went over the preliminary procedures. Chair Squier repeated all comments by staff and Commissioners directly into the speaker on the phone to ensure Ms. Barker could understand what was being said.

Martha Bennett presented a case overview and the various actions that Commissioners can opt to take at this hearing. She stated she and Ms. Barker had signed a resolution through agreement the prior day, and that the commissioners would be considering this agreement and deciding whether or not to accept it.

Allen Bell presented a history of the property, the original conditions of approval on the home, and a history of the conflict with Ms. Barker, and a description of the violation. The proposed resolution through agreement would require Barker to:

1. Complete the landscaping plan prepared by Karen Mirande, which includes planting of eight trees by no later than October 15, 2002.
2. Repaint her home a dark, earth-tone color by October 15, 2002.

Barker presented her case to the Commission. She said she is willing to plant the required trees, but she disagrees with the requirement that she paint the entire dwelling, since only the south side is visible from a key viewing area. She added that she thinks the existing color blends with the landscape. She noted that she had cut the trees because she had been advised that they were diseased. Commissioner Reinig expressed concern for how these new trees would be maintained. Barker assured the commission that the trees would be cared for.

The commission deliberated. Commissioner Reinig stated that Barker exhibits a clear pattern of non-compliance and the Commission should be clear about its expectations. Reinig expressed a concern that the original penalty was deleted from the agreement. She believed that this penalty should be added back into the agreement with the stipulation that the penalty will be waived if, and only if, the

work is completed by October 15, 2002. She also asked that a condition be included that requires a maintenance plan for the trees. Commissioner Crow concurred with Reinig and added that he would like more information about the need and payment for logging the trees.

Commissioner Sheehan supported Reinig's idea, and added that the civil penalty should be an amount equal to compensation for time staff has put into this issue. She also stated that by looking at the pictures of the trees, there did not appear to be any serious issues of rot visible on the trees that were cut down. Commissioner Sheehan moved to amend the agreement in the following ways:

On item 1, page 2 of the agreement, add "Ms. Barker shall implement the landscape maintenance plan shown on page 39 of the record".

On the top of page 3 under item 3, insert "October".

Add an item 4: "should any of the conditions 1 through 3 not be satisfied, the Commission shall impose a civil penalty equal to the amount of documented staff time spent on the issue, with \$1,800 being the minimum amount".

Commissioner Dunn seconded this motion.

Jeffrey Litwak noted that as written, this motion would require further action on the part of the Commission. If the intent of the Commission is to impose the penalty automatically, it should be stated as such.

Commissioner Sheehan amended her motion to read, "Ms. Barker shall pay....". Commissioner Dunn seconded the amended motion.

The Commission voted on amending the agreement. The commissioners voted as follows:

Farrow—yes	Dunn—Yes	Crow—Yes
Sheehan—Yes	Robertson—Yes	Reinig—Yes
Palena—Yes	Loehrke—Yes	Squier—Yes

The vote to amend the agreement passed unanimously.

Martha Bennett stated that the changes were acceptable to her and asked Ms. Barker if the changes were acceptable to her. Barker stated that she has every intent to comply. Ms. Barker noted the understanding that there would be no civil penalty if she complies, the changes were acceptable to her. With this agreement between the parties, the commission then acted to approve the amended settlement agreement.

Commissioner Sheehan moved to accept the proposed resolution through agreement with the amendments agreed to by Ms. Barker and the Executive Director. Commissioner Robertson seconded this. The commission voted as follows:

Farrow—Yes	Dunn—Yes	Crow—Yes
Sheehan—Yes	Robertson—Yes	Reinig—Yes
Palena—Yes	Loehrke—Yes	Squier—Yes

The motion passed unanimously.

The commission broke for lunch at noon.

The commission returned to session at 12:45 p.m.

Planning/Finance Committee

Commissioner Reinig presented the Planning/Finance Committee report. She stated that at the last Planning/Finance meeting, the group looked at the mission and goals for the agency for the upcoming biennium. The strategic plan was also looked at, as this will need to be updated for the 2003-2005 budget process.

Martha Bennett outlined how these proposed goals were modified from the current biennium goals. She discussed the six-year strategies, as well as the two-year strategies, which are a little more specific. Bennett said it would be a good idea to redo the entire strategic plan in the future, but the current plan is very focused and it satisfies requirements at this point.

Chair Squier complimented Reinig and Bennett for their efforts. A Planning/Finance Committee meeting will occur on June 28th where the upcoming budget numbers will be presented. The proposed draft budget will be submitted to the Gorge partners for their input, and public testimony on the budget will be taken at the next Commission meeting.

NSA Manager's Report

Virginia Kelly provided the Forest Service National Scenic Area Manager's report for Dan Harkenrider. In regards to the potential for a casino siting, she said the Bureau of Indian Affairs is putting the issue of fee to trust land on hold, and is instead focusing on existing trust land.

The Forest Service will be notifying the Washington State Parks Commission that the U.S. Forest Service will be starting work on the "Rails to Trails" project along the Klickitat River again.

The Fourth of July should complete the remodeling project underway at Multnomah Falls, this year.

In regard to the section 8(o) program, the Forest Service has 8.8 million dollars available. 2.7 million dollars have been obligated, and offers are out on another two million. She noted that a number of offers have been made on land, and the offers were declined. Property owners who decline offers are therefore not subject to the GMA guidelines, but remain under SMA regulation.

Commissioner Crow asked Kelly if all Gorge Commissioners could get copies of the Forest Service's "Gorge News" publication. He also asked if the Forest Service would bring up keeping the Spring Creek Hatchery open at the Washington Parks and Recreation Commission meeting.

Director's Report

Martha Bennett updated the Commission on the activities of the agency. She began by reminding the Commissioners that election of officers will occur at the July Commission meeting. She reminded Washington Commissioners to submit their expense reports for fiscal year 2002, since the end of the fiscal year is June 30, 2002.

Bennett noted that the agency had purchased a new telephone system, which has been installed and is operational. It is the type that uses an automated attendant, which is a little less friendly than having a person answer the phone, but has already saved a lot of time. She encouraged the Commissioners to let her know if they encounter any problems with the system.

Bennett stated that the next legislative oversight committee is scheduled for June 26. The Commission has not been requested to play a specific role in this next meeting, but is prepared to discuss a number of issues. Bennett stated that it might be helpful to have some Commissioners in attendance. She distributed a copy of the agenda.

Bennett provided a status report of the Plan Review process (see attachment A). Bennett stated that a public meeting on the Natural Resource revision issues is scheduled for June 20, which will be a public workshop, not a regular Gorge Commission meeting. Commissioner Sheehan will lead the meeting.

Bennett remarked that the first-ever Gorge Commission newsletter was recently published in the local newspapers. She stated that Commissioners need not hold

the fourth Tuesday during the months of July and August for meetings, but do hold the fourth Tuesday in September and October.

Skamania Lodge is having a celebration of their recent expansion, and the Gorge Commission has been invited Bennett asked to be notified by any Commissioners attending.

Commissioner Crow presented a thank-you plaque to the Commission from the City of Mosier for the Commission's involvement in the development of the waterfront. Crow encouraged folks to visit the Rock Creek area of the Columbia River.

Other Business

Martha Bennett asked the Commission to debrief the Barker hearing, particularly how it work to have parties teleconference into the hearing. She said a new speakerphone would be purchased. She invited feedback from Commissioners on the topic of hearings by phone. Commissioner Reinig believes holding phone hearings opens the Commission up to problems due to poor communication, and asked how other entities handle this. Jeff Litwak stated that telephonic hearings are not unusual.

Commissioner Loehrke said holding this type of hearing is unfair to those who do follow the usual practice and attend the hearing. Martha Bennett asked the Commission what its preference would be if someone notified her shortly before a hearing that they could not attend. She stated that it was her understanding that the Commission would like to try to hold the hearing anyway. Chair Squier noted a problem exists when a hearing has been scheduled and someone cannot make it. To postpone the hearing leaves a large hole in the meeting agenda. The Commissioners generally agreed that the hearing should be held by conference only when necessary, and only for a very just cause. They also agreed that if a party provides sufficient notice that they cannot attend their hearing, it could be rescheduled once to permit them to attend.

Appeal Hearing. Friends of the Columbia Gorge v. Multnomah County and Heuker.

The parties to this hearing were Gary Kahn representing Friends of the Gorge; Sandra Duffy representing Multnomah County; and Mike Neff representing the Heukers.

Chair Squier explained what the hearing was about, outlined the process that would follow, and asked any Commissioners if they had ex-parte contacts to disclose. Chair Squier said she had been at the last Legislative Oversight

Committee hearing on March 15, 2002 in which she heard information about the Heuker situation. Commissioner Robertson noted that he had also been at the legislative oversight hearing and had visited the Heuker property on a different matter. Commissioner Sheehan stated she had attended the Legislative Oversight meeting as well, but stated that she could hear this matter without bias. Commissioner Crow stated that he too would not be prejudiced, and Commissioner Palena stated that he had been on an adjacent property, but could still be fair. Commissioner Loehrke stated that he had been at the Legislative Oversight Committee hearing, but would not be prejudiced. No party had any objection to any Commissioner participating in the hearing.

Chair Squier then went over the preliminary issues. Chair Squier reminded the Commission that this was a hearing on the record before them, and no other issues or matters could be considered.

Mr. Kahn presented his oral argument. His argument was that Multnomah County failed to apply the appropriate regulation to an in-kind replacement dwelling.

Ms. Duffy presented her oral argument. Her points were that the county had applied the standard correctly, that any error of law was harmless, and that the Commission should uphold the county decision.

Mike Neff then presented his oral argument. He asked the Commission to defer to the County.

Mr. Kahn then presented his rebuttal.

The Commission deliberated. Commissioner Crow believed a visual subordination standard should be applied, and this decision should be remanded back to the county. Commissioner Dunn said he would not like to push to make the plan even more restrictive than it is currently. Commissioner Reinig said the original writers of the Management Plan put a lot of thought and effort into this topic, and the thought was that a dwelling could be replaced on the existing footprint. It was not the intent to bring a new set of standards on the landowner.

Commissioner Robertson said the spirit of the replacement structure provision is to apply less stringent standards to expedite the replacement of that structure. Commissioner Loehrke said the Commission should treat this application as if there has never been a discontinuation of use on the property because the Heukers did not intend to have their house burn down.

Commissioner Sheehan disagreed with Commissioner Dunn and Reinig. She noted that Multnomah County code refers to the word "standards" for color,

reflectivity, and landscaping. She noted that it is possible these three tools alone are not enough to create visual subordination, but that there is a clear reference in those standards to visual subordination.

Commissioner Farrow stated that he would be more comfortable referring the decision back to Multnomah County. He said if all other counties are using visual subordination, Multnomah County should. He added that this code should be legislatively clarified for future cases.

Commissioner Reinig stated that all counties brought their ordinances before the Commission for approval, and that she has consistently tried to support the counties in their decision-making. There are a very limited number of structures like this in the Gorge, and it is the role of the Commission to honor the commitment that was made when this was set up.

Commissioner Reinig moved to uphold the Multnomah County decision recognizing that 7090, the emergency provision does not apply, and that it was harmless error. Commissioner Dunn seconded the motion.

A vote was taken and the Commissioners voted as follows:

Farrow—No	Dunn—Yes	Crow—No
Sheehan—No	Robertson—Yes	Reinig—Yes
Palena—No	Loehrke—Yes	Squier—No

The motion to uphold the county decision failed.

Chair Squier said it is clear that 7090 does not apply, and that is an error. The question is, did the county adequately apply 30(b)(1), therefore making it harmless error. In regard to the discussion about whether the landscaping requirements were adequate, she believes landscaping has not been adequately addressed for protection of scenic resources, therefore, she did not find it harmless error. The deliberation continued.

Commissioner Sheehan said the county did not require any landscaping protection. Commissioner Loehrke said he does not see this as new development.

Commissioner Sheehan moved to remand the decision back to Multnomah County because they made an error that inaccurately construes the applicable law, and that the county should apply the standards for protecting scenic resources involving color, reflectivity and landscaping to achieve visual subordination to the extent practicable. A vote was taken. The Commissioners voted as follows:

Farrow—Yes	Dunn—No	Crow—Yes
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Sheehan—Yes	Robertson—No	Reinig—No
Palena—Yes	Loehrke—No	Squier—Yes

The motion to remand the decision back to Multnomah County passed 5 to 4.

Executive Session

Chair Squier announced the Commission would go into Executive Session to discuss matters of current litigation. According to Commission rule 360-11-06 1(g), the Commission went into Executive Session. The room was cleared of all members of the audience. There were no members of the press present. Executive session began at 3:50 p.m.

The Commission returned from Executive session at 4:05 p.m. having taken no action and requiring no follow-up.

Adjournment

The meeting adjourned at 4:05 p.m.

Notes taken by Bob McIntyre

Minutes approved by Commission on August 13, 2002.

PLAN REVIEW PROGRESS REPORT – JUNE 11, 2002

Topic	Work Completed	Work Pending / In Progress
Scenic Resources	<ul style="list-style-type: none"> • Third and fourth Committee meetings held on 5/20 and 6/5. • Committee recommended new standard (“harmonious”) for projects along KVA highways. Committee decided this standard may apply in limited circumstances to projects on other KVAs, and in immediate foregrounds of KVAs, with criteria. • Committee recommended changing “siting to minimize visibility” guideline to “siting to reduce visibility to achieve visual subordination”. • Committee confirmed current policies regarding developed settings, historic structures, and where “retention” standard applies. 	<ul style="list-style-type: none"> • Next Scenic Committee meeting set for 6/25/02. • Committee set to discuss standards for replacement structures, reflectivity guidelines, and the compatibility standard (applies to all Scenic Area lands, including those not seen from KVAs) at the next meeting.
Land Use	<ul style="list-style-type: none"> • Staff prepared preliminary draft overviews for four topics: temporary uses, accessory structures, repair and maintenance, and lot line adjustments. Staff also researched topics related to commercial uses. • Technical advisory committee (TAC) met on 6/6/02; five counties and two tribes represented. • TAC critiqued overviews and discussed issues and options for uses in the Columbia River. 	<ul style="list-style-type: none"> • Revising preliminary draft options based on TAC input at second meeting. • Third TAC meeting set for July 3. • Staff working on overviews with options for other topics in Land Use Issues 1 and 4 for review with TAC.
Natural Resources	<ul style="list-style-type: none"> • Met on 5/22/02 with county planners and state wildlife agencies to discuss options for issues. • Further research done on revisions to state and federal laws and their relevance to plan’s natural resource provisions; reviewed by partner agencies. 	<ul style="list-style-type: none"> • Public meeting to discuss options and gather input for natural resource issues planned for 6/20/02. Materials to be posted on web. • Consulting with counties regard methods to keep natural resource inventories current.
Public Outreach	<ul style="list-style-type: none"> • Four-page newsletter on Plan Review distributed 3rd week in may as insert in Gorge newspapers, covering overall process, work on specific topics and dates of future meetings. 	<ul style="list-style-type: none"> • Participated in Gorge radio talk show on 6/2/02, focusing on natural resource topics. • Radio talk show on plan review focusing on scenic resources scheduled for 6/13/02. • Natural Resources public meeting set for 6/20/02.

ATTACHMENT A