

# Columbia River Gorge Commission

## Meeting Minutes

October 14, 2003

Location: Best Western Hood River Inn, Hood River  
Time: Meeting began at 8:35 a.m.

### ***MEMBERS PRESENT***

Kenn Adcock  
Doug Crow  
Judy Davis  
Michael Farrow (9:10)  
Daniel Harkenrider  
Jane Jacobsen (9:00)  
Walt Loehrke  
Joe Palena  
Dave Robertson  
Katharine Sheehan  
Anne Squier, Chair  
Wayne Wooster, Vice Chair

### ***MEMBERS ABSENT***

Joyce Reinig (excused)

### ***STAFF PRESENT***

Martha Bennett, Executive Director  
Allen Bell, Senior Planner  
Jeffrey Litwak, Counsel  
Kathy Obayashi-Bartsch, Administrative Assistant  
Gary Pagenstecher, Planner

### ***AUDIENCE PRESENT***

Dean Apostol, Landscape Architect  
Nathan Baker, Friends of Columbia Gorge (FOCG)  
Brian Bainnson, Quatrefoil Inc.  
Stacey Borland, Skamania County Planning  
Dan Boldt, Wasco County  
Gina Carr, Project Engineer, Washington Department of Fish and Wildlife (WDFW)  
Edwin Caswell, FOGC  
Todd Cornett, Wasco County  
Mike Ferris, United States Department of Agriculture Forest Service (USDA FS)  
Chuck Frayer, Regional Accessibility Specialist, (USDA FS)  
Glenn Fullilove, FOGC  
Kevin Gorman, FOGC  
Josh Hudis, FOGC  
Gary Kahn, FOGC  
Virginia Kelly, USDA FS  
Jeanette Kloos, Oregon Department of Transportation (ODOT)

Diana Karabut  
Bob Leipper  
Bud Quinn, Skamania County Commission  
Diana Ross, USDA FS  
Nancy Russell, FOCG  
Dave Sauter, Klickitat County  
Mark Schumock, Washington Attorney General  
Charles Sciscione, ODOT  
Michael Shailer, Confederated Tribes of Umatilla Indian Reservation (CITUIR)  
Phyllis Thiemann, Columbia River Gorge Visitors Association (CRGVA)  
Joanie Thomson, FOCG  
Derrick Tokos, Multnomah County  
Curtis Wambach, Permit Specialist and Biologist, WDFW  
Richard Whitman, Oregon Department of Justice  
Karen Witherspoon, Skamania County Planning

### **Call to Order**

The meeting was called to order by Chair Squier at 8:35 a.m.

### **Approval of Minutes**

June 10, 2003

Commissioner Wooster moved to approve the minutes adding Commissioner Crow's comments regarding Heuker's commercial fishing operation. Commissioner Sheehan seconded the motion and the minutes were unanimously approved by voice vote.

July 22, 2003

Commissioner Sheehan moved to approve the minutes with a change on the last page pertaining to inaccurate information for the subsequent meeting. Commissioner Adcock seconded the motion and the minutes were unanimously approved by voice vote.

September 9, 2003

Commissioner Sheehan moved to approve the minutes with Commissioner Crow's name added to Commissioner Sheehan's comment regarding fuel break requirements on page 11, a period added on page 11 in the first full paragraph and Commissioner Robertson's voting record corrected. It was noted that Commissioner Robertson was only absent for 1 vote. Commissioner Palena seconded the motion and the minutes were unanimously approved by voice vote.

### **Public Comment**

Bob Leipper addressed the Commission and apologized for any prior comments that may have been construed to be disrespectful and indicated that this was not his intent. He wanted to stress to the Commission that enforcement of the Scenic Act needs to occur and he is very concerned that enforcement is not occurring consistently. Chair Squier thanked Mr. Leipper

and encouraged him to continue to bring enforcement concerns to the Commission's attention.

## **Friends of the Columbia Gorge v. Executive Director and Washington Department of Fish and Wildlife**

*NOTE: The audio tapes and the final order serve as the record of the hearing. These are available at the Gorge Commission office.*

Chair Squier introduced the next order of business which was an appeal hearing- Friends of the Columbia River Gorge v. Executive Director and Washington Department of Fish and Wildlife, CRGC No. C02-0001-K-S-20. The appeal was *de novo*. Participation in the appeal was limited to the parties: Executive Director, Friends of the Columbia Gorge, and Washington State Department of Fish and Wildlife.

Chair Squier introduced the parties and legal counsel:

- Richard Whitman, Oregon Department of Justice representing the Columbia River Gorge Commission (CRGC),
- Gary Kahn representing Friends of the Columbia Gorge (FOCG),
- Jeff Litwak representing the CRGC Executive Director
- Mark Schumock, representing Washington State Department of Fish and Wildlife (WDFW).

Chair Squier stated that this hearing was subject to the older CRGC rules, 350-70. She called for Commissioners to disclose conflicts of interest or *ex parte* contacts. She said that most of the Commissioners had driven by the site and asked each of the parties if this was acceptable. Commissioner Loehrke also noted that he has fished at Rowland Lake. No party objected.

Richard Whitman reviewed the conduct and the rules for the hearing, stating that appeal was subject to the Commission's old 350- 70 rules, as the appeal was filed before the newly adopted rules took effect. He explained that it was a *de novo* hearing, thereby not limited to the record, and new information could be considered. He also stated that 350-16 rules apply. He summarized the options for the Commission as follows: (1) uphold the decision, (2) uphold the decision based on additional or different conditions of approval and/or findings, (3) reverse the decision or (4) remand the application back to the Executive Director and staff for further review.

Commissioner Crow asked him to comment as to the issue of burden of proof. Whitman indicated that the decision has to be supported by substantial evidence that would be sufficient to persuade a fair minded person.

Commissioner Jacobsen arrived at 9:00 a.m. and Chair Squier asked her about *ex parte* contacts and conflicts of interest. She asked other Commissioners and parties if there was any objection with Jacobsen's participation, and they indicated that there was not.

Whitman reviewed the pre-hearing order and stated that all the parties had agreed to certain facts and that there are no facts in dispute. He then reviewed the process for the hearing as outlined in the prehearing order.

Commissioner Farrow arrived at 9:10 a.m. and Chair Squier asked him about ex parte contacts and conflicts of interest. She asked the Commissioners and parties if there was any objection with his participation and they indicated that there was not.

Chair Squier then asked for opening statements from the parties. Gary Kahn, representing FOCG and Nathan Baker, staff attorney for FOCG began the proceedings and asked for clarification as to acceptable evidence referred to in the pre-hearing conference and discussion. He asked if testimony would be accepted pertaining to alternative project designs.

Chair Squier indicated that the intent of the pre-hearing order was that no witness would present testimony pertaining to the need for the project or potential use or non use of the project. Kahn asked whether any additional testimony would be accepted pertaining to other possible ways to meet the project's design goals.

Jeff Litwak, representing CRGC Executive Director indicated that alternative designs are not a question that should be considered, rather the question was whether the decision was consistent with the land use ordinance.

Mark Schumock representing WDFW concurred with Litwak's comments and indicated that dozens of designs could have been submitted but the decision was about the design WDFW submitted to the Director. He said that the question at hand is not what could have been proposed but what was proposed.

Kahn indicated that there are other ADA designs that would be appropriate and that there are other ways to provide a handicapped accessible fishing dock.

Whitman said the Commission would typically look to the project at hand and whether the Executive Director's decision was based on the applicable land use ordinances.

Commissioner Robertson asked if testimony or evidence related to alternative designs should be allowed as this was a de novo hearing.

Commissioner Jacobsen indicated that the question at hand is whether the Executive Director's decision and application did or did not meet the standards.

Litwak and Schumock indicated that it would not be fair to entertain alternative designs as alternative designs were not presented to the Executive Director. They said they were willing to stipulate that other designs could exist that would meet ADA requirements.

Whitman indicated the fundamental question would be whether the Executive Director's decision applied more relaxed standards because of ADA considerations and advised that testimony should be taken only if relevant to the standards in the land use ordinance.

Chair Squier indicated that no witnesses would be allowed to discuss alternative designs unless it is relevant to an approval standard.

Commissioner Sheehan stated that the Commission should look at the decision first without looking at other possible sites or designs.

Litwak stated that there are some items that are relevant and proper in reviewing the application but to allow testimony that an entirely different project should be considered is inconsistent with the matter at hand.

Chair Squier indicated that she will permit testimony pertaining directly to the Executive Director's decision with a focus on the standards applicable to the project and not a complete redesign of the project.

Gary Kahn, Counsel for Friends of the Columbia Gorge (FOCG) made an opening statement that summarized the intent of the appeal and indicated that he would call four witnesses including:

- Diana Ross, Landscape Architect, USFS
- Dean Apostol, Landscape Architect, former USFS
- Gary Pagenstecher, Planner CRGC
- Chuck Frayer, Regional Accessibility Specialist, USFS

Jeff Litwak, Counsel for the CRGC Executive Director made an opening statement.

Mark Schumock, Counsel for Washington Department of Fish and Wildlife (WDFW) made his opening statement.

Chair Squier indicated that opening statements were concluded and asked Kahn to begin. Kahn called Gary Pagenstecher, Planner for CRGC, as his first witness, and he was sworn in and testified. Litwak cross-examined the witness. Schumock cross-examined the witness.

Chair Squier asked Commissioners if they had questions for the witness. There were no questions. Kahn then redirected questions to the witness.

Kahn called Diana Ross, Landscape Architect for USFS as a witness, and she was sworn in and testified.. Litwak cross-examined the witness. Schumock cross-examined the witness. The Commission asked the witness several questions. Kahn redirected questions to the witness.

Kahn then called Dean Apostol, Landscape Architect as a witness, and he was sworn in and testified. Litwak had no questions for the witness. Schumock cross-examined the witness. The Commission asked the witness questions.

Gary Kahn called Chuck Frayer, Regional Accessibility Specialist and Outdoor Recreation Specialist, USFS, and he was sworn in and testified as to his education and professional experience.. Schumock and Litwak indicated that they had no questions for the witness. Chair Squier asked for questions from the Commissioners of the witness.

Chair Squier called for a 45 minute break for lunch and asked to resume at 1:20 p.m. She reminded the Commission that they could not speak to anyone about the case during the

break. She also indicated that in the interest of time, Commissioner Jacobsen would provide an update of the Confluence Project at a subsequent meeting.

Chair Squier reconvened the meeting to order at 1:30 p.m.

### **Director's Report**

Bennett said that the Oregon Emergency Board will be meeting in November and in the meantime she will be meeting with legislators and may ask Commissioners to accompany her. She stated that a copy of the letter requesting funds from Oregon is enclosed in their packets.

Bennett said staff is working on a report to update the Commissioners on enforcement cases, noting that care must be given as to how the information is provided to the Commissioners. She also noted that there will be more work forthcoming on the process and rules governing enforcement. She noted that unless the Commission directs otherwise, the Commission will not become involved in enforcement issues in a county unless a county actively decides not to pursue enforcement of a severe violation. Commissioner Adcock said that he's supportive of this type of report.

Commissioner Crow indicated that he appreciates getting maps with the reports on land use decisions issued by the Executive Director.

### **Friends of the Columbia Gorge v. Executive Director and Washington Department of Fish and Wildlife (continued)**

Chair Squier reconvened the appeal hearing, and asked Mr. Schumock to proceed. He provided copies of his exhibits to the Commission and called his first witness, Gina Carr, Project Engineer for WDFW. She was sworn in and presented testimony. Litwak indicated that he had no questions for this witness and Kahn cross-examined the witness. Chair Squier asked for questions from the Commissioners of the witness. Schumock redirected questions to the witness.

Schumock called Curtis Wambach, Permit Specialist and Biologist, WDFW. He was sworn in and testified. Litwak had no questions of the witness and Kahn cross-examined the witness. Chair Squier asked for questions from the Commissioners of the witness. Schumock asked follow-up questions.

Schumock called Brian Bainnson, Landscape Architect for Quatrefoil Inc, and he was sworn in and testified. Litwak had no questions, and Kahn cross-examined the witness.

Schumock said that he had no further witnesses and Litwak said that he had no witnesses to call.

Chair Squier called for a break at 3:00 p.m. and reconvened the meeting at 3:15 p.m.

Kahn called Mr. Apostol for further questioning in rebuttal. Schumock and Litwak indicated that they had no further questions of the witness and no rebuttal witnesses to call.

Kahn made his closing arguments.

Litwak made his closing arguments.

Schumock made his closing arguments.

Chair Squier stated that it was now time for the Commission to deliberate on the issue. Litwak passed out the color originals of the photos in the record and there was no objection from any of the parties.

The Commission deliberated on the matter. Commissioner Crow made a motion to uphold the Executive Directors' decision. Commissioner Palena seconded. After further discussion, a vote was taken and the motion passed 10 to 1.

Kenn Adcock aye

Doug Crow aye

Judy Davis aye

Michael Farrow aye

Jane Jacobsen aye

Walt Loehrke aye

Joe Palena aye

Dave Robertson aye

Katharine Sheehan aye

Anne Squier no

Wayne Wooster aye

Chair Squier thanked all the parties, legal counsel and witnesses for their participation in the appeal hearing

### **Decisions on Plan Review issues for Expedited Review (ER) and Uses Allowed Outright (UAO).**

Commission and Forest Service staffs prepared revised final staff recommendations for two remaining topics in the General Land Use Track of Plan Review—Uses Allowed Outright and Expedited Development Review Process. The recommendations are based on public input gathered during the past nine months, including public testimony at the July 22 and September 9 Commission meetings.

Bennett introduced the two topics. She stated that staff had followed up on the testimony at the last meeting. She said that some of the issues were not directly addressed because they either were outside the scope of Plan Review or they were on the “long-term” list of Plan Review items, and the Commission decided to defer those to the next Plan Review at their August meeting. She said that grazing was not addressed because it was not in the scope of Plan Review, and the request from Wasco County about home occupations was not addressed because the Commission deferred that topic as part of the “long-term” list.

Allen Bell, Senior Planner and Virginia Kelly, USDA FS referred to the memorandum and attachments dated October 3, 2003 sent to the Commissioners (see attachment A). Kelly

noted that there were some items that were added, some clarifications were added, and all new changes were written in bold underlined text. She noted one typographical error in the attachment "Revised Final Staff Recommendation Expedited Development Review Process", page 3, item 18. This item, pertaining to retaining walls, should read 2 feet in height not 24 feet height.

Bell referenced Expedited Review (ER), page 5 and discussed the issue of a comment period. He explained that a 10 day comment period is recommended as a shorter period may be too short and a longer period defeats the purpose of ER. As to the issue of deleting a comment period entirely, he said that Section 6(0) of the Act requires notice for residential development and major development actions. Many of the uses proposed for expedited review are associated with residential uses.

Bell discussed the issues pertaining to the size of accessory buildings allowed outright. He stated that the staff had discussed increasing the size of accessory buildings allowed outright, but had concluded that the existing size of 60 square feet worked well with few problems. He added that staff had also discussed placing a limit on the total number of accessory structures, but quickly concluded that it would be a difficult set of regulations to enforce.

Commissioner Davis asked about Wasco County's input that game fences should be allowed without review on agricultural properties such as orchards. Bell said that large fences have scenic, cultural, and wildlife effects to be considered. For example, they can limit wildlife migration and can be barriers in wildlife corridors.

Commissioner Crow asked how road projects would be affected and asked for clarification as to removal of a road hazard such as an overhanging rock. Bennett replied that a rock protrusion could be removed. She stated however that excavation into the hillside to remove an entire rock, changing the slope of a bank, or large ground disturbance would require a full review. Bennett indicated that the road maintenance and capital improvement projects are planned ahead and those agencies have adequate time to apply for permits.

Commissioner Davis asked staff to describe an example detailing how long the expedited review process would take. Bell responded that a specific timeframe or steps have not been developed but that these standards would be implemented within the counties existing processes. Bennett responded that staff estimates that the expedited process would take approximately 3 to 4 weeks.

Commissioner Crow asked how a minor and major development would be affected and Bell indicated that the ER process would not apply to any major development and depending on the scope of a minor development it may qualify for ER.

Commissioner Wooster asked about the guidelines pertaining to weather towers and mobile home replacement. Bell said he had spoken with Sam Wilkins of ODOT, who agreed that weather towers taller than 12 feet can go through full review. Bell said the standards for mobile/manufactured homes were based on the Commission's previous decisions on replacements.

Commissioner Sheehan asked how much planner time would be saved by the expedited review process, and Bell responded that the check list approach proposed should make a significant time savings.

Chair Squier asked for clarification on Uses Allowed Outright (UAO) page 1, item 5. She asked whether if you exceed either length or height standard, it would not qualify. Bell indicated that was correct and staff would go through the attachments for UAO and ER and clarify the language for similar items, to read "or" not "and".

She referred to UAO page 2, item 7A, indicating that the Columbia Historic Highway should be added and Bell agreed. The same additions should be made to all references to "a scenic highway corridor strategy" in the attachments for UAO and ER.

She also stated that on UAO on page 5, item 10, the flag pole addition is a concern as there is nothing pertaining to the location of the flag pole, just the height.

She also asked in reference to UAO the issue of not limiting the number of accessory structures and asked whether considerations had been made to protect areas near a key viewing area. Bell stated that this was considered but limiting the number of accessory structures was going to be problematic.

Chair Squier then asked the Commission to deliberate on the issue.

Commissioner Adcock stated that a 60 sq. ft. size restriction was too small and that he'd vote no as he felt that strongly about this. He also noted that an ER process should be detailed with time frames.

Commissioner Loerkre indicated that the accessory building size should be larger than 60 sq. ft. in UAO.

Commissioner Robertson moved to accept the recommendations as drafted. Commissioner Jacobsen seconded the motion.

Commissioner Crow stated that some of these minor developments should be allowed outright to limit costs to agencies and property owners.

Commissioner Palena stated that he supported the staff recommendations. Commissioner Robertson stated that a number of the items proposed under these two designations would be a savings in time for property owners and staff.

Commissioner Davis indicated that she believed the 10 day comment period is too long for ER.

Commissioner Wooster stated that overall he supported the staff recommendations but felt that 60 square feet was too limiting for accessory structures and preferred using 120 feet. He also brought up some concerns for the mobile home replacement guidelines and wondered if 10% was a viable number.

Commissioner Sheehan suggested accepting the staff recommendation changing the UAO, to include the Historic Columbia Highway in item 7A and other similar items, and making the typographical change in ER on page 3, item 18 to read 2 feet not 24 feet. She also recommended changing the “and” to “or” in UAO item 5 and elsewhere in the attachments as suggested by Chair Squier.

Commissioner Robertson agreed to accept Sheehan’s changes to his motion, and Commissioner Jacobsen also agreed. This resulted in changes to the staff recommendation as follows:

Change "and" to "or" in UAO item 5 and all similar guidelines in the attachments for UAO and ER. For example:

In UAO, item 5, the paragraph should read:

5. Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses that do not exceed 500 feet in length **or** 10 feet in height that are accessory to an existing dwelling, provided woven-wire fences are brown or black if visible from Key Viewing Areas. Height is measured from the ground to the top wire. (Not proposed in GMA/SMA Open Space.)

Add "Historic Columbia River Highway" to all references to a "scenic highway corridor strategy" in the attachments for UAO and ER. For example:

In UAO, item 7A, the paragraph should read:

7. The following transportation facilities:
  - A. Replace existing safety or protective structures, including guardrails, access control fences, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with a scenic highway corridor strategy for Interstate 84, **Columbia River Historic Highway** or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled “Scenic Travel Corridors.”

In ER, item 18, the paragraph should read:

18. Retaining walls accessory to existing dwellings that do not exceed **2** feet in height and or 100 feet in length.

Commissioner Wooster made a motion to amend the original motion to change in UAO, item 4, to replace the structure size from 60 sq. feet to 120 sq. feet. Commissioner Crow seconded and Commissioner Robertson did not accept the change. A vote was taken on whether to so amend the main motion, and the motion failed 5 to 6 .

Kenn Adcock aye  
Doug Crow aye

Judy Davis no  
Michael Farrow aye  
Jane Jacobsen no  
Walt Loehrke aye  
Joe Palena no  
Dave Robertson no  
Katharine Sheehan no  
Anne Squier no  
Wayne Wooster aye

Commissioner Wooster made a motion to amend the original motion to change UAO, item 4, to replace the structure size from 60 sq. feet to 80 sq. feet. Commissioner Crow seconded and Commissioner Robertson did not accept the change. A vote was taken on whether to so amend the main motion and the motion failed 5 to 6.

Kenn Adcock aye  
Doug Crow aye  
Judy Davis aye  
Michael Farrow no  
Jane Jacobsen no  
Walt Loehrke aye  
Joe Palena no  
Dave Robertson no  
Katharine Sheehan no  
Anne Squier no  
Wayne Wooster aye

Chair Squier made a motion to change the language of the staff recommendation on ER, page 5 as follows and Commissioner Sheehan seconded. A vote was taken and the motion passed 9 to 2.

*Motion:*

Procedural Guidelines

Comment Period

Reviewing agencies shall allow interested parties at least 10 calendar days from the date a notice is mailed and/or posted to **mail** written comments on the proposed development.

Kenn Adcock aye  
Doug Crow aye  
Judy Davis no  
Michael Farrow aye  
Jane Jacobsen aye  
Walt Loehrke aye  
Joe Palena aye  
Dave Robertson aye  
Katharine Sheehan aye  
Anne Squier aye  
Wayne Wooster no

Chair Squier made a motion to change the language of the staff recommendation on UAO, item 10 about flagpoles to include "and located within 50 feet of the principal building." Commissioner Sheehan seconded and a vote was taken. The motion failed 5 to 6.

Kenn Adcock no  
Doug Crow no  
Judy Davis no  
Michael Farrow aye  
Jane Jacobsen aye  
Walt Loehrke no  
Joe Palena aye  
Dave Robertson no  
Katharine Sheehan aye  
Anne Squier aye  
Wayne Wooster no

Chair Squier made a motion to change the language of the staff recommendation on UAO, item 4, to include "that are not in the foreground of a KVA." Commissioner Sheehan pointed out that many property owners might not know that whether they are in the foreground of a KVA. Chair Squier withdrew the motion.

Chair Squier made a motion to change the language of the staff recommendation on UAO, item 4, to include language stipulating accessory structures allowed outright are "black or brown." Commissioner Jacobsen seconded and a vote was taken. The motion failed 4 to 7.

Kenn Adcock no  
Doug Crow no  
Judy Davis no  
Michael Farrow aye  
Jane Jacobsen aye  
Walt Loehrke no  
Joe Palena aye  
Dave Robertson no  
Katharine Sheehan no  
Anne Squier aye  
Wayne Wooster no

Commissioner Adcock made a motion to amend the staff recommendation to change in UAO, item 4, to replace the structure size from 60 sq. feet to 96 sq. feet basing this figure on standard size building supplies. The motion failed for lack of a second.

Vice Chair Wooster called for a vote on Commissioner Robertson's original motion, as amended. The motion passed 8 to 3.

Kenn Adcock no  
Doug Crow no  
Judy Davis aye  
Michael Farrow aye

Jane Jacobsen aye  
Walt Loehrke no  
Joe Palena aye  
Dave Robertson aye  
Katharine Sheehan aye  
Anne Squier aye  
Wayne Wooster aye

### **Area Manager's Report**

Chair Squier asked for the NSA Manager's Report and Dan Harkenrider reported that the Burdoin Mountain thinning project has started and should be completed next month.

### **Other Business**

Chair Squier asked for other business topics and Commissioner Sheehan indicated that the six county meeting originally scheduled for this Friday may be rescheduled. She was still waiting for confirmation on the meeting.

Bennett and Litwak noted that the Executive Session scheduled for this meeting could be postponed as the matters were not pressing. Bennett reminded Commissioners that the November meeting would be held at The Dalles Discovery Center on November 18<sup>th</sup>, as November 11<sup>th</sup> was Veteran's Day.

Chair Squier said that Committee descriptions and assignments had been circulated and that she had discussed these with Commissioners individually. She asked if these were acceptable. As no Commissioner indicated any concern, she indicated to Bennett that these assignments are therefore final.

There being no further business the meeting was adjourned at 7:05 p.m.

Notes taken by Kathy Obayashi- Bartsch  
Date Minutes Approved: November 18, 2003