

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

JODY AKERS, PAUL AKERS, DANNY
GAUDREN, KATHEE GAUDREN, RACHEL
GRICE, ZACHARY GRICE, GREG MISARTI,
EDMOND MURRELL, KIMBERLY
MURRELL, KIMI RITTER, WAYNE RITTER,
RICHARD J. ROSS, KAREN STREETER,
SEAN STREETER, and ELEANOR WARREN,

Appellants,

and

FRIENDS OF THE COLUMBIA GORGE,

Intervenor-Appellant,

v.

CLARK COUNTY,

Respondent,

and

JUDITH ZIMMERLY, JERRY NUTTER, and
NUTTER CORPORATION,

Intervenors-Respondents.

)
) CRGC No. COA-C-18-01
)
) Clark County No. CDE2017-Z-1069(A)
) **NOTICE OF HEARING FOR**
) **HEARING ON MOTIONS TO**
) **DISMISS**

FRIENDS OF THE COLUMBIA GORGE,

Appellant,

)
) CRGC No. COA-C-18-02
)
) Clark County No. CDE2017-Z-1069(A)

and)
))
JODY AKERS, PAUL AKERS, DANNY)
GAUDREN, KATHEE GAUDREN, RACHEL)
GRICE, ZACHARY GRICE, GREG MISARTI,)
EDMOND MURRELL, KIMBERLY)
MURRELL, KIMI RITTER, WAYNE RITTER,)
RICHARD J. ROSS, KAREN STREETER,)
SEAN STREETER, and ELEANOR WARREN,)
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Intervenors-Appellants,)
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v.)
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CLARK COUNTY,)
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Respondent,)
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and)
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JUDITH ZIMMERLY, JERRY NUTTER, and)
NUTTER CORPORATION,)
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Intervenors-Respondents.)
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The Columbia River Gorge Commission will hold a hearing on April 9, 2019 at 9:00 a.m.¹ at the Holiday Inn Express, 477 NW Phoenix Drive, Troutdale, Oregon, to hear oral argument on motions to dismiss the consolidated appeals by Jody Akers, et al. and Friends of the Columbia Gorge of Clark County Hearing Examiner decision No. CDE2017-Z-1069(A).

The Commission derives its jurisdiction over the matter from Section 15(a)(2) of the Columbia River Gorge National Scenic Area Act (16 U.S.C. § 544m(b)(2)), which allows a

¹ At the time of this notice, the Commission has not finalized its agenda for its meeting, so the Commission is noticing this hearing for the beginning of the meeting. The Commission finalizes its agenda approximately one week prior to its meeting. The Commission will provide a copy of the final agenda to the parties at that time.

person adversely affected by any final action or order of a county relating to the implementation of the National Scenic Area Act to appeal to the Commission.

PARTIES

The parties in the appeals are:

- Jody Akers, Paul Akers, Danny Gaudren, Kathee Gaudren, Rachel Grice, Zachary Grice, Greg Misarti, Edmond Murrell, Kimberly Murrell, Kimi Ritter, Wayne Ritter, Richard J. Ross, Karen Streeter, Sean Streeter, and Eleanor Warren, represented by Gary K. Kahn, and Peggy Hennessy, Reeves Kahn Hennessy & Elkins, Portland Oregon.
- Friends of the Columbia Gorge, represented by Nathan J. Baker, Senior Staff Attorney, Friends of the Columbia Gorge, Portland, Oregon.
- Clark County, represented by William Richardson, Deputy Prosecuting Attorney, Clark County Prosecuting Attorney's Office, Civil Division, Vancouver, Washington.
- Judith Zimmerly, represented by James D. Howsley, and Armand Resto-Spotts, Jordan Ramis, PC, Vancouver, Washington.
- Jerry Nutter and Nutter Corporation, represented by Stephen W. Horenstein and Maren Calvert, Horenstein Law Group PLLC Vancouver, Washington.

RECORD

The hearing is on the record developed by Clark County. If a party appeals the Commission's action, the Commission will transmit Clark County's record and the record of the Commission's action (under separate cover) to the court in which the appeal is filed. In this case, Clark County provided only an electronic record to the Commission. In the event the court requires or requests a paper copy of the record, Clark County must supply the paper copy of the complete administrative record, including supplements to the record. The Commission makes an oral recording of its proceeding (the parties' oral argument and the Commission's deliberation and oral decision), but does not create a transcription. The oral recording is part of the record of the Commission's action and is available to the parties for duplication and transcription.

ATTORNEYS

An attorney may represent any party. It is not necessary, however, that parties have an attorney. Any individual may elect to proceed without an attorney and speak on his or her own

behalf. Oregon and Washington law require that attorneys must represent governments and all non-governmental organizations or associations. The Commission's counsel, Jeffrey Litwak, will be present to provide advice to the Commission.

ROLE OF PRESIDING OFFICER AND COMMISSION

The Chair of the Commission will act as presiding officer at the hearing. In the absence of the Chair, the Vice Chair of the Commission will act as presiding officer. The presiding officer will rule on all motions, evidentiary questions, and other similar matters. The presiding officer may, at his or her discretion, refer motions, questions or other similar matters to the full Commission. In this matter, the Chair has referred the two motions to dismiss to the full Commission. The full Commission will hear argument on the motions and will make an oral decision. The presiding officer is responsible for issuing the decision on behalf of the full Commission. The Chair of the Commission is Loretta S. DeKay, P.O. Box 730, White Salmon, WA 98672 (509) 493-3323, email: info@gorgecommission.org; the Vice-Chair of the Commission is Robert Liberty, at the same mailing address, phone number, and email address. All filings should be sent to the Commission office at with copies to other parties as appropriate. No person shall send any materials directly to the presiding officer at any address other than the address listed above. The Commission requests persons also send a courtesy copy of any filing to the commission's counsel at jeff.litwak@gorgecommission.org.

The presiding officer will issue a written decision within 90 days after the date the Commission completes its deliberation and issues an oral decision.

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EVIDENCE

The evidence the Commission may consider is derived only from the administrative record. New evidence may not be presented and will not be accepted in briefs or at oral argument.

Pursuant to Commission Rule 350-60-120(6), Clark County is responsible for transmitting to the Commission, at or prior to the hearing, all audiotape recordings (other than the recordings of June 28, 2018 and July 17, 2018, which were provided to the Commission as part of the administrative record), large maps, and exhibits and documents that were not provided in the duplicated record, even if Clark County chooses not to participate in oral argument. The presiding officer has broad authority to redress a failure to do so, including but not limited to, postponing the hearing, excluding a missing item from the record before the Commission, or taking official notice of the missing item and the content of the item as presented by a party that wishes to use the item.

ORAL ARGUMENT

Oral argument is conducted in accordance with Rule 350-60-120. Only parties that have filed briefs may present oral argument to the Commission. If a party waives oral argument, the Commission will consider the case based on that party's brief along with the briefs and oral argument presented by the other parties. The parties may, with the consent of the Commission, stipulate to submit a case to the Commission on briefs without oral argument.

HEARING PROCEDURE

This hearing involves two motions to dismiss directed at both appeals constituting the consolidated appeal. The hearing will be conducted as follows:

Approximately two weeks prior to the hearing, members of the Commission will receive a copy of this notice of hearing, a staff report from the Commission's counsel, the parties' briefs, the administrative record (as supplemented), and a copy of Clark County's National Scenic Area Land Development Code. The Commission will also provide a courtesy copy of the Commission's counsel's staff report to the parties. There is no opportunity to file a written response to the staff report. Parties may address points in the staff report as part of their oral argument.

At the hearing, the Commission will first take up preliminary matters, including disclosures of conflicts of interest and ex parte contacts, and other issues that may arise.

Members of the Commission will then have an opportunity to ask questions that they wish the parties to address in their oral arguments. Members of the Commission need not identify which motion their questions relate to; the parties will address the questions they believe apply to their issues in their oral arguments.

After questions from the members of the Commission, the Commission will hear argument from the movants. The Commission will hear both motions to dismiss in a single oral argument. The movants shall be allowed 20 minutes (shared) for oral argument, which may be divided between the initial presentation and rebuttal. The parties responding to the movants shall be allowed 20 minutes (shared) to respond. These are uninterrupted times; members of the Commission do not ask questions during the parties' oral arguments. These times are for both motions; there are not separate time periods for each motion or each appeal. The presiding officer will track the parties' overall time but will not provide warnings at set times; the parties are responsible for managing the length of their arguments.

After the parties' arguments, members of the Commission may ask brief questions of the parties concerning the facts of the case, the arguments made, and applicable law. Each side shall have two (2) minutes to answer each question, except that the Chair may allow a longer time provided that he or she allows both sides the same time to answer the question. Multiple appellants or respondents shall share the allotted time to answer a question. This opportunity for questions covers all motions. Members of the Commission need not identify which motion their questions relate to.

After oral argument is completed, the Commission will deliberate to an oral decision. Members of the Commission may ask questions of its counsel during deliberations; parties do not have an opportunity to respond to the Commission's counsel, except that the presiding officer may at his or her discretion allow the parties to respond. The presiding officer may at his or her discretion also refer questions during deliberation to the parties, in which case each side will have the same amount of time to answer a question. The Commission may vote on each issue raised in the motions separately or vote on some or all issues together. A simple majority of the Commission is required for a decision. The presiding officer participates in all voting. In the event of a tie vote, the presiding officer may request the Commission continue deliberating to reach a majority or conclude that additional deliberation will not break a tie. A tie vote means that a motion does not pass.

WRITTEN DECISION

The presiding officer will issue a written decision on the motions within 90 days of the date the Commission makes its oral decision. If the Commission votes to grant the motions to dismiss, the written decision will constitute the Final Opinion and Order of the Commission in accordance with Commission Rules 350-60-210 and 350-60-220 as applicable. If the

Commission votes to deny the motions to dismiss, the written decision will not be the Final Opinion and Order of the Commission. The presiding officer typically asks the Commission's counsel to draft written decisions and orders for the presiding officer's signature. There will be only one written decision. Members of the Commission do not issue dissenting or concurring opinions. The Commission's counsel may consult with individual members of the Commission while drafting the decision, but the full Commission does not hold a hearing to deliberate or vote to adopt the written decision. There is no opportunity for the parties to review any draft written decision.

Any party may appeal a Final Opinion and Order within 60 days after the date of service of the order, as allowed by Section 15(b)(4) of the National Scenic Area Act (16 U.S.C. § 544m(b)(4)). In the event the Commission denies one or both of the motions to dismiss, the Commission's written decision may not be appealable.

MERITS BRIEFING

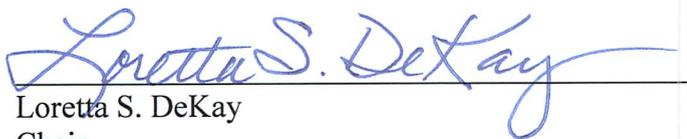
If the Commission does not dismiss the appeals, the time for the appellants to prepare their briefs will begin immediately. In the alternative, the Chair may, at her discretion, request the parties set a firm briefing schedule immediately following the end of this hearing or schedule a conference call to set a firm briefing schedule.

NOTICES

A party who fails to attend or participate in the hearing may be held in default in accordance with Commission Rule 350-16.

In the event a party is not represented by an attorney, that party may, during the course of the proceedings, request a recess if at any point the party determines that representation by an attorney is necessary to the protection of that party's rights.

DATED this 7th day of March 2019



Loretta S. DeKay

Chair

Columbia River Gorge Commission

NOTICE OF MAILING

I certify that on March 7, 2019, I mailed the attached NOTICE OF HEARING FOR HEARING ON MOTIONS TO DISMISS by electronic mail* to the following persons, all of whom have indicated that they accept email service:

Gary K. Kahn
Peggy Hennessy
Reeves Kahn Hennessy & Elkins
Attorneys for Jody Akers, et al.
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Nathan J. Baker, Senior Staff Attorney
Friends of the Columbia Gorge
Attorney for Friends of the Columbia Gorge
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William Richardson, Deputy Prosecuting Attorney
Prosecuting Attorney's Office, Civil Division
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Stephen W. Horenstein
Maren Calvert
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maren@horensteinlawgroup.com

/s/ Nancy A. Andring
Nancy A. Andring
Administrative Analyst

* All parties consented to electronic mail service of this Notice of Hearing and waived service by personal delivery, registered or certified mail as required in Commission Rule 350-16-009. See emails from Bill Richardson, Maren Calvert, Nathan Baker, Gary Kahn, Armand Resto-Spotts, and Steve Horenstein, all dated March 5, 2018.