

Columbia River Gorge Commission
Meeting Minutes
April 9, 2019

Holiday Inn Express
477 NW Phoenix Dr., Troutdale, Oregon

MEMBERS IN ATTENDANCE

Bridget Bailey
Bowen Blair
Lynn Burditt
Keith Chamberlain
Sondra Clark
Lorrie DeKay
Dan Ericksen
Robert Liberty
Rodger Nichols
Janet Wainwright
Damon Webster

MEMBERS ABSENT

Don Bonker
Carina Miller

STAFF PRESENT

Nancy Andring, Administrative Analyst
Bryce Guske, Land Use Planner - Klickitat County
Joanna Kaiserman, Land Use Planner
Jeff Litwak, Counsel
Mike Schrankel, GIS Specialist
Krystyna Wolniakowski, Executive Director
Aiden Forsi, PSU Hatfield Fellow

AUDIENCE PRESENT

Acker, Connie
Baker, Nathan – Friends of the Columbia Gorge
Becker, Dave – Friends of the Columbia Gorge
Calvert, Maren
Carr, Geoff – Friends of the Columbia Gorge
Cheatham, North
Cornelison, Peter – Friends of the Columbia Gorge
Herrington, Gregg
Horenstein, Steve
Howsley, Jamie
Kahn, Gary – Friends of the Columbia Gorge
Lang, Michael – Friends of the Columbia Gorge
Leipper, Bob
Lingley, Terra – Historic Columbia River Highway, ODOT
McCoy, Steve – Friends of the Columbia Gorge

Resto-Spotts, Armand
Richardson, Bill – Clark County
Ryan, Casey – Mayor, Troutdale

Others were present during the day.

Call to Order and Roll (9:02 AM)

Chair DeKay called the meeting to order and Nancy Andring called roll.

Approval of Minutes for March 12, 2019 Commission meetings (9:03 PM)

Commissioner Nichols moved to adopt the March 12, 2019 meeting minutes. Commissioner Wainwright seconded the motion. Commissioner Blair moved to make a correction to the minutes. The motion passed unanimously on a voice vote, with Commissioner Liberty abstaining because he was not present at the meeting.

Executive Director's Report (9:05 AM)

Director Wolniakowski reported on:

- March 25, 2019 Oregon Budget Hearing and WA budget status
- Commission schedule for future Gorge "2020" topics (see attachment A)
- Governor Evans Tribute at Gorge-ous Night Out in Olympia
- Status of recruiting a new Administrative Assistant

Oral Argument on Motions to Dismiss *Jody Akers, et al. v. Clark County*, CRGC No. COA-C-18-01 and *Friends of the Columbia Gorge v. Clark County*, CRGC No. COA-C-18-02 (consolidated cases)

(9:21 AM) The Gorge Commission held a hearing on motions to dismiss the above appeals filed by intervenors Judith Zimmerly, Jerry Nutter, and the Nutter Corporation. The Gorge Commission heard oral argument from the parties and deliberated to an oral decision. The Commission will issue a final written order at a later date.

Chair DeKay opened the hearing and asked the parties to introduce themselves. The parties introduced themselves. Chair DeKay stated that the hearing was on the record and no new evidence would be allowed. Chair DeKay announced that the procedure for the hearing is contained in the Notice of Hearing that the Commission sent the parties last month.

Chair DeKay requested Commissioners disclose ex parte communications and conflicts of interest. Chair DeKay noted the Commission's counsel issued a staff report with several general disclosures.

Commissioner Blair disclosed his past experiences, including his employment as Director of Friends of the Columbia Gorge from 1982 to 1988, a donor to, and board member of Friends of the Columbia Gorge from 1988 to March 2011, including Board Chair for part of that time. These dates preceded his appointment to the Commission. Commissioner Blair also disclosed that he was a staff member and officer for the Trust for Public Land from 1989 to 2010. One of the projects he was involved in at TPL involved acquisition of land for Steigerwald Lake National Wildlife Refuge near the subject property. He said he can be fair and impartial about the applicable law and facts and confident he can and will be impartial in this hearing.

Commissioner Liberty disclosed that he served on the Board of Directors for Friends of the Columbia Gorge in the 1980s and up to two years ago, donated \$25 per year to Friends of the

Columbia Gorge. He said he can be partial in the proceeding and was a land use hearings officer, so is aware of the need to be impartial and act on the record, so he can and will be impartial in this hearing.

Commissioner Bailey disclosed that she is married to the district attorney of Wasco County.

Commissioner Burditt disclosed that she is the Area Manager for the Columbia River Gorge National Scenic Area for the U.S. Forest Service, and that the Forest Service has a variety of partnerships with Friends of the Gorge and works with all six Gorge counties to provide technical assistance. She stated that she can be fair and impartial.

Commissioner Webster disclosed that through his business, he knows Mr. Howsley, attorney for Ms. Zimmerly. He has no current contracted projects or clients in common, and no common financial interest with Mr. Howsley. Approximately 30 years ago, he worked on a project with Mr. Howsley's father. Commissioner Webster disclosed his firm is currently working with a common client with Mr. Horenstein, but no financial interest with Mr. Horenstein individually or between businesses. Commissioner Webster disclosed that he is well-acquainted with Jerry Nutter and Commissioner Webster's company has had several prior contracts for surveying, engineering, and design services with him and the Nutter Corporation in the past but has no current common financial interests with Mr. Nutter or Nutter Corporation. He stated neither he nor his company have any prior involvement with the quarry at issue. He stated that he could be impartial and a fair decision-maker in this hearing.

None of the parties questioned the commissioners' disclosures and none challenged any commissioner's participation in the hearing.

Commissioners asked questions of the parties.

Maren Calvert and Jamie Howsley presented argument on their motions to dismiss on behalf of Judith Zimmerly, Jerry Nutter, and the Nutter Corporation. They referred to digital slides and presentation boards and provided handout copies of the presentation boards to the Commission. (see attachment B1 and B2)

Gary Kahn and Nathan Baker presented response argument on behalf of Jody Akers, et al., and Friends of the Columbia Gorge. They referred to handouts.¹ (see attachment C)

Maren Calvert and Jamie Howsley presented rebuttal to the respondents' argument.

--Break--Chair DeKay announced the Commission would take a 15-minute break and reminded commissioners not to discuss the argument during the break.

Chair DeKay invited Commissioners to ask questions of the parties. Each side was generally provided up to two minutes to respond to each question. Where parties used extra time, the Chair allowed opposing parties similar extra time. Commissioners Nichols, Wainwright, Liberty, Ericksen, Blair, Bailey and Clark asked questions. The movants objected to Clark County answering questions of the Commission; Clark County did not answer questions.

¹ Some of the handouts presented at the hearing contained the Clark County logo. Clark County did not prepare the handouts and did not submit the handouts at the hearing.

After the Commissioners finished asking questions, Chair DeKay explained that the Commission's role is to decide the motions to dismiss, not the merits of the appeals. The Commission deliberated on the motions.

Following the Commission's deliberations, the Commission voted to deny the motions to dismiss as follows:

Mr. Nutter and Nutter Corporation's Failure to Follow Commission Rules argument

Commissioner Liberty moved to find that the notice of appeal was sufficient and complied with the Commission's rules. Commissioner Wainwright seconded. Commissioner Nichols asked Commissioner Liberty to expound on his motion. The Commission voted as follows:

Bridget Bailey - Y
Keith Chamberlain - Y
Lorrie DeKay - Y
Dan Ericksen - Y
Robert Liberty - Y
Sondra Clark - Y
Rodger Nichols - Y
Janet Wainwright - Y
Damon Webster - Y
Bowen Blair - Y

The motion passed 10 to 0.

Ms. Zimmerly's Lack of Jurisdiction argument

Commissioner Bailey moved that the Commission has jurisdiction under 16 U.S.C. § 544 and is required to hear the issue. Commissioner Ericksen seconded. Commissioner Clark had questions about the motion. The Commission voted as follows:

Bridget Bailey - Y
Keith Chamberlain - N
Lorrie DeKay - Y
Dan Ericksen - Y
Robert Liberty - Y
Sondra Clark - N
Rodger Nichols - Y
Janet Wainwright - Y
Damon Webster - N
Bowen Blair - Y

The motion passed 7 to 3.

Ms. Zimmerly's Lack of Standing argument

Commissioner Liberty moved that we find the parties, Ms. Akers, et al. and Friends of the Columbia Gorge, have standing to bring the appeals to the Commission, with the basis being

physical impacts to parties and adverse effect on the members of Friends of the Columbia Gorge and because Friends of the Columbia Gorge owns land adjacent to the subject property and there is continued proceeding of mining. Commissioner Wainwright seconded. The Commission voted as follows:

Bridget Bailey - Y
Keith Chamberlain - N
Lorrie DeKay - Y
Dan Ericksen - Y
Robert Liberty - Y
Sondra Clark - N
Rodger Nichols - Y
Janet Wainwright - Y
Damon Webster - N
Bowen Blair - Y

The motion passed 7 to 3.

Chair DeKay thanked the attorneys for their helpful presentations and announced the Commission's counsel would draft the final order for the Chair's signature. The Commission will not discuss the final order. There is no opportunity to see a draft order before it is signed.

Chair DeKay asked the parties to stay for a few minutes to develop a briefing schedule. The time for the appellants to begin drafting their brief begins immediately and the respondents' briefs will be due as specified in the Commission's rules.

Lunch (12:21 PM)

Welcome (1:06 PM) Troutdale Mayor Casey Ryan welcomed the Commission.

Opportunity for Treaty Tribe Nations to address Commission (1:17 PM)

As part of the Government to Government consultation process the Commission welcomes input from treaty tribe members on any issue on the agenda and any other matters. No treaty tribe members spoke to the Commission.

Opportunity for Public Comment (1:20 PM)

The following provided public comment to the Commission on items not listed on the agenda:

- Bob Lieper- Troutdale resident. Brought up the compliance findings of the Scenic Resources Review, 2000. Brought up the issue of retaining walls and how walls under a certain size should be allowed outright or through expedited review.

Information Item: "Gorge 2020" Update - County Land Use Designations and Clarifications

(1:24 PM) Mike Schrankel, GIS Manager, Gorge Commission, presented the work to clarify land use designations in Wasco, Hood River, Clark, Skamania and Klickitat Counties. [\(see attachment D\)](#) Multnomah County was completed in 2016.

National Scenic Area Manager's Report (1:55 PM) Commissioner Burditt reported on:

- FS website has public information for consistency determinations.
- Just signed off on review of Underwood Conservation District's Little Wind River project.

- Dog Mountain permitting will start again April 20th.
- Multnomah-Wahkeena Loop trail closed until further notice due to erosion and rock calving.

Other Business (2:12 PM)

- none

Adjourned (2:12 PM)

Approved 5.14.19