

Columbia River Gorge Commission

Meeting Minutes

August 13, 2019

Columbia Gorge Discovery Center & Museum
5000 Discovery Dr, The Dalles, Oregon

MEMBERS IN ATTENDANCE

Bridget Bailey
Bowen Blair
Don Bonker
Lynn Burditt
Sondra Clark
Keith Chamberlain
Lorrie DeKay
Dan Ericksen
Robin Grimwade
Robert Liberty
Rodger Nichols
Janet Wainwright

MEMBERS ABSENT

Carina Miller

STAFF PRESENT

Connie Acker, Administrative Assistant
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

AUDIENCE PRESENT

Baker, Nathan – Friends of the Columbia Gorge
Brewer, Angie – Wasco County Planning
Broke-Willbanks, Elizabeth
Calvert, Maren
Carr, Geoff
Cornelison, Peter – Friends of the Columbia Gorge
Duce, Ron
Gatz, Casey – US Forest Service
Gaudren, Danny
Gaudren, Kathee
Grice, Rachel – Friends of the Columbia Gorge
Heath, Delvis – Confederated Tribes of the Warm Springs
Howsley, Jamie
Irish, Sherri
Kahn, Gary
Keister, Larry
Lang, Michael – Friends of the Columbia Gorge
Lingley, Terra

Marcus, Riley – City of The Dalles
McCoy, Steve – Friends of the Columbia Gorge
Peters, Alan - Skamania County Planning
McConville, Brigette
Misarti, Greg
Rittenhouse, Ryan – Friends of the Columbia Gorge
Schwartz, Kathy
Streeter, Karen
Streeter, Sean

Others were present during the day.

Call to Order and Roll (9:00 a.m.)

Chair DeKay called the meeting to order and Connie Acker called roll.

Oral Argument on Jody Akers v. Clark County and Friends of the Columbia Gorge v. Clark County, Nos. COA-C-18-01 and COA-C-18-02 (consolidated cases) (9:05 a.m.)

The Gorge Commission held oral argument on the merits of the above appeals filed by Jody Akers, et al. and Friends of the Columbia Gorge. The Gorge Commission heard oral argument from the parties and deliberated to an oral decision.

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. No parties had any questions about the Notice of Hearing.

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 Grimwade disclosed that he was on Clark County Planning Commission but that mining operations was not discussed.

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.

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 to \$35 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. He said that he has not had any parte communications.

Commissioner Bailey disclosed that she paid a small amount of money to attend a Friends' walk. She also disclosed that she had met with Friends regarding various issues sometime in 2018.

Chair DeKay invited Commissioners to ask questions of the parties.

Commissioner Liberty questioned the Commission's legal counsel.

Ms. Zimmerly's attorney, Jamie Howsley, stated that Ms. Zimmerly was preserving her ability under the Washington Land Use Petition Act, RCW 36.70C.120 to maintain the right to supplement the record at a later time to raise issues related to disqualification and conflicts of interest. Ms. Zimmerly has many pending

public records requests with agencies and until they receive that information, they're still in the dark a little bit.

Mr. Nutter and the Nutter Corporation's attorney, Maren Calvert, questioned Commissioner Bailey whether her contact with Friends pertained to mining activity. Commissioner Bailey stated that the discussions did not pertain to mining.

Chair DeKay asked whether the Commissioners had questions for the parties to address in their oral argument.

Commissioners Blair, Liberty and Bailey asked questions for the parties to address.

Chair DeKay announced that each party will have 35 minutes for oral argument.

Nathan Baker and Gary Kahn provided oral argument. The attorneys requested to reserve their remaining 7 minutes for rebuttal.

Jamie Howsley and Maren Calvert provided oral argument. They presented documents entitled:

Standards of Review [Akers' Brief]

Letter addressed to Brian Litt, Columbia River Gorge Commission, from attorney Steven Tubbs dated 3/24/1993

Printed email from Jamie Howsley to Joseph Schaefer and various parties with the subject line: DNR Views of No Activity

Illustrative Exhibit From Record Documents

Letter addressed to attorney Steven Tubbs from Lawrence Watters, legal counsel for the Columbia River Gorge Commission, dated 11/27/1996

All these documents are exhibits to the hearing record, except the illustrative exhibit from record documents. There was no motion to disallow the illustrative exhibit from record documents.

Nathan Baker and Gary Kahn presented their rebuttal.

--Break--Chair DeKay announced the Commission would take a 10-minute break and reminded Commissioners not to discuss the argument during the break. (10:30 a.m.)

Chair DeKay asked whether the Commissioners had any questions for the attorneys. (10:45 a.m.)

Commissioner Ericksen questioned the attorneys.

Commissioner Wainwright questioned the attorneys.

Commissioner Nichols questioned the attorneys.

Commissioner Chamberlain questioned the attorneys.

Commissioner Clark - Reserved the right.

Commissioner Grimwade - Reserved the right.

Commissioner Bonker - No questions.

Commissioner Blair questioned the attorneys, including Jeff Litwak.

Commissioner Liberty - No questions

Commissioner Bailey questioned the attorneys

After the Commissioners finished asking questions, Chair DeKay asked the Commission to deliberate.

Commissioner Liberty commented.
Commissioner Blair commented.
Commissioner Bonker commented.
Commissioner Grimwade commented.
Commissioner Clark commented.
Commissioner Chamberlain commented.
Commissioner Nichols commented.
Commissioner Wainwright commented.
Commissioner Ericksen commented.
Commissioner Bailey commented.
Commissioner DeKay commented.
Commissioner Burditt made no comment.

The Commission deliberated to an oral decision.

MOTION: 1

Commissioner Liberty moved as follows: “The Hearing Examiner’s conclusion that CCC 40.240.170(E) was less specific (and therefore not applicable) than subsection (D)(4) improperly construed applicable law because subsection (E) cross references the prior section, subsection (C), not subsection (D) and the application of subsections (D)(4) and (E) implement the NSA Act, and the Hearing Examiner found there was a 10-year period of no mining activity and thus erred in not concluding the mining use was discontinued. The Commission reverses the decision of the Hearing Examiner.” Commissioner Ericksen seconded. The Commission voted as follows:

Bridget Bailey - Y
Bowen Blair - Y
Don Bonker - Y
Keith Chamberlain - Y
Sondra Clark - N
Lorrie DeKay - Y
Dan Ericksen - Y
Robin Grimwade - Y
Robert Liberty - Y
Carina Miller - Absent
Rodger Nichols - Y
Janet Wainwright - Y

The motion passed 10 to 1.

MOTION: 2

Commissioner Liberty moved as follows: “The Hearing Examiner erred in concluding that the mining use was not discontinued when he found that the site revegetated with trees and grasses. The findings are insufficient to support the decision that CCC 40.240.170(D)(4)(a) was met. The Commission remands the decision of the Hearing Examiner on this basis.” Commissioner Wainwright seconded. The Commission voted as follows:

Bridget Bailey - Y
Bowen Blair - Y
Don Bonker - Y
Keith Chamberlain - Y
Sondra Clark - Y
Lorrie DeKay - Y

Dan Ericksen - Y
Robin Grimwade -Y
Robert Liberty - Y
Carina Miller - Absent
Rodger Nichols - Y
Janet Wainwright - Y

The motion passed 11 to 0.

MOTION: 3

Commissioner Liberty moved as follows: “The Hearing Examiner’s Discussion Finding (F)(3) was clearly erroneous and arbitrary and capricious and improperly construed applicable law. This Discussion Finding is internally inconsistent because the Hearing Examiner considered and treated as interpretive authority the 1993 permit in the proceedings, and the conclusion is not supported by the Clark County Code citations that the Hearing Examiner cited. The Commission remands the decision of the Hearing Examiner on this basis.” Commissioner Nichols seconded. The Commission voted as follows:

Bridget Bailey - Y
Bowen Blair - Y
Don Bonker - Y
Keith Chamberlain - N
Sondra Clark - Y
Lorrie DeKay - Y
Dan Ericksen - Y
Robin Grimwade -Y
Robert Liberty - Y
Carina Miller - Absent
Rodger Nichols - Y
Janet Wainwright - Y

The motion passed 10 to 1.

MOTION: 4

Commissioner Nichols moved as follows: “The Hearing Examiner’s decision was arbitrary and capricious in concluding that Friends of the Columbia Gorge and the neighbors were not parties to the appeal.” Commissioner Bailey seconded. The Commission voted as follows:

Bridget Bailey - Y
Bowen Blair - N
Don Bonker - N
Keith Chamberlain - N
Sondra Clark - N
Lorrie DeKay - N
Dan Ericksen - N
Robin Grimwade -N
Robert Liberty - N
Carina Miller - Absent
Rodger Nichols - Y
Janet Wainwright - Y

The motion failed 3 to 8.

Chair DeKay thanked the attorneys and announced the Commission's counsel would draft the final order for the Chair's signature. The Commission has 90 days to prepare the final order. Chair DeKay announced that the Commission will not meet to discuss or vote on the final order, and there is no opportunity for parties to review or comment on the order before the Chair issues it.

Chair DeKay announced that appeal of the Commission's decision must be made within 60 days of the date the Commission mails the final order to the parties in accordance with Sec. 15 of the National Scenic Area Act. The Commission will email the final order to the parties, and the final order will be posted on the Commission website.

Lunch (1:00 p.m.) The Commission shortened the lunch period to accommodate the very full agenda.

Commission Blair asked for assurances from staff that the mining issue is at the top of the list to deal with and make sure that we have an application or permit if mining is to continue. Krystyna Wolniakowski assured Commissioner Blair that now that a decision had been made, staff will be moving forward to decide the next step and what is within the Commission's jurisdiction. (1:39 p.m.)

Welcome (1:42 p.m.) Discovery Center Director Carolyn Purcell welcomed the Commission.

Approval of Minutes of June 11, 2019 Commission meeting (1:45 p.m.)

Commissioner Nichols moved to adopt the June 11, 2019 meeting minutes. Commissioner Bailey seconded the motion. The motion passed unanimously on a voice vote.

Welcome New Commissioner (1:46 p.m.) The Commission welcomed new Gorge Commissioner, Robin Grimwade, Clark County Appointee.

Thank You to Congressman Don Bonker (1:48 p.m.) The Commission expressed its appreciation to Congressman Bonker for his many years of service. Commissioner Blair provided highlights of Congressman Bonker's service to the Columbia River Gorge Commission.

Opportunity for Treaty Tribe Nations to address Commission (2:00 p.m.)

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 tribes provided comment.

Opportunity for Public Comment (2:00 p.m.)

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

- Ryan Rittenhouse – House Bill 2209 (Relating to safe transportation of oil) and 5579 (vapor pressure in train cars)
- Rich Mays – City of The Dalles Mayor – Commented on urban growth boundary expansion.

Action Item: 2019-2021 Biennium Budget (2:09 p.m.)

Krystyna U. Wolniakowski, Executive Director, presented the 2-year budget approved by Oregon and Washington legislatures and the spending plan for approval. Commissioner Chamberlain moved to approve the 2019-2021 Biennium Budget. Commissioner Nichols seconded the motion. The motion passed unanimously on a voice vote. (See Attachment A)

Action Item*: Re-Adoption of the Roadmap/Timeline for the "Gorge 2020" Management Plan Review and Update Process (2:20 p.m.) (See Attachment B)

Krystyna U. Wolniakowski provided a proposed modification to the roadmap/timeline for completion of revisions to the Management Plan by August 2020.

- Michael Lang, Friends of the Columbia Gorge, questioned technical review Natural Resources section.

After comment and Commission discussion, Commissioner Nichols moved to re-adopt the Roadmap/Timeline for the "Gorge 2020" Management Plan Review and Update Process. Commissioner Wainwright seconded the motion. The motion passed unanimously on a voice vote.

Public Comment for “Gorge 2020” Focus Topics followed by Commission Discussion and Guidance*
(2:42 p.m.)

- Natural Resources Chapter Technical Edits (See Attachment C)
- Economic Development Chapter 2 Proposed Edits (See Attachment D)
 - Amanda Hoey, Executive Director of Mid-Columbia Economic Development Commission discussed economic vitality.
 - Michael Lang, Friends of the Columbia Gorge presented Friends’ Memo: “Review and proposed revisions to the Natural Resources Section of the Management Plan”
 - Steve McCoy, Friends of the Columbia Gorge commented.
 - Various Commissioners asked questions and made comments.
 - Krystyna Wolniakowski set an August 30th deadline for Commissioners to comment on economic vitality.

Executive Director’s Report (3:45 p.m.)

- Reviewed the Draft Agency Workplan 2019-2021 (to be adopted in September 2019) Set an August 30th deadline for Commissioners to comment. (See Attachment E)
- Reported on the Tribes and First Nations Climate Summit in Spokane (July 2019)
- Announced Urban Area Boundary meeting at CRGC office on 8/14/2019 at 2:00 pm
- Announced Land Use Designation workshop at White Salmon Fire Hall on 8/14/2019 at 5:30 pm

National Scenic Area Manager’s Report (4:00 p.m.) Commissioner Burditt reported on:

- Eagle Creek bridge construction contracts awarded
- Trail openings
- Continuing rock fall
- Congestion issues continue at Multnomah Falls
- Ribbon cutting on bike/pedestrian trail on August 3rd
- CAT evaluating transportation w/ODOT
- Herman Creek Campground

Other Business (4:08 p.m.)

- The Commission discussed a possible retreat
 - Various Commissioners commented about retreat, whether it was needed and its intent but decided no to hold a retreat
- The Commission discussed rules relating to public notice of Commission v. Committee meetings
 - Various commissioners commented on quorum issue at Committee meetings
 - Jeff Litwak gave his opinion on this issue

Executive Session (4:30 p.m.) The Commission held an executive session pursuant to Commission Rule 350-11-006(1)(g) to consult with counsel concerning the legal rights and duties of the Commission regarding current litigation or litigation likely to be filed.

Adjourned (4:30 p.m.)

Approved 9.10.19