

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

GAIL CASTLE

Petitioner,

and

DAVID SWANN,

Intervenor-Petitioner,

v.

EXECUTIVE DIRECTOR,

Respondent.

CRGC No. C99-0017-K-G-11

FINAL OPINION AND ORDER
(including Findings of Fact
and Conclusions of Law)

I. INTRODUCTION

This case is the appeal of the decision of the Executive Director denying Ms. Castle's application to construct a "replacement" dwelling at a proposed site on her property, of which 520 acres is located in the general management area in Klickitat County.¹

For the reasons set forth below, we reverse the decision of the Executive Director and remand with instructions.

II. PARTIES

The parties to the hearing were:

Petitioner Gail Castle, as represented by Steve DiJulio and Jill Long of Foster, Pepper and Shefelman,

Intervenor-Petitioner David Swann, representing himself; and

¹ Klickitat County has not chosen to adopt land use ordinances to implement the Columbia River Gorge Scenic Area Act. Therefore, by law the Commission was then charged with adopting, and did adopt, such an ordinance for the county. By rule of the Commission, the Executive Director is charged with making the initial decision on permit applications in the county. Dissatisfied applicants may "appeal" to the Commission, which triggers a contested case hearing. See Commission Rules Chapter 350, Division 70. This order is the product of such an appeal.

Respondent Executive Director, as represented by Jeffrey Litwak.

Although not parties to the proceeding, Klickitat County, also represented by Ms. Long, was allowed to file an amicus curiae brief on behalf of Ms. Castle, and the Friends of the Columbia Gorge, represented by Gary Kahn of Reeves, Kahn and Eder, was allowed to file an amicus curiae brief on behalf of the Executive Director.

III. SUMMARY OF THE PROCEEDINGS

Ms. Castle filed her application to replace an existing single-family dwelling with a new single-family dwelling on December 13, 1999. After some study and some investigation, the Executive Director indicated that she might not be able to approve the new dwelling site proposed in the application but offered to discuss possible approvable alternatives. The two parties did meet to discuss alternatives but were not able to reach agreement on an alternative. Ms. Castle asked the Executive Director to rule on the original proposal.

On June 27, 2000, the Executive Director denied Ms. Castle's application. Ms. Castle filed a timely Notice of Intent to Appeal and Petition pursuant to Commission Rules Chapter 350, Division 70. Appropriate notice of the hearing was issued, and the parties were determined as discussed above.

At the initiation of Chair Anne Squier, a prehearing conference was held on December 4, 2000, pursuant to Commission Rule 350-70-120. Chair Squier presided over the deliberations, which resulted in the issuance of a final prehearing order, as provided in Commission Rule 350-70-130. The preliminary order identified the factual and legal contentions of each party. It also identified witnesses and summarized their testimony and estimated the length of each party's case.

The hearing began as scheduled on December 12, 2000. The hearing proceeded as outlined in Commission Rule 350-70-140 and as agreed to in the prehearing order. After discussion of some preliminary matters by the Chair and Commission, the attorneys for Petitioner Ms. Castle presented her case, followed by Intervenor-Petitioner David

Swann and then by counsel for the Executive Director, with all parties' witnesses being subject to cross-examination and questions from the Commission. Petitioner and Intervenor-Petitioner were given the opportunity to present rebuttal evidence. The hearing was then continued until December 27, at which time the Commission heard closing arguments and then deliberated toward the decision reflected in this order.

IV. PROCEDURAL RULINGS

A. Standing

The Executive Director stipulated that Ms. Castle has standing to appeal because she was the applicant in the matter for which review is requested. In addition, the Executive Director stipulated that Mr. Swann had standing because he submitted a comment on the original application.

B. Objections and Motions

All rulings made on objections and motions during the hearing are hereby affirmed. Any objections or motions not ruled upon during the hearing are hereby overruled.

V. STANDARDS OF REVIEW

The Commission rules set forth the standards of review in full as follows:

- (1) The Commission shall *reverse* a land use decision when:
 - (a) The Executive Director exceeded his/her jurisdiction;
 - (b) The decision is unconstitutional;
 - (c) The decision violates a provision of applicable law and is prohibited as a matter of law; or
 - (d) The decision was clearly erroneous or arbitrary and capricious.
- (2) The Commission shall *remand* a land use decision for further proceedings when:
 - (a) The findings are insufficient to support the decision;

- (b) The decision is not supported by substantial evidence in the whole record;
- (c) The decision is flawed by errors that prejudice the substantial rights of the petitioner(s); or
- (d) The decision improperly construes the applicable law.

350-70-230 (emphasis added).

Thus, this rule draws a distinction between reversal and remand of the Executive Director's decision. Generally, the Commission *reverses* a decision of the Executive Director when that decision is flawed as a matter of law and can be fully resolved without further discretionary decisionmaking by the Executive Director. In contrast, the Commission *remands* the case to the Executive Director when there are factual or legal problems with the initial decision but some further determinations by the Executive Director are necessary or appropriate.

VI. FINDINGS OF FACT²

1. The applicable Commission Rules (in this instance, also referred to as a "Land Use Ordinance") includes a definition of "parcel" that depends in part on what a county's regulations defined as a parcel on the date of the Scenic Area Act. 350-80-040(97). Klickitat County had a subdivision ordinance in effect on that date, November 17, 1986. At that time, the subdivision ordinance's definition of "lot" stated that, "A lot shall be considered as all contiguous land under a single ownership unless legally platted or short platted." Based on the land ownership information submitted by the applicant and the above definitions, the land affected by this decision was part of a 1,500-acre parcel on November 17, 1986.

2. Approximately 520 acres of this 1,500-acre parcel are located within the Scenic Area. The subject property is in the General Management Area and designated Large-Scale Agriculture.

² Factual statements by the Commission in Part IX, Analysis/Reasoning are also considered Findings of Fact.

3. An existing dwelling, pole barn, hay barn, shop, and shed are located in the middle of the NE ¼ of Section 34 at the southern end of the subject property, with access from County Road 1230. The existing dwelling was built around 1900, according to the Klickitat County Assessor's Office. In 1900 Klickitat County did not require building permits.

4. The existing dwelling is two-stories, 1,682 square feet in size and approximately 25 feet tall. The applicant has proposed a one-story replacement dwelling with attached garage and deck totaling 2,300 square feet, 20 feet tall, in a location approximately 10 feet east of the existing dwelling. The existing dwelling would be removed on completion of the replacement dwelling.

5. The building site is visible from two Key Viewing Areas: the Rowena Plateau and Nature Conservancy Viewpoint, and the Historic Columbia River Highway. The distance from the building site to the Rowena Plateau and Nature Conservancy Viewpoint is approximately 1-3/4 miles. The site comes into view along the Historic Columbia River Highway at a distance from the site of approximately 2-1/4 miles, east of the Viewpoint, and at a distance from the site of approximately 3 miles, west of the Viewpoint. Along the Historic Columbia River Highway intermittent views of the building site can be seen for 2 miles to the east and approximately 2-1/2 miles to the west of the Nature Conservancy Viewpoint. The building site is at the north edge of a plateau at an elevation of 480 feet. The site is set back from the southern edge of the plateau approximately 750 feet. The Nature Conservancy Viewpoint on the Rowena Plateau is at an elevation of approximately 710 feet. At a distance of 1-3/4 miles the building site is approximately 230 feet lower than the Viewpoint. As the distance from the Viewpoint increases and elevation decreases, the building site becomes increasingly obscured by topography and vegetation.

6. The building site is at the north edge of open pastureland that undulates gently to the south toward a sparsely treed bluff. The proposed building site includes a

hedgerow of mature lilac bushes approximately 10 feet tall. If the lilacs were preserved, they would screen approximately 20 percent of the proposed dwelling's south elevation during mid-spring through mid-fall (leaves on). Directly to the north of the proposed site, the ground rises steeply to provide a mixed backdrop of rock, clusters of trees, and open grass.

VII. CONTENTIONS OF THE PARTIES

The prehearing order provides a summary of the contentions of each of the parties, which is set forth immediately below with minor paraphrasing.

A. Petitioner Gail Castle

1. Petitioner owns nine separate parcels pursuant to the definition of parcel in Commission Rule 350-80-040(97).

2. Petitioner's proposed replacement dwelling complies with the General Management Area Scenic Review Criteria listed in Commission Rule 350-80-520 because the dwelling will have a minimal visual impact on the Scenic Area. More specifically:

- a. The replacement dwelling is visually subordinate based on the location, size and design of the house pursuant to Commission Rule 350-80-520(2)(b).
- b. The cumulative effect of the proposed replacement dwelling is to minimize potential visual effects and comply with visual subordination policies pursuant to Commission Rule 350-80-520(2)(c).
- c. The replacement dwelling is not highly visible from Key Viewing Areas and in fact is sited in such a manner that minimizes visibility from Key Viewing Areas pursuant to Commission Rule 350-80-520(2)(f).

3. The Executive Director did not make a timely decision on Petitioner's application pursuant to Commission Rule 350-80-100.

B. Intervenor-Petitioner David Swann

1. Petitioner meets all the criteria under Commission Rule 350-80-520 and the Executive Director has improperly and inconsistently construed the criteria under this section.

2. Petitioner has nine parcels under Klickitat County Zoning Ordinance and Commission Rule 350-80-040(97), and the Executive Director has improperly disregarded the inclusion of the Zoning Ordinance in the Commission Rules.

3. The Executive Director's untimely decision under Commission Rule 350-80-100 constitutes an automatic approval.

C. Respondent Executive Director

1. Pursuant to Commission Rule 350-80-040(97) (definition of parcel), and Klickitat County Subdivision Ordinance § 4.21 (1983) (definition of lot), Ms. Castle's property is not nine separate parcels, but consists of one parcel that includes over 500 acres in the Scenic Area.

2. Pursuant to Commission Rules 350-80-070(2) (1997) (general standard for replacement uses) and 040(74) (definition of in-kind), Ms. Castle applied for a replacement dwelling that is not "in-kind." The land use ordinance requires that for replacement dwellings that are not "in-kind," the new dwelling must comply with all of the land use ordinance criteria.

3. Pursuant to Commission Rule 350-80-520(2)(b), Ms. Castle's proposed location is highly visible as seen from key viewing areas.

4. Pursuant to Commission Rule 350-80-520(2)(f), Ms. Castle's proposed location of her dwelling is not the site that minimizes visibility as seen from key viewing

areas, because there are several other sites on the parcel that provide better screening for the dwelling than the proposed site.

5. An application is not automatically approved when the decision is not issued within the 72 day time period specified in the land use ordinance (Commission Rules 350-80-100(2) and 130(3)). Ms. Castle consented to an extension of time for the Executive Director to review her land use application.

6. The Executive Director's denial of Ms. Castle's application does not constitute a regulatory taking.

VIII. CONCLUSIONS OF LAW

The Commission's conclusions of law are set forth immediately below. In some instances, to assist the reader's understanding of this order, the Commission's reasons for reaching that conclusion are also summarized. In general, however, the Commission's full reasoning and analysis is found in the following part of this order, Part IX Analysis/Reasoning. No conclusion in this order should be used as precedent outside of the specific context provided in Part IX.

A. The Parcel

1. Pursuant to Commission Rule 350-80-040(97) (definition of parcel), and Klickitat County Subdivision Ordinance § 4.21 (1983) (definition of lot), Ms. Castle's property is not nine separate parcels, but consists of one parcel that includes over 500 acres in the Scenic Area.

B. Replacement Dwellings

By a preponderance of the evidence, Petitioner demonstrated that the proposed replacement dwelling satisfies all of the scenic review criteria of Commission Rule

350-80-520(2). This conclusion is based upon the specific and unique facts of this case, as follows:

1. Petitioner's replacement dwelling should be evaluated as part of an established viable commercial farming operation, one of the key resources that the Gorge Commission is charged with protecting under the federal Scenic Area Act.

2. The alternative sites identified by the Executive Director were not practicable as *replacements* for the existing dwelling, which serves an integral function in the commercial farming operation.

3. Petitioner committed to work with the Executive Director to develop appropriate permit conditions that would further reduce visual impacts of the development and its overall context.

4. There are no practicable alternatives that can use topography and existing vegetation to a greater degree than this site.

5. When applying the scenic review criteria to a *replacement* dwelling that is part of a complete commercial farming operation, the applicant is entitled to have a *functional* replacement – *i.e.*, a dwelling that serves the same level and type of role on the farm that the prior dwelling did, so long as the replacement can be made visually subordinate from Key Viewing Areas. This proposed replacement dwelling and the related changes will result in reduced visual impacts of the farm operation as a whole.

C. Timing of Decision

1. The Executive Director's decision was not invalid because of the timing of its issuance, and the application was not automatically approved.

D. Regulatory Takings Issue

1. No party to this proceeding claimed a taking through the Special Review process in Commission Rule 350-70-060, the mandatory process for asserting a

regulatory taking. In the event that a court determines that a takings claim was properly raised in this proceeding, the Commission's reversal of the Executive Director's decision renders any claim for damages moot. Any claim is unfounded because the current substantial uses of the property—residential and agriculture—remain available to Petitioner and have been so throughout the pendency of her application.

IX. ANALYSIS/REASONING

A. The Parcel

Commission Rule 350-80-040(97) defines parcel in part as:

****Any unit of land legally created and separately described by deed or sales contract prior to November 17, 1986, if there were no applicable planning, zoning, and land division ordinances or regulations*** (emphasis supplied).*

A Klickitat County subdivision ordinance effective at that time provided the following definition of LOT:

“LOT” is a fractional part of divided land having fixed boundaries, being of sufficient area and dimension to meet the minimum zoning requirements for width and area. The term shall include tracts, parcels, building sites, or divisions. A lot shall be considered as all contiguous land under a single ownership unless legally platted or short platted. Property bisected by a public road or river shall not be deemed contiguous. Section 4.21 (emphasis added).

In short, the effect of these two legal provisions was to define all of Petitioner's land east of Canyon Road as a single lot on the date of the Scenic Area Act. Therefore, that is what the Executive Director was bound to consider for the purpose of identifying alternative sites.

B. Replacement Dwellings

When an agency is called upon to interpret statutes or rules, its primary challenge is to ascertain and give effect to the intention of the legislature, in the case of statutes, or

the agency itself, in the case of the agency's own rules.³ To arrive at that intent, the agency must first look to the words and the context in which they are used. Words used in a statute or rule are to be given their usual and ordinary meaning absent an express definition. Only when the language remains unclear is it appropriate to look to the legislative (or administrative) history of the written law.

Especially when, as in this case, a commission is interpreting the policy in rules that it has itself adopted, a court will usually afford the agency some degree of deference. Also, when members of the commission have some experience or expertise in the subject matter of those rules, the case for deference is even stronger.

In this case, the Executive Director contends that there is no way that the applicable rules can be read to allow Petitioner's replacement dwelling at the proposed site, just 10 feet from the existing dwelling. Furthermore, the Executive Director submits that the Commission should "strictly construe" the rules as a matter of policy choice.

The Commission disagrees with both of these positions. In the factual and legal context of this case, the Commission concludes, and intends to send a clear signal, that applications should be reviewed with an eye toward allowing as much flexibility as the standards and other applicable law allow in each case. In no case, however, should that flexibility be used in a manner that conflicts with the purposes of the federal Scenic Area Act and Management Plan. This case involves a longstanding commercial agricultural operation, a replacement dwelling virtually adjacent to the site of the current, 100-year

³ Because this document is an order, not a legal brief, we will limit the number of citations to court cases. Readers who are interested in examining the legal principles on statutory construction may wish to start with the following cases: *Whatcom County v. City of Bellingham*, 128 Wn2d 537, 909 P2d 1303 (1996); *Portland General Elect. v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d, 1143 (1993); *State Department of Transportation v. State Employees Insurance Board*, 97 Wn2d 454, 645 P2d 1076 (1982); *Jeld Wen v. Environmental Quality Commission*, 162 Or App 100, 986 P2d 582, rev den 329 Or 479 (1999).



old house, and an applicant who has agreed to limitations and conditions that most likely will produce an overall benefit to the scenic resource. Nothing in the language of the federal Scenic Area Act, the adopted Management Plan or the applicable rules/ordinance prohibit this agency from getting to the result that common sense dictates. To the contrary, as we shall now discover, the plain language and the context of the applicable law fully support approval of this application for a replacement dwelling.

Several Commissioners offered theories on how Petitioner's proposed dwelling might satisfy the following definition of "In-Kind Replacement:"

A development or land use which is the same as or smaller than an existing or destroyed use or structure. An in kind building or structure may be shorter in height, smaller mass, and contained entirely within the existing footprint of the existing use or destroyed use or structure.

Commission Rule 350-80-040(74).

Some commissioners noted that the second sentence of this definition states that in-kind buildings "may be" within the footprint, thereby suggesting that this requirement was discretionary, not mandatory. Another Commissioner observed that the language "use or structure" might allow the Commission to consider not just the house, but the broader farming operation. Ultimately, no proposed interpretation of in-kind replacements was offered or agreed to as part of the Commission's motion to approve Petitioner's application. 3

The Commission's formal action and related discussion indicate that the Commission instead chose to base its decision on whether the scenic review criteria, including the "minimize visibility" standard, were fully satisfied. Importantly, had the Commission concluded that Petitioner's proposed house was an "in-kind replacement," there would be no basis for considering 350-80-520(2)(b), (c), (f), (g), etc. In-kind replacement dwellings are only "subject to guidelines for protection of scenic resources involving color, reflectivity, and landscaping." Commission Rule 350-80-070(2)

The parties appear to be in agreement on one important point: any replacement dwelling that is not “in-kind” must be reviewed for consistency with all of the scenic review criteria for Gorge resources. Even if the parties were not in agreement on this point, the plain language of Commission Rule 350-80-070(2) would compel that conclusion. Commission Rule 350-80-070(2) provides in pertinent part:

Any use or structure damaged or destroyed by fire shall be treated as an existing use or structure if an application for replacement in kind in the same location is filed within one year of such damage or destruction. Such replacement uses or structures shall be subject to compliance with guidelines for protection of scenic resources involving color, reflectivity and landscaping. Replacement of an existing use or structure different in purpose, size or scope shall be subject to Commission Rule 35-80, except sections .170 through .510.

The scenic review criteria are numerous and diverse, as they must be to anticipate a wide range of potential uses and situations, and we address those in contention here. The record in this case establishes to the Commission’s satisfaction the review criteria for other resources either have been satisfied, or will be, through conditions to the permit and agreements reached between the parties.

As noted above, the Executive Director’s contentions focus on the “minimize visibility” standard in Commission Rule 350-80-520(2)(f), which provides:

New buildings and roads shall be sited on portions of the subject property which *minimize visibility* from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plant, sensitive wildlife sites or conflict with the protection of cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable. (emphasis added)

In addition to the literal rule language on minimizing visibility, the Commission has refined its interpretation of this standard in at least two previous cases. While these cases were different in many factual and legal respects, the cases are still instructive on questions raised by this case. In a seminal enforcement case, the Commission embraced

the most common professional and lay meaning of "minimize," which is defined by Webster's Third New International Dictionary (1993) to mean, "to reduce to the smallest possible number, degree, or extent." *In the Matter of Skamania County*, Director's Decision NSA 96-81, Findings of Fact, Conclusions of Law and Final Order (January 25, 1999). The decision here must adhere to this interpretation. Second, in a recent case, the Commission offered additional guidance on the "minimize visibility" standard, this time with a focus on the type of alternative sites that must be considered. *Friends of the Columbia Gorge v. Skamania County and David and Gretchen L'Hommedieu*, CRGC No. COA-S-00-04 (October 16, 2000). The lesson of this case is straightforward, at least in the abstract: "Nothing in the 'minimize visibility' standard requires counties to site development at locations that are impracticable." *Id.* at 11.

This brings us to what the Commission concludes is the essential and clear error in the Executive Director's analysis of the case: the Executive Director considered the replacement dwelling in isolation, without taking into account the functions that the dwelling would be replacing. The Director's approach in this case is appropriate when evaluating new dwellings, whether on agricultural or other lands. It would also remain appropriate in evaluating a proposal to replace a dwelling that is not part of an established, ongoing farming operation clustered about the proposed replacement site. However, in this case the Executive Director failed to consider the impacts and viability of the entire farming operation, one of the Scenic Area Act's most protected resources, rather than just the impacts of the isolated replacement dwelling. There was persuasive testimony that the alternative sites identified would not provide Ms. Castle with opportunities for overseeing her stock operation as she has had on an ongoing basis. Therefore, the Commission concluded that none of the identified alternative sites would constitute practicable *replacement* sites for the existing dwelling and turned its attention to the other scenic protection considerations, accepting that existing vegetation and topography could not contribute more to the visual subordination in this case.

Although there is not a specific directive in the rules to consider the "bigger picture," there is certainly language in the scenic review criteria that supports that approach. For example, consider the emphasized language in the following standards, all of which are relevant to this case:

“All Review Uses visible from Key Viewing Areas shall comply with the following applicable guidelines

- (a) Size, height, shape, color, reflectivity, landscaping, siting or other aspects of proposed development shall be evaluated to ensure that such development is “visually subordinate to its setting” as seen from Key Viewing Areas.
- (b) The extent and type of conditions applied to a proposed development to achieve visual subordination should be proportionate to its potential visual impacts as seen from Key Viewing Areas. Primary factors influencing the degree of potential visual impact include: the amount of area of the building site exposed to Key Viewing Areas, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Areas from which it is visible, the number of Key Viewing Areas from which it is visible, and the linear distance along the Key Viewing Areas from which the building site is visible (for linear Key Viewing Areas, such as roads). Written reports on determination of visual subordination and final conditions of approval shall include findings addressing each of these factors.
- (c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.”

Commission Rule 350-80-520(2)(a)(b)(c) (emphases added).

The Commission notes that from Key Viewing Areas, the existing dwelling is one of a cluster of farm buildings, many of which are highly visible despite the distance, because of light, flash and/or reflective colors and roofs. The intermediate colored roof of the existing building attracts the eye somewhat less, but is clearly visible. A lower, one-story home with dark, non-reflective color and roof will be visually subordinate against the rock and treed bluff behind it.

With removal of the existing dwelling and perhaps other measures to reduce visibility of the site overall (for instance, removal or painting of other buildings, additional landscaping), the cumulative effect of replacement of Ms. Castle's existing dwelling will be to reduce visual impacts of her farming operation.

C. Timing of Decision

In both written and oral argument, the Executive Director provided a persuasive response to the contentions by Petitioner and Intervenor-Petitioner that the Executive Director's decision was untimely and thereby triggered an automatic approval of the application. Commission Rule 350-80-130(3) requires that the Executive Director issue a decision in this type of case within 72 days after acceptance of the application with certain exceptions. The Executive Director acknowledges that she exceeded that time limit but contends that this fact did not result in automatic approval of the application.

This contention is consistent with the Commission's understanding of the applicable law. In addition to the case and statutory law discussed in the Executive Director's brief, it should be noted that the courts often distinguish between "mandatory" and "directory" deadlines. *See Norco Constr. Inc. v. King Cy.*, 649 P.2d. 103, 106 (Wash. 1992); *Sullivan v. Department of Transp.*, 858 P.2d 283 (Wash. App. 1993); *Niichel v. Lancaster*, 647 P.2d 1021 (Wash. 1982). Mandatory deadlines set a time limit, but they also expressly prescribe a result, such as deeming the application to be approved by operation of law. In the absence of such an explicit result, however, a statutory deadline

is considered to be "directory," meaning that the statute directs that a deadline be met but does not prescribe any particular result of failing to do so. In the latter case, the sole remedy for an aggrieved party is to file a writ of mandamus in court, asking that the court compel that the agency take action.

The Executive Director also contends that Petitioner agreed to an extension of time, specifically to consider alternative sites. The pertinent Commission Rule specifically recognizes consensual extensions as an exception to the 72-day deadline. 350-80-130(3)(a). Although the parties and Commission understandably focused on other issues at the hearing, the written communications from Petitioner in the record are sufficient to establish that she consented to the continued discussion which required the Executive Director to postpone the decision.

D. Regulatory Takings Issue

As set forth adequately in the Conclusions of Law, the takings contentions fail for both procedural and substantive reasons especially in light of the Commission's directive that a permit be issued, Ms. Castle is assured of continuing the use of her land for the economically beneficial purposes.

X. MISCELLANEOUS PROVISIONS

A. Resolution of Conflicts and Continuing Jurisdiction

The Commission retains continuing jurisdiction in this matter. Such jurisdiction may be invoked to resolve disputes among the parties as follows:

1. Any party, after providing notice to the other parties, may request that the Chair of the Commission take action to resolve a dispute between the parties;
2. If the dispute cannot be resolved to the satisfaction of the parties, the Chair, at the request of any party and after providing notice to the parties, shall refer any continuing issues to the Commission for resolution.

B. Enforcement

Any of the procedural mechanisms discussed in A. may also be used to have the Chair or Commission consider alleged violations of the terms of this order.

XI. CONCLUSION AND ORDER

The decision of the Executive Director is REVERSED and remanded to the Executive Director with direction to issue the permit, with the further understanding that the parties and the Executive Director will agree on further measures as appropriate to reduce visibility, including removal of the existing structure no later than completion of the new structure.

IT IS SO ORDERED.

DATED this 16th day of February, 2001


Anne W. Squier, Chair
Columbia River Gorge Commission

NOTICE: You are entitled to judicial review of this Final Order within 60 days from the date of this order, pursuant to section 15(b)(4) of the Scenic Area Act, P.L. 99-663.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2001, I served a true and correct copy of the foregoing FINAL OPINION AND ORDER by first class mail on the following persons:

Claire Puchy, Executive Director
Columbia River Gorge Commission
PO Box 730
288 E. Jewett Blvd.
White Salmon, WA 98672

Gail Castle
37 Titman Road
Lyle, WA 98635

David Swann
PO Box 830
White Salmon, WA 98672

Gary Kahn
Reeves Kahn & Eder
PO Box 86100
Portland, OR 97286

Jill Long
Foster Pepper & Shefelman, LLP
101 SW Main St., 15th Floor
Portland, OR 97204


Nancy Andring
Secretary
Columbia River Gorge Commission