

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

FRIENDS OF THE COLUMBIA GORGE,)
INC. and MARILYN KELLY,)
)
 Petitioners,)
) CRGC No. COA-S-95-01
 v.)
)
 SKAMANIA COUNTY,)
) DECISION
 Respondent,)
)
 and)
)
 NATURE FRIENDS NORTHWEST,)
)
 Respondent-Intervenor.)

This case is an appeal by Friends of the Columbia Gorge ("Friends") and Marilyn Kelly¹ from a decision of Skamania County upholding the planning director's approval of the conversion of a single-family residence to a clubhouse in the Columbia River Gorge National Scenic Area. We reverse.

The applicant, Nature Friends Northwest ("NFW"), owns a two-acre parcel of property in Skamania County. The property is located in a general management area designated commercial forest. NFW previously obtained a permit to construct a single-family residence at the site. On June 28, 1994, NFW submitted an application to the County for a permit to rebuild an existing structure on the property for use as a clubhouse. The planning director approved the request and the Friends, as petitioner, appealed the decision to the Board of Adjustment. The Board conducted a hearing and upheld

¹At oral argument, the Friends indicated Marilyn Kelly is no longer participating in the appeal.

the director's approval of the clubhouse. The petitioner then filed this appeal with the Gorge Commission.

We address the standard of review first. The Commission shall reverse or remand a land use decision when:

- (a) the governing body exceeded its jurisdiction;
- (b) the decision is unconstitutional;
- (c) the decision violates a provision of applicable law and is prohibited as a matter of law;
- (d) the decision was clearly erroneous or arbitrary and capricious;
- (e) the findings are insufficient to support the decision;
- (f) the decision is not supported by substantial evidence in the whole record;
- (g) the decision is flawed by procedural errors that prejudice the substantial rights of the petitioner;
- (h) the decision improperly construes the applicable law; or,
- (i) a remand is required pursuant to section (d).

Rule 350-60-220

Since the issues raised by petitioner are essentially legal in nature, our inquiry focuses on whether the decision violates a provision of applicable law and is prohibited as a matter of law, based on the record below.

Petitioner contends the county erred by approving the clubhouse because it is not an allowed use in the ordinance and the management plan which lists the uses for each zone. Under this view, any use not listed is prohibited.

The respondent and intervenor (the applicant) argue that if a specific use is not allowed in the ordinance or the management plan, the governing body may authorize it if the use fits the "general framework" of the ordinance and "furthers the purposes of the land use designation." The governing body, according to this

position, has the discretion to decide what use best protects and enhances the resources in the National Scenic Area.

In order to determine what uses are allowed on the property, we turn to the management plan. The introduction contains a detailed guide which lays out each step for determining how a parcel of land may be used. Plan, 13 It begins with the statement that the objective of the management plan "is to ensure that land in the Scenic Area is used consistently with the purposes and standards of the Scenic Area Act." Plan, 13

The first step is to consult the land use designation map. The designation provides initial information about how a parcel may be developed. This reflects the primary use for which the property is suited. In this case, the property is designated commercial forest.

The second step is to identify the uses allowed in each land use designation. "The policies and guidelines in Part II of the Management Plan specify the uses allowed within each land use designation..." Plan, 14 The applicable policies specify the criteria used and the guidelines list the uses allowed within a land use designation.

Two categories of uses are generally allowed. The first consists of uses that do not require review by the governing body's county planning department. These uses are allowed outright. The second is made up of uses that may be allowed after review and approval by the planning department.

We then turn to examine the governing body's ordinance. The provisions in the plan are reflected in the ordinance implementing

the National Scenic Area Act.² Section 22.08.070 provides the allowable uses in a commercial forest zone in the general management areas. Section C provides the uses for commercial forest zones. The first paragraph lists the uses allowed without review.³ The second paragraph lists the uses subject to review by the

²The County's ordinance was reviewed by the Gorge Commission and the Secretary of Agriculture to determine if it was consistent with the Plan as required by the National Scenic Area Act. 16 USC 544e, f The Commission determined it was consistent on September 28, 1993, and the Secretary of Agriculture concurred on December 21, 1993.

³The uses are as follows:

- a. Agricultural use, except new cultivation.
- b. Forest practices that do not violate conditions of approval for other approved uses.
- c. Repair, maintenance and operation of existing structures, trails, roads, railroads and utility facilities.
- d. Construction of roads in conjunction with agricultural and forest uses or practices.
- e. Buildings less than 60 square feet in floor area and not exceeding 18 feet in height, measured at the roof peak, which are accessory to a dwelling.

Section 22.08.070, C., 1

planning director which may be allowed.⁴ A clubhouse does not fall

⁴The uses are as follows:

- a) New cultivation.
- b) New agricultural structures in conjunction with agricultural use, subject to the standards set forth in Subsection B.1, above.
- c) Buildings greater than 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling, subject to the standards set forth in Subsection B.1 and B.2, above.
- d) The temporary use of a mobile home in the case of a family hardship, subject to the standards set forth in Subsections B.1 and B.2, above. See also Section 22.08.040(A).
- e) Construction, reconstruction or modifications of roads, not in conjunction with forest use or forest practices.
- f) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
- g) Structures associated with hunting and fishing operations.
- h) Towers and fire stations for forest fire protection.
- i) Life estates. A landowner who sells or otherwise transfers real property may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined herein. A second dwelling in conjunction with agricultural use may be allowed if:
 - i) The proposed dwelling is in conjunction with agricultural use as set out in Section 22.08.050.B.3)a), above; and
 - ii) Upon termination of the life estate, the original or second dwelling shall be removed.
- j) Temporary onsite structures which are auxiliary to and used during the term of a particular forest practice. "Auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- k) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous land in the same ownership where

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within either of these categories of uses.

The ordinance provides for a third category of uses subject to review by the planning director which may also be allowed.⁵ This

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the facility is to be located. The facility shall be removed upon completion of the harvest operation.

- l) Private roads serving a residence, subject to Subsections B.1 and B.2, above.
- m) A temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with harvest operation or the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season.
- n) Land divisions to facilitate forest management. No resulting parcel may be less than 80 acres in size.

Section 22.08.070, C., 2

⁵The uses are as follows:

- a) Utility facilities and railroads necessary for public service upon a showing that
 - i) There is no practicable alternative location with less adverse effect on agriculture and forest lands and on scenic, cultural, natural and recreation resources and
 - ii) The size is the minimum necessary to provide the service.
- b) Home occupations or cottage industries in existing residential or accessory structures. See also Section 22.08.040(B).
- c) Wineries in conjunction with on-site viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.
- d) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.
- e) The stabling, feeding and grooming for a fee, or the renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals and exercise tracks.
- f) Bed and breakfast inns in single-family dwellings (See also Section 22.08.040(C)), provided that the
(continued...)

list does not include a clubhouse. Nor does any portion of the ordinance allow for approval of a use that is not specified in it or in the management plan. In contrast, the management plan provides that the policies and guidelines "specify the uses allowed within each land use designation..." Plan, 14

Based on the explicit language of the ordinance and the management plan, a clubhouse is not a use that is allowed outright or through review.⁶ Since the ordinance and the management plan do not provide for a clubhouse, it is not permitted.

Our analysis, however, does not end there. The respondent and intervenor argue the governing body has discretion to allow a clubhouse as "nonprofit, environmental, forestry or agricultural

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residence:

- i) Is included in the National Register of Historic Places; or
- ii) Is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation.
- g) Non-profit, environmental, forestry or agricultural learning or research facilities.
- h) Temporary portable asphalt/batch plants related to public road projects, not to exceed six months.
- i) Expansion of existing non-profit group camps, retreat or conference center.
- j) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.
- k) Exploration, development and production of mineral and geothermal resources.
- l) Aquaculture.

Section 22.08.070, C., 3

⁶The county planning directors' report recognized this in concluding: "The use does not appear to be one that is allowed under Section 22.08.070, C. governing the Commercial Forest Land zone." (Rec. 147-148)

learning or research facilities" under the ordinance. Section 22.08.070 In order to consider this position, we examine how the applicant characterized the proposed use. While the documents in the record describe the clubhouse in various ways⁷, the dominant use is for recreational and social purposes.⁸ Learning and research facilities, however, are used to pursue knowledge in a formal or academic manner.⁹ By linking "facilities" with "environmental, forestry or agricultural learning", the context of the use denotes an emphasis on science and formal study.

Under these circumstances, we hold the proposed use does not come within the plain meaning of the term "learning and research facility" in the ordinance. In light of the text of the ordinance, as well as the requirements of the management plan discussed above,

⁷"Hiking club" Rec. 33; "environmental club" Rec. 33; "hostel" Rec. 53; "educational center" Rec. 54; "teaching facility" Rec. 55; "association of hikers" Rec. 91; "shelter, house or place of recreation" Rec. 91; "private membership club" Rec. 108; "environmental group" Rec. 109.

⁸The ordinary definition of the term "clubhouse" contained in the dictionary is instructive. Webster's states as follows:

Clubhouse 1. A building occupied by a club. 2. The locker room for an athletic team.

WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY, 274 (1984)

⁹"Learning" is defined as:

1. Education : instruction. 2. Acquired wisdom, knowledge or skill.

Id. 683

"Research" is defined as:

1. Scientific or scholarly investigation. 2. Close careful study.

Id. 999

the governing body is not free to permit a use that is not allowed. See also Mandelker, LAND USE LAW, 3 (Second Edition). The fidelity to the precise provisions of the National Scenic Area Act and the legislative history revealed in prior decisions of the courts of Washington and Oregon in interpreting the law underscore the standard we must adhere to in this appeal. See Broughton Lumber Company v. Columbia River Gorge Commission 975 F.2d 616 (9th Cir. 1992), cert. denied, 114 S. Ct. 60 (1993); Klickitat County v. Columbia River Gorge Commission, 770 F. Supp. 1419 (E.D. Wash. 1991); Klickitat County v. State of Washington, 71 Wash. App. 760, 862 P.2d 629 (1993).

Moreover, by relying on the precise language of the ordinance and the management plan, we advance the purposes of the National Scenic Area Act. 16 USC 544a, d In the passage of the Act, Congress provided a uniform set of legal standards for the management of the Gorge as one region¹⁰. This uniformity, which is critical to protecting national and interstate interests, is implemented through the management plan and county ordinances. The requirements apply to all levels of government. The Ninth Circuit Court of Appeals expressed this principle in upholding the constitutionality of the Act:

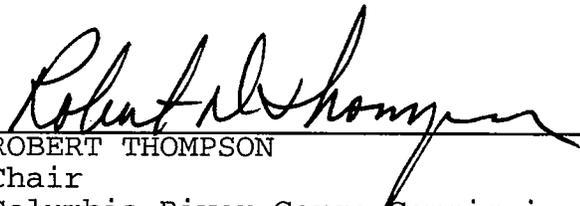
Under the Act, and the resulting Compact, all land use within the Columbia River Gorge Scenic Area, whether private, federal, or local, will be consistent with the management plan developed by the Commission.

¹⁰Senator Hatfield, one of the chief sponsors of the legislation, stated at the time of its enactment that "The Columbia Gorge will be managed as a single geographical unit...". Cong. Rec. S15636 (October 8, 1986)

Columbia Gorge United v. Columbia River Gorge Commission, 960 F.2d 110, 112 (9th Cir. 1992), cert. denied 113 S.Ct. 184 (1993)

For these reasons, consistency is the crucible of the National Scenic Area Act and the Columbia River Gorge Compact. RCW 43.97 et seq.; ORS 196.160 et seq. We are required to carry out the intent of Congress and ensure consistency is achieved throughout the Gorge in county, state and federal actions.

Dated this 16 day of November, 1995.



ROBERT THOMPSON
Chair
Columbia River Gorge Commission