

January 18, 2002

Michael Benedict
Director
Hood River County Planning and Community Development
300 State Street, Room 101
Hood River, OR 97031-2093

Dear Michael:

Thank you for the opportunity to comment on your letter and Terry Angle's letter regarding the alleged land use violation on land owned by the Confederated Tribes of the Warm Springs Reservation (Warm Springs).

As I understand your letter, you believe the information from the Warm Springs indicates that the recent work on their road did not need a permit because it was *repair and maintenance*. I disagree after reviewing the information. I believe the Warm Spring's road construction activities and their subsequent use of the road for geotechnical testing violated the Management Plan and Hood River County's Scenic Area Zoning Ordinance (Article 75).

Section 040(116) of Article 75 defines *repair and maintenance*:

An activity that restores the size, scope, configuration, and design of a serviceable structure to its previously authorized and undamaged condition. Activities that change the size, scope, and configuration of a structure beyond its original design are not included in this definition.

Mr. Angle stated that the road construction activities did not change the size, scope, configuration, and design of the original skid road. However, the facts in his letter point us to the conclusion that the road was not serviceable before this work was done, which is also part of the definition of *repair and maintenance*. Section 040(129) of Article 75 defines *serviceable* as: "Presently useable."

For instance, Mr. Angle states:

Repair of the road included removing soil that had sloughed off the road cut/fill slopes, along with removal of rocks and logs that had accumulated over the years. At the intersection of the skid road and main gravel road there had been a 'washout' of the skid road turn-around.

Michael Benedict
January 18, 2002
Page Two

Log trucks and logging equipment could not have used the skid road because it was blocked by slides, rocks, logs and a washout. Given these circumstances, the road construction activities do not meet the definition of *repair and maintenance* because the road was not serviceable when the work took place. As a result, the Warm Springs were required to obtain a Scenic Area permit from Hood River County before working on the road.

The Gorge Commission believes that a permit was required for two other related reasons. First, Section 070(3) of Article 75 states: "Replacement or reestablishment of a use or structure discontinued for more than one year shall be subject to provisions in this Ordinance." As quoted above, Mr. Angle indicates that log trucks and logging equipment had not used the original skid road for "years." According to Section 070, use of the road was discontinued and the Warm Springs were required to obtain a Scenic Area permit from your department before reconstructing or using the road.

Second, Section 030 of Article 75 states: No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged . . . except for the uses listed in this Ordinance, when considered under the applicable procedural and substantive guidelines of this Ordinance." Mr. Angle states that the original skid road "was used for log trucks and logging equipment." The Warm Springs' road construction activities took place so the road could be used for a purpose other than logging. Specifically, Mr. Angle states the skid road was used to "access drill sites." According to Section 030, the Warm Springs should have obtained a permit from Hood River County before using the road for a new purpose. * * *

All of these reasons lead me to conclude that the Warm Springs should have obtained a permit from your department before working on or using the skid road. I realize that you have reached a different conclusion, and I would like to meet with you to talk about the next steps in resolving this violation. I will call you next week to arrange a meeting. Again, thank you for the opportunity to comment on this matter.

Sincerely,



Martha Bennett
Executive Director