

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL

March 12, 2019

The minutes of the proceedings of a special meeting of the City Council of the City of Coos Bay, Coos County, Oregon, held at 5:30 pm in the Coos Bay Public Library's Large Conference Room, 525 Anderson Avenue, Coos Bay, Oregon

Those Attending

Those present were Mayor Joe Benetti and Councilors Lucinda DiNovo, Drew Farmer, Stephanie Kilmer, Carmen Matthews, and Rob Miles. Councilor Phil Marler was absent. City staff present were City Manager Rodger Craddock, City Attorney Nate McClintock, Finance Director Nichole Rutherford, Deputy Finance Director Melissa Olson, Public Works and Community Development Director Jim Hossley, Community Development Administrator Carolyn Johnson, and Police Captain Chris Chapanar.

Consideration of Traditional Cultural Lands Historic District

On February 19, 2019, the Coos Bay City Council and the Tribal Council of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI) met to discuss the CTCLUSI nomination to the National Park Service (NPS) for a Traditional Cultural Properties Historic District (TCP). The City Council requested an extension of time before state and federal action on the TCP. A revised list of properties included in the TCP was anticipated for City review.

On February 22, 2019, the State Advisory Committee on Historic Preservation (SACHP) reviewed of the nomination document for the proposed Q'alya ta Kukwis shichdii me Traditional Cultural Property TCP Historic District. During the meeting, at least three members of the Advisory Committee noted that the application had numerous spelling and grammatical errors, an ambiguous boundary, and historic inaccuracies. Despite those observations, the City's request for an extension, and the stated opposition to the TCP Historic District by the City of North Bend, Coos County Board of Commissioners, Oregon International Port of Coos Bay, and the Southwestern Oregon Regional Airport, the SACHP recommended to forward the proposed nomination as is with no required revisions.

February 27, 2019 through March 1, 2019, the City and Confederated Tribes discussed mapping discrepancies that included unintended areas in the proposed TCP Historic District; errors were confirmed and City staff was advised corrections would be made. Documentation on those revisions were not received. On March 4, 2019, the City of Coos Bay Landmarks Commission met to revisit their initial recommendation for the TCP Historic District and began their review of the National Park Service criteria relative to the TCP proposal. They would complete their review on Friday, March 15, 2019. On March 6, 2019, the Bay Area Chamber of Commerce Board of Directors approved a resolution in opposition of the TCP Historic District.

City concern remained regarding the potential impact of TCP authorization on city development

application processing. There was not a well-defined response about potential changes to development review, answers about development application processing were not clear, possible legal challenges related to processing type, and concerns about expanded time and expense to the property owners and the city were unresolved.

City Manager Joe Benetti read an email sent by City Manager Rodger Craddock on behalf of the City Council to CTCLUSI, addressed to Chief Executive Officer Alexis Barry, "I hope this email finds you well. As we have discussed, the City understands the Tribe's desire to protect cultural artifacts and resources. As you know, the proposed TCP district is a source of great concern to many private property owners and of concern to the City as it could greatly affect the cost and time of permit processing as there are some unknown consequences anticipated in that such a district is unprecedented in Oregon. I greatly appreciate the opportunity you presented us by having a joint Council meeting a few weeks ago. As you are aware, our Council formally requested a delay in the consideration process to allow us time to better study and understand the impacts, both intended and unintended. Should the TCP district be established, unfortunately while there were some discussion by some SHPO (Oregon State Historic Preservation Office) advisory committee for the need for delay, the delay was not granted. I think my Council is in the proverbial real rock and a hard place on this matter. We enjoy a good relationship with our Tribal governmental partners and we understand your desire to protect cultural artifacts and resources. While this is the case, I don't believe the private property owners, business owners, local governments have been given the sufficient time to evaluate the proposed TCP. As you are aware, a number of the governmental bodies have decided to object to the formation of the TCP district for various reasons and I have recently learned that the Chamber of Commerce's Board of Directors have approved a resolution in opposition of the proposed TCP district. You are no doubt aware the property owners have organized an effort to reached out to each and every private property owner listed within the proposed district boundaries and are urging them to officially oppose the district as proposed. In the City's request for delay and the review process was not granted, a special Council meeting has been scheduled for tomorrow evening (which is this evening) to allow the Council an opportunity to decide if they want to take a formal position of support or opposition to proposed TCP district. The meeting is scheduled to begin at 5:30 p.m. and will be held at the Coos Bay Library. I believe you are in the loop with the fact that some mapping issues have been identified which have unintentionally cause some properties to be included on the list and affected properties. It is my understanding your staff is working to identify and correct those mistakes. I can only imagine the tremendous amount of work which has gone into this application, but I'm wondering given the current opposition, the mapping errors, and the application issues discussed by SHPO's advisory committee members, if it wouldn't be advantageous to pull the application to allow more time to evaluate the impacts, correct and redefine the application, and provide community education."

Mayor Benetti opened the Public Hearing and asked those in favor of the TCP to speak first.

Scott Wheat, General Council for the Confederated Tribe stated the Tribe had put a lot of effort into preparing the TCP application and wanted to make clear Mr. Craddock's comments were well taken, if they were in control of this process maybe they would be in a position to influence

it, but it was a state and federal process at this point. The State Advisory Committee on Historic Preservation (SACHP) had voted unanimously to forward the application on to the National Park Service (NPS), and that process was governed by Federal law, not Tribal law. As much as they are always willing to consider good faith requests from fellow jurisdictions here within the Bay, this one was regrettably out of their hands. Mr. Wheat noted the NPS review period was such that comments would be received up until the latter part of May 2019, so to the extent that the City wanted to comment, they encouraged the City and all property owners to do so. In the interim, they would encourage the City and property owners within the TCP boundaries to contact SHPO and NPS to get questions answered, and the Tribe was always willing to sit down and have that conversation as well. They understood this TCP would be a first for the City of Coos Bay, but would point the City Council to other areas of the country where TCP have been in effect for quite some time; for example, a mountaintop in Southern California near Temecula was recently designated a TCP, as well as various other real world examples across the country. Hopefully, the city can take comfort in knowing that this isn't the first TCP ever, there is plenty of existing designations out there and encouraged interested people to ask those local governments affected by those TCP designations how the implementation process went, how it's been working and how they currently feel about it. CTCLUSI's understanding was it hadn't created great difficulties for those communities.

Mr. Wheat wanted to be clear that maybe CTCLUSI could have done a better job of trying to explain what a TCP was and what a TCP wasn't. A TCP was a designation under Federal Law, it was not an action enforcing designation, it was an information enforcing designation in the sense that if this area was designated then Federal Agencies would be required to consider impacts upon the identified historic archaeological and cultural resources within the TCP boundary area much like the National Environmental Policy Act (NEPA) that required those agencies to make informed decisions about potential impacts to those resources; it didn't compel a particular result. Mr. Wheat stated not with every federal agency, but some agencies that don't have offices out here and are headquartered in Washington D.C., CTCLUSI has had challenges in having a conversation about how the government's actions or permits might affect the cultural resources within Coos Bay. For CTCLUSI, the purpose of this designation was to get past the quibbling with Federal Agencies to discuss permit impacts. With the TCP designation and application, a Federal permitting decision would have tremendous benefit of the TCP work that identifies the sites that are known within the TCP boundary. The TCP designation will not force a discussion, but the agencies will have a body of work to review, with resources identified, removing guess work and permit delays. If anything, it's going to speed up the review because a significant body of the scientific work was already been completed and available for the agencies to review.

One thing that has led to confusion within the community was there were existing laws, within the Coos Bay Estuary Management Plan Assessment, known as Policy 18. The TCP designation could pass or fail, but it won't change the existing laws which Coos County, the City of North Bend, and the City of Coos Bay must follow. Policy 18 requires these same resources and impacts to be considered prior to the City or County issuing permits. Mr. Wheat was afraid this TCP designation had been confused with the preexisting obligations under local ordinance to consider those impacts. This TCP destination didn't create that obligation, the existing laws

did. People were wondering how this TCP would affect them, and unless they are a federal agency, it would not affect them. Existing Policy 18 obligations required permits be sent to the Coquille Indian Tribe and CTCLUSI anyway. That was a freestanding, independent obligation and it was unfortunate to confuse one for the other. Mr. Wheat stated he understood there were Statewide Planning Goal 5 issues that spoke to historical properties, and State Land Use individuals were concerned how the TCP designation might bleed into Goal 5 compliance issues, but the Tribe was going to work with the state, counties, and cities to minimize disruption on the Goal 5 issues which came down to a requirement that there be a public hearing if there was demolition or relocation of a historic property. Senior level planners at state level were correct when they stated the Goal 5 people didn't have traditional cultural properties in mind when they were drafting those requirements. It appeared they were thinking of historic buildings and structures; as an example, to demolish a building on the National Registry you need to have a public hearing. CTCLUSI acknowledged there was some uncertainty there, but they were not there to put up road blocks, create additional delay or expense to the property owners or local governments, they were willing to address those items in Goal 5 together. In CTCLUSI's view, we are all neighbors, and with their good track record of being a good neighbor in this community, they ask that this request be based upon a long line of their good conduct and wanting to work together to make this a good place to live.

Mayor Benetti stated at the February 19, 2019 special joint meeting there were individuals from SHPO, Department of Land Development and Conservation (DLCD), and staff trying to comprehend how the TCP would impact the City. CTCLUSI had been putting this application together for three years and had a lot of time to go through it, but the City had only a short period of time and was facing a May 2019 deadline. The City thought at this point the TCP would create extra added work and may require additional staff for the City. The City stated they needed more time to try to understand the whole process. Mr. Wheat made it sound like a very easy process and only affects Federal agencies; however, the City did not get that understanding based upon the information from SHPO, as they were uncertain how it would or would not affect the area, as well as, CTCLUSI staff stated they would have to get back to the City with answers that the City had not received yet.

CTCLUSI Culture and Natural Resource Director Margaret Corvi brought a TCP Frequently Asked Questions (FAQ) resource to answer some of the questions from the previous meeting, and further clarification on definitions. Ms. Corvi stated it was up to the City to clarify how the TCP may or may not affect ordinances further. CTCLUSI was willing to have conversations on how to minimize those impacts. Mr. Wheat stated under the statewide planning Goal 5 that the uncertainty was relocation and demolition, when it came to archaeological and cultural resources and thought the work to be done at the local level was looking at those definitions, as to not force a public hearing every time there was a nominal impact to one of those cultural resources. He would like to tie Policy 18 compliance, which has already taken on that obligation, to also meeting Goal 5 requirement with respect to those specific resources.

Council stated many of the individual property owner situations had not been clarified and changes to processes would happen to impact the property owners as there are uncertain gray areas. Mr. Wheat stated there were some properties (68 lots within City of Coos Bay limits) in

the TCP that were out of the Policy 18 Estuary area, but would only be affected if there was a complete demolition or relocation under Goal 5. Council asked since there was Policy 18 and Goal 5, what did the TCP do that wasn't already done. Mr. Wheat stated it required Federal agencies to pay attention to these issues and currently CTCLUSI had to dispute whether there was national preservation act listed or eligible resources within an area. The TCP designation would end the debate and push the Federal agencies into a discussion of potential impacts of resources. For individual property owners, the contributing factors in the TCP designations were not buildings or structures; remodeling structures would not be affect as they are non-contributing features and not part of TCP designation. Additionally, the viewshed was the view from the water, unless planning a massive landscape impacting development right on the waterfront, obscuring an entire shoreline feature would not likely happen. Council asked if a future CTCLUSI Council could use the TCP to stymie future development they disapproved of. Mr. Wheat stated the TCP doesn't confer any jurisdiction or authority upon CTCLUSI, they could oppose a development and the Federal agencies have to consider the impacts, but it would always be the Federal agencies that would make the permitting decisions and CTCLUSI would always be constrained by the law. Council stated they weren't against the TCP or protecting cultural resources, but reiterated the issue was the process had been in the works since 2015 yet the City has been given roughly two months to gather information and questions had not been answered in a way that the City or property owners can easily state they support the process. The conversation had not been started sooner and Council asked if CTCLUSI would be willing to withdraw the application to allow more time for the City, Mr. Wheat stated it was no longer CTCLUSI's process, it was in the hands of the NPS, and it would be very difficult and at great cost to CTCLUSI to withdraw.

Mayor Benetti asked who was against the TCP:

Todd Goergen, Coos Bay stated he was at the February 22, 2019 Advisory Committee meeting where SHPO stated CTCLUSI could pull the nomination and that he felt it was disingenuous for CTCLUSI to state it could not be done.

Lou Leberti, Coos Bay stated after the North Bend community meeting he contacted CTCLUSI to find out if his property was in the boundary. He never received a call back, did not believe the City needed another layer of regulation, and CTCLUSI could apply for specific sites instead of the whole bay.

Rick Skinner, Coos Bay stated he took the Fact sheet and FAQ to his lawyers to review and brought their responses for the Council. He was a representative of the Bay Area Chamber of Commerce, on their executive committee, and read a position statement to reject or suspend the application. He requested CTCLUSI to pull the application and Mr. Wheat stated the state voted to forward to NPS, so CTCLUSI was not holding the application, and it would have to go back to the Tribal Council to make any decisions.

Ann Kaiser, North Bend stated she owned undeveloped land and asked how the TCP would affect development. Ms. Corvi stated the land was in the estuary so it would need to follow current regulations. Community Development Administrator Carolyn Johnson stated if in the estuary, the property owner would already have to go through a Type II permit process where

CTCLUSI was notified. The City would have to use definition by the state for demolition because the City does not have a definition, and would require a Type III permit process which included a public hearing. A Type II process could work as there was an appeal process with a public hearing, but not certain it would follow Goal 5. Outside the estuary area would need to be updated for the TCP designation, does not stop the development, but adds additional processes and how to mitigate any issue to resources.

Frank Williams, Coos Bay stated a lot of acres were covered by the TCP, already had use plans and zoning established, and asked where to get the paperwork to withdraw as it was not publicized.

Geno Landrum, Coos Bay stated he has business and rental property in the city, was on the fence regarding the TCP, was a maybe vote, and was concerned about the City and State oversight when property owners need permits.

Mary Kay Hill, Coos Bay stated did not own property in the TCP area, asked why it encompassed so much area already protected, the majority of land in Oregon is owned by Federal government, State government, and National Parks already.

Joann Hansen, North Bend stated there were 68 sites within the City limits the City was concerned about, but the Council should consider there were 1,624 parcels of property affected by the TCP, and all the other jurisdictions and groups that have already said no to the TCP.

Tom Burdett, North Bend stated the Council was asking for more time, but if he develops on his land and finds something, how much more time and money will it take. Mayor Benetti stated the City knew it would take additional time and expense.

Kortney Johnson, Johnson Rock Products, Coos Bay stated he was concerned for a specific customer that was one of the 68 designated properties that does not fall into any other regulation other than the TCP, would be additional process and cost, and for a phased plan it would apply to each phase. Believed the only way to delay the process was for the Council and Landmark Commission to reject the TCP for a further review process.

Mayor Benetti closed the Public Hearing.

Councilor Miles asked if there were boundary discrepancies in the application that included more properties than should have. Ms. Corvi stated it was around CTCLUSI property, the boundary description was accurately described in the application, the map was incorrect and would be corrected. A large portion of the square miles was in the Estuary area. Mr. Miles stated in the application it was a twenty (20) mile area and was hearing it may be larger than that. Ms. Corvi stated a large portion of the TCP boundary was actually the Estuary area and would have to do a calculation of land versus the Estuary itself.

Councilor DiNovo asked if Mr. Wheat would be willing go back to the Tribal Council to request them to pull the TCP application. Mr. Wheat stated he could, but it would take tremendous time and cost to delay. Mayor Benetti stated the Coast Guard did not know about the TCP, whereas Ms. Corvi stated they were notified. Ms. DiNovo thanked the Tribe for being in the community

and could not imagine not having two tribes in the area, supported the TCP, but not this application as it was currently written.

Councilor Farmer stated there were unknowns, but also the City had not had time for the known items and would be put in a reactive position. Goal 5 has the biggest impact and what the City needs to plan for. Mr. Farmer has heard both: it would not be used to obstruct development and hope it could be used to block something in disagreement with. Mr. Farmer asked if the City could help with any issues CTCLUSI was having with Federal agencies. Mr. Wheat stated he appreciated the offer, but this was the best course of action to have that discussion with Federal agencies.

Councilor Matthews stated there were already regulations for everyone for what could be done on properties and going through proper regulations was being a good neighbor. This was not a unique situation for just property owners affected by the TCP, as there were already processes for protecting resources, but he was worried people were skirting current regulation Mr. Matthews noted Council concern over local community and regulations not federal issues and was worried this application was not helping with communication and building a better relationship. The lack of information to clarify concerns was disconcerting, and extra regulatory issues had caused local citizens more time and money without bringing much added benefit to the community considering there are already protections on culturally significant sites already exists. Mr. Matthews also asked everyone to be respectful of all citizens not just affected landowners as CTCLUSI was just trying to be at the table with all decisions.

Councilor Kilmer stated many points were already noted, with the big concern was cost so any added layers adding cost to doing business was hard. Ms. Kilmer noted it was not about avoiding the need to protect resources, had concern it would be taking policy and procedures to a Federal level, and appreciated everyone for being there making comments.

Mayor Benetti stated the Landmark Commission would be meeting March 15, 2019, if they objected to the TCP, it may delay the process for a period of time. City Manager Rodger Craddock stated it may not delay as an objection of objection would continue the process. Mr. Benetti stated he was grateful for the February 19, 2019 joint meeting, but still did not answer all the questions, did not feel the Council had all the answers from all parties involved, to approve the TCP.

Councilor Farmer moved to oppose the TCP. Councilor Miles seconded the motion which carried. Ayes: Benetti, DiNovo, Farmer, Kilmer, Matthews, Miles. Absent: Marler.

Council Comments

Mayor Benetti stated the TCP program had validity, just this application was unclear, and that was why he voted against it. Councilor Matthews stated he had done many permit applications that were rejected, and that was tough, but had to come back again, and with better communication, or an amended application, things could change. Councilor DiNovo stated she completely supported the TCP program, CTCLUSI had a right to go through this process, but because of so many unanswered questions she couldn't support this application as written

today and hoped the Tribal Council would consider opening the process again to have a conversation. Councilor Miles thanked CTCLUSI for coming to the meeting, and they made a compelling argument, which he wanted to support, but there were too many questions surrounding it so couldn't support it at this time.

Adjourn

There being no further business to come before the Council, Mayor Benetti adjourned the meeting. The next regular Council meeting was scheduled for March 19, 2019 in the Council Chambers at City Hall.



Joe Benetti, Mayor

Attest: Nichole Rutherford
Nichole Rutherford, City Recorder