

Ralph O. Bloemers, OSB No. 984172
ralph@crag.org - (503) 525-2727
Christopher G. Winter, OSB No. 984355
chris@crag.org - (503) 525-2725
Crag Law Center
917 SW Oak Street, Suite 417
Portland, OR 97205
Fax: (503) 296-5454

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BARK, an Oregon non-profit corporation,
FRIENDS OF MOUNT HOOD, an Oregon
non-profit corporation, **NORTHWEST**
ENVIRONMENTAL DEFENSE
CENTER, an Oregon non-profit
corporation, **SIERRA CLUB**, a California
non-profit corporation,

Plaintiffs,

v.

LISA NORTHROP, Acting Forest
Supervisor of the Mt. Hood National Forest,
BILL WESTBROOK, Zigzag District
Ranger, **KENT CONNAUGHTON**,
Regional Forester for Region 6, and the
UNITED STATES FOREST SERVICE, a
federal agency.

Defendants.

Case No. 3:13-cv-00828-AA

**DECLARATION OF
DENNIS M. CHANEY**

DECLARATION OF DENNIS M. CHANEY

I, DENNIS M. CHANEY, pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. My name is Dennis M. Chaney, and I am a life-long resident of Portland, Oregon. I am a member and supporter of the Friends of Mount Hood. I volunteer for the organization and serve on its board of directors. I am currently the Chairperson of the organization.

2. The Friends of Mount Hood is a nonprofit organization dedicated to monitoring development and management of national forest lands on Mount Hood. The Friends of Mount Hood is especially interested in protecting the alpine meadows, wetlands, streams, wildlife, and forested slopes on the mountain. For more than two decades, Friends of Mount Hood has worked to safeguard the natural environment at ski areas that operate on national forest land under special use permits. These high alpine areas contain fragile alpine meadows and wetlands, clear flowing streams that feed into larger rivers downstream, and high alpine stands of mountain hemlock and slow growing white bark pine. Over the past two decades, the Friends of Mount Hood has worked to challenge major overnight resort developments at Mt. Hood Meadows Ski Area and more recently on the North side of Mount Hood at Cooper Spur Ski Area. Friends of Mount Hood worked with a coalition of groups on a settlement agreement with the owners of the Inn at Cooper Spur and the Cooper Spur Ski Area on federal legislation that provides for the permanent protection of the North Side of Mount Hood at Cooper Spur. President Obama signed this historic legislation into law in 2009.

3. Like many of our members and supporters, I have a relationship with Mount Hood and Timberline Lodge dating back to my childhood, and this relationship has given me a strong sense of personal responsibility to protect the historic lodge and the high alpine flanks that surround it from over-commercialization and damaging development.

4. I cannot recall my first family outing to Mount Hood as a child, but since the age of twelve I have vivid memories of excursion after excursion on the mountain. As a boy scout in the 1950's and '60's, I camped and hiked the trails during the summer, and spent winter days on the slopes sledding and trekking on snowshoes.

5. As a young teenager, I learned to ski with the Jaycee's ski school at Timberline, and later I climbed the peak and reached the summit with my college outdoor club. One of my fondest memories is backpacking the classic Timberline Trail with my dad, and spending the final night in a comfortable lodge bed after a feast in the grand dining room.

6. Over many years, I returned to Timberline Lodge again and again for winter skiing and summer hiking and sightseeing. Over the past forty-five years, my wife and I have taken our children and all our visiting relatives and friends to see the lodge and the magnificent vistas. Timberline is truly every Oregonian's mountain home.

7. Today, we have reached the point where visitors are being denied access to Oregon's most beloved mountain and historical landmark. The 2009 Timberline Master Development Plan (the "MDP") states that there are thirty-three days in the winter high season when Timberline is "parked out." (MDP at 7) On these days visitors are turned away at a roadblock at Highway 26.

8. Even more worrisome is the following statement that is found in the Mountain Bike Trails and Skills Park Environmental Assessment (the "EA"):

On above-capacity summer days, the parking lots at Timberline become parked out and additional visitors to Timberline (both paying and non-paying guests) must be turned away. According to the ODOT traffic counter on the Timberline Road, Timberline already is close to reaching capacity on both summer weekends and busy weekdays. (EA at 205)

The EA further states that the addition of the bike trails and skills park could potentially bring an excess of 60,000 park users each year to Timberline, which is 40,000 over the estimated capacity of the proposed park design (EA at 225). If these numbers are to be believed, this means that starting on the opening day there will be a clamor to expand the facility. And, of course, all these new users will be competing with the traditional visitors for access to the lodges and parking lots during the short summer tourist season.

9. Permitting another commercial activity at Timberline will bring more visitors to add to what is clearly an unsustainable transportation and parking situation. Even under the existing conditions it is becoming more and more likely that visitors to Timberline will be turned away on a typical summer day. There is ample evidence, as presented in the EA, that Timberline's crowd capacity is at the tipping point, and, undoubtedly, the predicted 20-60,000 new visitors will require new parking and transportation solutions.

10. With the additional projected visitor numbers due to the new bicycle adventure park, the planned downhill race events on those trails, and the noise from the skills park, I am convinced that my life-long experience of enjoying the magnificence of Timberline Lodge and

sharing it with family and friends on a summer day will be irreparably altered and harmed. We will have officially "loved the place to death."

11. Only some of us that seek to visit will be turned away on any particular day, which means that thousands of others will be able to explore the lodge and hike the trails that interlace Timberline. The most popular trail, Mountaineer, leads to the west and is the gateway to the Pacific Crest National Scenic Trail.

12. Hikers will find that the proposed bike park layout will cross the Mountaineer Trail at two locations. The EA states that when the facility is operating at capacity it is estimated that there will be 220 bicycle crossings per hour at these intersections. (EA at 218) These are numbers that the city of Portland, which has bicycle commuting as one its highest priorities, would be proud to claim.

13. I myself enjoy bicycling, but I am confounded as to why we would want or need to bring bicycling, a touchstone of cutting-edge urbanization, to Timberline Lodge, which sits at 6,000' on the highest and most iconic mountain peak in Oregon. For me and many other visitors, Timberline is a refuge from the urban environment. This is a place where you go to escape the city and try to experience nature in the unique and fragile environment of the High Cascades.

14. The decision to build a new bicycle adventure park at Timberline is a radical departure from what has been a seventy-five year policy of historic preservation. The National Park Service's historic building survey for the lodge documents the friction between commercial interests and the public interest that is the result of having a publicly-owned historic hotel in the middle of a national forest (the "NPS Report for Timberline Lodge" attached as **Exhibit A**).

15. The NPS Report explains that although the lodge was originally conceived as a winter resort, the Forest Service quickly realized that the popularity of the building would require planning for all-season use. The report explicitly states that the Region 6 Superintendent held that the new summer activities would not include "urban" forms of recreation.

16. The NPS report documents the philosophy of the Forest Service on summer recreational activities at Timberline:

The vision of how the lodge and its site would actually be used by the public was planned during the early years. Mountain climbing and hiking had been the primary recreational use at the site, but the developmental plan emphasized skiing and tourism as the greatest potential growth...

From the beginning, the lodge was a tourist attraction. Everyone wanted to see the beautiful building and enjoy the mountain scenery...

The need to make a profit and the early recognition that summer was the most lucrative tourist season, produced plans to develop other year-round recreation at the lodge. Trails were laid out on the north side of the building. A temporary stable for the horses used for trail riding was built in 1939 and a more permanent stable was completed in 1942. A swimming pool was discussed but not built. Promotional brochures in this period touted the lodge as an "all-year around playground" and a "twelve-month pleasure paradise." They included cartoon-like maps that sketched a dizzying array of fun available in every season. More attention began to be paid to keeping the site attractive in summer as well as winter because it was the beauty of the location that brought the tourists. During this phase, there was a great deal of discussion about the type of recreation that should be allowed at the lodge. Regional Forester C. J. Buck and some Forest Service personnel felt strongly that only activities such as trail riding, hiking, camping and skiing should be permitted. They did not allow the addition of a swimming pool, permanent tennis courts, or other forms of "urban" recreation.

NPS Report on Timberline Lodge at 20.

17. Horseback riding is not a commercial activity at the lodge today. I have been unable to find any documentation of why it disappeared, but I believe that conflicts with hikers and damage to the fragile trails may have played a part.

18. Many promoters of the bicycle adventure park, including the supervisor who authored the Decision Notice and FONSI, have used quotes from the dedication speech of President Franklin D. Roosevelt to try to claim that a system of downhill bike trails, race events, and a skills park is what he envisioned. FDR spoke in general terms that the lodge will be a place of play for Americans from all corners of the country, but his only reference to specific forms of recreation was centered on winter sports.

19. The NPS report speaks to Roosevelt's thinking:

The lodge demonstrated the New Deal effort to provide recreation areas. Because it was the first publicly owned hotel in a national forest, Roosevelt called it a test in "the workability of recreational facilities installed by the government itself and operated under its complete control." Just as he tied timber and tourism together in the dedication, he emphasized the magnetic relationship between recreational development and tourism. "I look forward to the day," declared President Roosevelt, "when many, many people from this country are going to come here in the west for skiing and tobogganning and various other forms of winter sports.

NPS Report on Timberline Lodge at 17 (Footnotes omitted).

20. From what I have read, Roosevelt saw Timberline as a way to promote timber, recreation, and tourism, and he only specifically spoke about winter recreation. We have no way of knowing what he thought about appropriate summer activities, but there is documented evidence that from the very beginning the Forest Service held true to a policy of summer activities oriented around skiing, climbing, hiking, camping, and sightseeing. They purposely did not allow tennis courts or other forms of "urban" recreation. The only exception in seventy-

five years has been a small pool and hot tub for registered hotel guests; and, this facility is screened from the public and most do not even know it is there.

21. Regardless of what President Roosevelt intended, I and many others members and supporters of Friends of Mount Hood have enjoyed and benefited from this policy during our lifetimes. The proposed downhill bike trail system, planned race events, and the skills park threatens my use and enjoyment by approving facilities that are not related to winter sports or hiking, climbing and sightseeing; that will require grubbing seventeen miles of dirt pathways through mostly undisturbed forest and meadows; and will bring thousands of users to speed down the fragile volcanic mountainside further degrading a system that has already suffered too much from past damage.

22. So the question remains: Why, after holding true to a seventy-five year policy, has the Forest Service decided now to permit this proposed commercial activity? After all, downhill bike parks are not a new idea. Whistler, in British Columbia, has been operating for fifteen years, and the existing bike park on Mount Hood at Ski Bowl opened a year earlier in 1988.

23. The answer to this question, I believe, can be found in a Forest Service policy paper titled "Public Lands and Private Recreation Enterprise: Policy Issues from a Historical Perspective" (Attached as **Exhibit B**). The author, T. Quinn, analyses the historical relationship between the federal agencies and the private sector, and "gives particular attention to the balance between protecting public interests while offering opportunities for profit to the private sector."

24. Quinn states that "protecting public interests has frequently been sacrificed owing to political pressures or inadequate agency oversight." He writes:

The profit motive will drive entrepreneurs headlong toward any source of perceived demand, with "willingness to pay" their mantra; cost minimization will drive them away from perceived environmental "constraints" and government "interference." This is not a condemnation; it is simply a fact—the foregone conclusion of rational economic behavior by private sector entrepreneurs. Federal agencies have no choice but to intervene and play a regulatory role when this behavior is permitted (indeed encouraged) on public lands.

Exhibit B at 27.

25. And, Quinn states:

Land management agencies must be able to look beyond the "wants" as expressed through the wallet and consider their responsibilities in the broader context of land management goals and the public interest. Private enterprises do not generally agree. As expressed by the concessioner at Yosemite in the early 1980s: "I don't consider it a responsibility of the National Park Service and its supporting organizations to improve the public taste, and certainly no duty devolves upon the concessioners in the parks" (Zaslowsky 1983: 30). Such logic ignores the obligation of the public land agencies to consider any more than the narrow, interests of park "consumers" and it incorrectly assumes that the park purchases and activities represent a "vote" on whether a particular good or service should be offered.

Exhibit B at 28.

26. After watching this decision unfold over the past three years, I have concluded that this is exactly what is occurring today on Mount Hood. My interests and the interests of the thousands of others will be permanently and irreparably harmed by a project that has been pushed forward to serve the narrow interests of a concessionaire and certain "consumers" who are willing to pay to use the proposed adventure park.

27. Even though a diverse coalition of conservation groups with tens of thousands of members and supporters have petitioned Forest Service officials to perform their regulatory role and fulfill their obligation to protect the public interests and observe codified land management

goals, the Forest Service has moved ahead with a project that will generate a new revenue stream for R.L.K. & Co, the operators of the Timberline Ski Area.

28. In order to push this project the Forest Service chose to limit the scope of analysis to the project submitted by the lease holder, and purposely refused to consider the potential of other locations on the Mt. Hood National Forest for this type of activity.

29. The essence of a downhill bike park, also known as a gravity flow park, is an optimal grade angle in conjunction with grade reversals and numerous changes in direction. It is all about friction between the tire and the soil; in other words, it is all about soil disturbance. I do not think it is a coincidence that there are very few photographs of actual flow trails in the EA.

30. I have collected some photos attached in **Exhibit C** of existing trails at Ski Bowl and Sandy Ridge that are easily found on the Internet. While at lower elevation, these are the two downhill parks closest to Timberline and they show what some of the proposed trails will actually end up looking like. I have also included photos of examples of the wooden Technical Trail Features that would be distributed throughout the trail system. There will be as many as ninety of these structures, and there are also very few photos of this ancillary infrastructure in the EA.

31. What is unique about the proposed Timberline project is that it would start in the alpine zone at approximately 6,000' in elevation. This soil is mostly loose volcanic ash and sand. The Forest Service recently completed a downhill bike trail that begins at this elevation and ends in Government Camp. This 6.5 mile trail, called the Timberline to Town (TTT), is the closest depiction possible to the proposed trail system. The difference between the two is that the Forest

Service deliberately sited this bike trail so that it would not enter into any of the watersheds that would be directly effected by the proposed project. A trip down the TTT can be experienced by viewing this video link. <http://tinyurl.com/kmvyo9l>

32. After a detailed study of the proposed project, it is my conclusion that it is incompatible in every way with the historic Timberline Lodge and its environs. One of these downhill mountain bike adventure parks can be built on just about any hill, but to me there is only one Mount Hood and only one place called Timberline. For all the described reasons, this project will irreparably alter my use and enjoyment of this special place.

I swear under the penalty of perjury that the foregoing is true and correct.

Executed in Portland, Oregon this 30th day of May 2013.


DENNIS M. CHANEY