



PO Box 730 • #1 Town & Country Square • White Salmon, Washington 98672 • 509-493-3323 • fax 509-493-2229
www.gorgecommission.org

TO: Gorge Commissioners

FROM: Judy Davis, Rules Committee Chair
Jennifer Ball Kaden, Planner

DATE: May 27, 2009 for the June 9, 2009 Public Hearing

RE: Rules Committee Recommendation – Proposed Revisions and Additions to the Urban Areas Boundary Revisions Handbook and Proposed Guiding Principles

Action Requested

Hold a public hearing on a Rules Committee recommendation to revise the Urban Areas Boundary Revisions Handbook (Handbook) and to adopt an accompanying statement of guiding principles. The Rules Committee recommends the hearing continue on July 14, 2008 and the Commission consider adopting the recommended revisions to the Handbook and the guiding principles at its July 14, 2009 meeting.

Background

Process: In June 2008, the Commission decided to begin consideration of three key policy questions related to urban area boundary revisions with the intent of revising Commission Rule 350-40. As a reminder, the three key policy issues are: the meaning of “minor revision,” evaluating a priority of lands that cities and counties can consider for urbanization, and regional analyses of boundary revisions. The Rules Committee met twice in the summer 2008 to discuss the best approach for developing new rules for urban area boundary revisions. It recommended seeking additional public input than the traditional rulemaking process allows and additional education for Commissioners about the development patterns in urban areas and on surrounding lands. In the fall 2008, the Commission toured all 13 urban areas. In October 2008, the Rules Committee recommended the Commission conduct a consensus rulemaking process on the key issues. The Commission asked staff to refine the scope of work and identify grant funding sources for the project. In December 2008, the Commission approved a work plan for the remainder of the 2008-09 fiscal year that did not include a consensus rulemaking process. Instead, the Commission directed the Rules Committee to explore changes to the urban area boundary revision rules (Commission Rule 350-40) using the traditional rulemaking process and requested recommended changes by the end of the fiscal year.

Since the December Commission meeting, the Rules Committee has met seven times to work on the rulemaking effort. The focus of the first several meetings was to brainstorm ideas for each of the three policy questions. The Committee then narrowed down the ideas and directed staff to draft options for policy language. The Committee also spent time talking about whether the NSA Act allows urban areas to expand and the character and identity of urban areas.

At its April 22, 2009 meeting, the Rules Committee decided to recommend to the Commission that the Committee change procedural direction and work on proposed changes to the advisory Handbook instead of Commission Rule 350-40. On May 12, 2009, the Gorge Commission accepted the Committee’s recommendation on a 6 to 3 vote.

At its last meeting, May 13, 2009, the Committee agreed to recommend one proposal to the Gorge Commission. There has been participation by some stakeholders and public at all of the meetings. Staff posted all of the meeting notes on the Commission's website.

Handbook: The Urban Areas Boundary Revisions Handbook is an advisory document adopted by the Gorge Commission in 1992 to assist local jurisdictions through the boundary revision process. It includes four sections:

- I. **Introduction** - Explains the authority for making boundary revisions, the purpose of the Handbook, and the structure of the Handbook;
- II. **Overview of Scenic Area Act Provisions** – summarizes the provisions of the Act that address urban areas;
- III. **Recommended Interpretations** – provides Commission interpretations of the key terms and provisions of Section 4(f) of the NSA Act; and
- IV. **Recommended Information** – offers recommendations regarding information and analyses useful in demonstrating consistency with the criteria in Section 4(f)(2) of the Act.

The Handbook serves as a guide. It provides consensus interpretations and methodologies for evaluating urban area boundary revisions. As an advisory document adopted by the Commission, the Commission should generally follow the guidance provided in the Handbook. Where it decides not to or determines recommended factors or analyses are not relevant to a particular proposal, it should explain why.

Proposed Handbook Revisions and Additions

The Rules Committee recommends making the following changes and additions to the Handbook:

Minor Revision: Section III of the Handbook includes an interpretation of the key term “minor revisions” in Section 4(f) of the Act. It reads:

“Minor revisions” are those boundary changes which do not have a significant effect on surrounding lands outside the Urban Area and beyond the immediate area subject to the boundary change or those boundary changes which do not result in a substantial expansion of an Urban Area. (Page 4, Urban Areas Boundary Revisions Handbook, 2/11/1992)

This interpretation is that a boundary revision may be considered minor if it meets one of the two parts of the definition – either that it does not have a significant effect on surrounding lands or that it is small in size. With this interpretation, the determination of whether a boundary revision is minor is made on a case-by-case basis.

The Rules Committee recommends the following revision:

“Minor revisions” are those boundary changes which do not have a significant effect on surrounding lands outside the Urban Area and beyond the immediate area subject to the boundary change ~~or~~ and those boundary changes which do not result in a substantial expansion of an Urban Area.

By changing one word – “or” to “and” – the threshold for considering a boundary revision minor is raised substantially. With this change, a boundary change may be considered minor only if it does

not have a significant effect on surrounding lands and it is not substantial in size. This change takes into account both impacts and size. The determination of whether a boundary revision would continue to be made on a case-by-case basis, allowing some Commission discretion.

Other options for interpreting “minor revision” were considered by the Committee. The Committee looked at a wide range of ideas and decided that many of them already are addressed by the Section 4(f) criteria. The Committee was not comfortable in recommending a one-size-fits-all numerical interpretation of “minor revision” because of the varying sizes and characteristics of the thirteen urban areas. Also, the Committee discussed the idea that the Commission’s authority to revise urban area boundaries is not limited to technical corrections or mapping errors because the Act allows for urban area boundary revisions based on “long-range urban population growth requirements or economic needs.”

The Committee wrestled with the idea of addressing the cumulative impacts of boundary revisions within the interpretation of “minor revision.” In the end, it decided that the evaluation of the cumulative effects of boundary revisions is adequately addressed in the Section 4(f) criteria, as explained in the Handbook (Criterion B interpretation, pages 4 and 5). In short, Criterion B is intended, in part, to ensure urban area boundary revisions do not adversely affect the resources protected by the standards and purposes of the Act – scenic, cultural, natural, and recreation resources and agriculture and forest lands. The Act includes an evaluation of cumulative impacts in its definition of “adversely affect.” The Handbook recommends evaluating potential cumulative impacts of a boundary revision as part of the analysis of Criterion B. The Committee received some public comments disputing this interpretation. The scope of the Committee’s work did not include revising this portion of the Handbook.

The Committee also spent time discussing a proposed concept of describing “minor revision” in terms of a “no net loss” of resource values (scenic, cultural, natural and recreation resources). Using this concept, land trades could be used to off-set any loss of resource values to achieve a “no net loss” of values. In its discussion, the Committee affirmed that Criterion B already establishes a standard of reviewing impacts to Gorge resources for boundary revisions. The Committee rejected the idea of a “no net loss” standard because it would add confusion and may have effects beyond the topic of boundary revisions.

Prioritization: The Commission was asked to establish guidance about the priority of lands that cities and counties can consider for urbanization. Except for Criterion D (a boundary revision should not result in the significant reduction of agricultural lands, forest lands, or open spaces), the Act, Commission Rule 350-40, and the Handbook do not address what lands should first be considered for urbanization.

After two brainstorming sessions, the Committee asked staff to draft language that captured the concepts of first affirming the land need cannot be met inside the existing urban area, in nearby urban areas, or outside the Scenic Area; and then in two tiers of land types.

The Committee looked at three options for articulating its recommendation of lands better suited for possible urbanization (subject to consistency with the 4(f) criteria). The Committee decided upon the option that most clearly informs applicants of a recommended method for choosing the best location for boundary revisions. It recommends adding this new policy direction in a new Section V of the Handbook (Attachment A).

Regional Analysis: The Commission directed the Rules Committee to consider requiring a city to look beyond its immediate boundaries when making the case to expand its urban area (i.e.

consideration of growth trends and land availability in nearby urban areas). This idea has been portrayed by some as an attempt by the Commission to force one community to send its future residents or businesses to other communities. In its deliberation on the issue, the Rules Committee clarified the intent of the regional analysis concept instead is to ask applicants (counties) to include in their analysis, for example, an explanation as to why the anticipated population growth or economic development cannot or will not be accommodated on existing lands or other nearby lands already designated for urban development. When the Rules Committee discussed the topic further, it realized that the principal ideas already were included in the language it proposes to address prioritization (emphasis added):

- B. If the need for land cannot be met inside the existing urban area (as demonstrated under A above), a county should demonstrate the need cannot reasonably be met on lands *in nearby urban areas* or on land outside the NSA. To demonstrate whether lands in nearby urban areas, or outside the NSA are not reasonable, a county should provide analyses of those lands considering efficient land use, physical constraints (topographical, geological, etc.), sensitive resources (scenic, cultural, natural, recreation), other protected resources (agriculture, forest), practicability of providing public services, state law restrictions and priorities for urbanization, and other relevant factors.

Handbook Structure: The Rules Committee recommends adding the language addressing prioritization and regional analysis as a new section V in the Handbook. The reason for adding it as its own section is it provides a supplemental interpretation of the Section 4(f) criteria as well as an additional recommended methodology for demonstrating consistency with the four criteria. The new section reinforces the idea that a county must: show lands in the existing urban area boundary are inadequate to accommodate anticipated population growth or economic needs (Criterion A), minimize impacts on gorge resources and agricultural, forest, and open space lands (Criteria B and D), and demonstrate efficient urban growth (Criterion C).

The Rules Committee also proposes a couple of minor edits and one additional sentence in the introduction to identify and explain the proposed new section.

Non-substantive Correction: The Handbook includes either one incomplete sentence or two unfinished sentences at the end of the section that provides an interpretation of Criterion C. Staff searched unsuccessfully for earlier drafts or another version of the Handbook that might fill in the blanks. The Rules Committee recommends making a simple, non-substantive correction on page 5 to remedy the situation. No other changes to the Handbook are proposed. Also, other than described in this report, the Committee did not revisit the original Handbook language.

Proposed Guiding Principles

The Rules Committee recommends the Commission consider adopting a statement of guiding principles to accompany the Handbook. The purpose of the statement is to address the broader context of the role of urban areas in the Scenic Area which is sometimes lost in the details of methodologies and procedures for revising boundaries. Many of the ideas originate from the Future Forum *Envisioning Our Future*. The proposed statement "Guiding Principles for Urban Area Boundary Revisions" is attached for your consideration (Attachment B).

- Attachments: A. Urban Areas Boundary Revision Handbook with recommended changes and additions, 5/13/09
B. Proposed "Guiding Principles for Urban Area Boundary Revisions"

URBAN AREAS BOUNDARY REVISIONS HANDBOOK
Columbia River Gorge Commission
February 11, 1992

I. INTRODUCTION

The Columbia River Gorge National Scenic Area Act authorizes the Columbia River Gorge Commission to make minor revisions to Urban Area boundaries after adoption of the Management Plan. Such revisions must comply with the procedural requirements in Section 4(f) of the Act. These provisions contain several key terms that may be interpreted in different ways. The primary purpose of this handbook is to assist local jurisdictions through the boundary revision process. The handbook recommends interpretations of these key terms and types of information which may be submitted to comply with these provisions in section 4(f).

Establishing some consensus on the meaning of the key terms and provisions in the Section 4(f)(2) will assist local jurisdictions in compiling the necessary application materials to successfully complete the boundary revision process. Such consensus assists the Commission in its deliberations on proposed minor boundary revisions.

This handbook serves as a guide, offering recommended interpretation and analysis tools. It is not intended to be used as mandatory rules or policies, nor is it exhaustive. The Commission may use other factors thought applicable to the key terms and provisions. Similarly, applicants may wish to pursue additional issues or analysis techniques they feel are applicable. The factors and analyses recommended herein are offered as suggestions which may assist in demonstrating consistency with the 4(f) criteria. Some of these recommended factors and analyses may not be relevant to a particular proposal and thus need not be addressed in such cases.

The handbook is divided into ~~four~~ five sections. Section II summarizes provisions of the Act that address Urban Areas. The third section includes Commission interpretations of the key terms and provisions of Section 4(f). ~~The last s~~Section IV of the handbook offers recommendations regarding information and analyses useful in demonstrating consistency with the criteria in Section 4(f)(2) of the Act. The last section includes additional recommended analyses to demonstrate consistency with the Section 4(f)(2) criteria.

II. OVERVIEW OF SCENIC AREA ACT PROVISIONS FOR URBAN AREAS

Congress designated thirteen cities and towns as Urban Areas: Cascade Locks, Hood River, Mosier, and The Dalles, Oregon; and Bingen, Carson, Dallesport, Home Valley, Lyle, North Bonneville, Stevenson, White Salmon, and Wishram, Washington [Scenic Areas Act, Section 4(e)]. The Urban Areas encompass about 28,500 acres. Their boundaries are shown on maps incorporated by reference into the Scenic Area Act, titled "Urban Areas, Columbia River Gorge National Scenic Area," numbered UA-004 sheets 1 through 11, and dated September 1986 [Scenic Area Act, Section 4(e)(2)].

The Urban Areas are exempt from regulation under the Scenic Area Act and the Management Plan [Scenic Area Act, Sections 6(c)(5) and 8(e)(2)]. They will be the focus of future growth and economic development [Scenic Area Act, Section 3(2)]. Industrial development is allowed only in the Urban Areas [Scenic Area Act, Section 6(d)(6)]. Commercial development is encouraged to occur in the Urban Areas [Scenic Area Act, Sections 6(b)(5) and 6(d)(7)]. Single-family dwellings and high-density and multifamily residential development may occur in Urban Areas

without being constrained by scenic, natural, cultural, or recreation resources [Scenic Area Act, Section 6(d)(8)].

The boundaries of an Urban Area cannot be freely revised. The Commission's land use designations must "incorporate without change" the Urban Areas designated by Congress [Scenic Area Act, Sections 6(b)(7) and 6(c)(2)]. The Commission may make "minor revisions" to the boundaries of an Urban Area after the Management Plan is adopted [Scenic Area Act, Section 4(f)]. Boundary revisions must be consistent with the procedural requirements and criteria in Section 4(f) of the Act.

Three important procedural requirements are listed in Section 4(f)(1) of the Act: (1) requests to revise an Urban Area boundary must be submitted to the Commission by a county government; (2) the Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and (3) two-thirds of the Commission members, including a majority of the members appointed from each state, must approve any revision of an Urban Area boundary (votes from four members residing in Oregon and four members residing in Washington).

Section 4(f)(2) of the Scenic Area Act allows the Commission to revise Urban Area boundaries only if the following criteria are satisfied:

- A. A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;
- B. Revision of Urban Area boundaries would be consistent with the standards established in Section 6 and the purposes of this Act;
- C. Revision of Urban Area boundaries would result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and
- D. Revision of Urban Area boundaries would not result in the significant reduction of agricultural lands, forest lands, or open spaces.

III. RECOMMENDED INTERPRETATIONS OF SECTION 4(f) SUBSTANTIVE PROVISIONS

Introduction and Methodology

The Act's requirements for minor boundary revisions include several substantive provisions. Practical application of these provisions requires some interpretation. In particular, the four criteria in Section 4(f)(2) include terms which may be interpreted in different ways by reasonable people. The nature of such interpretations will influence the type of analysis required to demonstrate compliance with the criteria. Clarification of the meaning of "minor revisions" will also be helpful.

Research into existing and recently-established planning programs helped derive an interpretation of key terms. This included a look at recommendations and requirements for local municipalities in establishing urban growth areas. Planning programs from several states were analyzed to determine whether such efforts were applicable to this situation and what lessons could be learned from the experience of others (e.g. Washington, Oregon, California, Florida and Minnesota).

Valuable perspective and input from officials representing Gorge counties, cities and port districts was also utilized in developing this handbook. Advice and recommendations have been