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DIRECTOR'S REPORT

December 27, 2006

Proposed Amendment to the *Management Plan for the Columbia River Gorge National Scenic Area (PA-06-04)*: The text of the complete proposed amendment is provided in Appendix A. The amendment proposes two changes:

1. Change the definition of horse boarding to allow non-profit horse boarding in addition to for-profit horse boarding; and
2. Allow horse boarding (as revised) as a review use in the 10-Acre Residential Land Use Designation, subject to additional approval criteria and the guidelines to protect scenic, cultural, natural and recreation resources.

Applicant: None. This is a legislative plan amendment that the staff has proposed.

Commission Hearing: January 9, 2007, Hood River County Building, Hood River, Oregon.
The Commission will take public comment on this proposed Plan Amendment.

EXECUTIVE SUMMARY

Criteria for Amending the Management Plan

To approve an amendment to the Management Plan, Commission Rule 350-50-030 requires that the Commission must find:

1. Conditions in the Scenic Area have significantly changed;
2. The proposed amendment is consistent with the purposes and standards of the Scenic Area Act; and
3. No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists.

Summary of the Consistency of the Proposed Plan Amendment with the Criteria

Criterion 1: The proposed plan amendment is consistent with criterion 1. Since the adoption of the Management Plan, the number of horse rescue organizations operating in Oregon and Washington has greatly increased. Also during this period- and potentially contributing to the formation of these organizations- several other changes have occurred. These changes include new information available to the public about horse abuse, an increased public awareness of and intolerance for horse abuse, and changes in the legal conditions relating to horse abuse. All these factors together constitute a significant change in conditions in the Scenic Area pursuant to Commission Rule 350-50-030(1).

Criterion 2: The proposed plan amendment is consistent with criterion 2. Commercial horse boarding is currently allowed within the Scenic Area as being consistent with the purposes and standards of the Act. Non-profit horse boarding would have similar impacts on Gorge resources and is thus also consistent with the purposes and standards of the Act. By requiring that horse boarding in the 10-acre Residential zone be reviewed for consistency with resource protection guidelines and additional approval criteria, this use can be added to this zone while remaining consistent with the purposes and standards of the Act.

Criterion 3: The proposed plan amendment is consistent with criterion 3. Staff considered seven alternatives to address the new information and achieve the proposed amendment: (1) considering the use an agricultural use, (2) considering the use an accessory use, (3) creating a new use category that would be added to the GMA Agriculture, Forest and 10-acre Residential zones, (4) rezoning an area where this use exists in Klickitat County, (5) adding horse boarding to all GMA Residential zones, (6) reserving the change for discussion during Plan Review, and (7) not allowing any horse rescue organizations to occur in the Scenic Area. Staff finds that none of these is more consistent with the purposes and standards of the Act than the proposed amendment.

Staff Recommendation

Staff recommends the Commission adopt the proposed amendment. Staff believes there is a need to amend the Management Plan to allow non-profit horse rescue centers. Our review has shown that the proposed amendment is consistent with all plan amendment criteria and should therefore be adopted.

I. Amendment Summary and Background

In February 2006, staff became aware of a non-profit horse rescue center operating in the Scenic Area within a 10-acre Residential zone in Klickitat County. The organization rescues and rehabilitates abused horses and then either adopts them out or houses them permanently on the property. The use includes supporting structures. The Chairman of the organization lives on the property.

Because this operation was occurring without Scenic Area permits, staff initiated an enforcement action that required obtaining all necessary Scenic Area permits. However, staff was unable to identify a use allowed in the Management Plan that fit what was occurring on the subject property. Staff noted that the use was very similar to horse boarding which is currently allowed in all GMA Agriculture and Forest zones, except that horse boarding is defined as operating “for a fee” and is not allowed in the 10-acre Residential zone. The Executive Director (Martha Bennett, at the time), signed an agreement in April 2006 with the Chairman of the horse rescue organization. The agreement stated that in return for the organization withholding new construction and acceptance of more horses than their then-current number, staff would postpone enforcement action and initiate a legislative plan amendment to allow the use to occur in the Scenic Area as a review use. This proposal is the result of that action.

The proposed plan amendment, therefore, includes changes to the definition of horse boarding to allow for non-profit horse boarding and also adds horse boarding as a review use to the 10-acre Residential zone. While horse boarding occurs in Agriculture and Forest zones without review for compatibility

with adjacent properties, staff believes that horse boarding applications in the 10-acre Residential zone should be reviewed for compatibility with adjacent properties because of the increased possibility for impacts to those properties in a Residential zone as opposed to Agricultural and Forest zones. However, because this use generally requires relatively large acreage and because on smaller parcels there is a greater potential for conflicts with adjacent uses, it is recommended that this use be added to the 10-acre Residential zone only rather than to all Residential zones.

II. Criteria and Rules for Approving an Amendment to the Management Plan

Section 6(h) of the Scenic Area Act authorizes the Gorge Commission to amend the Management Plan, and requires the Secretary of Agriculture to concur with a plan amendment adopted by the Gorge Commission before the plan amendment can go into effect.

Commission Rule 350-50 specifies the procedures for amending the Management Plan, based on the requirements of the Scenic Area Act. Proposed plan amendments must be considered after a public hearing. They must be adopted by a majority vote of the members appointed to the Gorge Commission, including at least three members from each state. According to Commission Rule 350-50-030, the Gorge Commission must find that the following three criteria are satisfied before it approves an amendment to the Management Plan:

1. Conditions in the Scenic Area have significantly changed. This means:
 - (a) Physical changes that have widespread or major impacts to the landforms, resources, or land use patterns in the Scenic Area;
 - (b) New information or inventory data regarding land uses or resources that could result in a change of a plan designation, classification, or other plan provisions;
 - (c) Changes in legal, social, or economic conditions, including those that affect public health, safety, or welfare, not anticipated in the Management Plan; or
 - (d) A demonstrable mistake in the Management Plan that has resulted in significant impacts or that involves significant issues, such as, but not limited to, a land use guideline that is less protective of Gorge resources than the policies the guideline was intended to implement; a land use designation that does not conform to the corresponding designation policies; or two or more guidelines that cannot be reasonably reconciled;
2. The proposed amendment is consistent with the purposes and standards of the Scenic Area Act; and
3. No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists.

The Gorge Commission may conclude that conditions in the Scenic Area have significantly changed if it finds that any one of the four subsections of Commission Rule 350-50-030(1) have been satisfied.

Commission Rule 350-50-100(3)(g) provides the procedure for the Commission to make changes to the amendment language that the staff recommends.

- (g) For legislative amendments, the Commission may modify the recommended language in any manner.
 - (i) If the Commission makes clarifying changes to the recommended language, then it may proceed to vote on whether to adopt the recommended language, as clarified, after providing an opportunity for public comment during the hearing.
 - (ii) If the Commission makes substantive changes, i.e. those not covered by subparagraph (i) immediately above, to the recommended language, the Commission shall:
 - (A) provide an opportunity for additional public comment during the hearing on the new language, and then proceed to vote on whether to adopt the amendment; or
 - (B) continue the hearing to a new date to allow for adequate public notice of the content of the language and for further consideration of the issues. When the hearing is resumed, the Commission shall provide a reasonable opportunity for the applicant and members of the public to respond to the proposed language, and then proceed to vote on whether to adopt the amendment.

III. Public Comments and Consultation

A pre-application conference was held on August 30, 2006 in accordance with Commission Rule 350-50-045. A pre-application report was issued two weeks after the conference. According to Commission Rules 350-50-080 and 350-50-085, the Executive Director sent public notice of the proposed amendment to the U.S. Forest Service, all four tribal governments, the six Gorge county planning offices and interested parties who requested notice. The notice, including the proposed plan amendment language, was issued on September 28, 2006. The Executive Director also published notice of the proposed amendment in local Gorge newspapers and the major newspapers in Portland and Vancouver. Interested persons had 30 days from the date the notice was mailed to submit written comments to the Executive Director (September 28, 2006 through October 28, 2006). Additionally, staff had phone conversations or email contact regarding the proposed amendment with the U.S. Forest Service, the six Gorge county planning offices and the four Indian tribal governments. The Gorge Commission received three letters, three emails and one comment through a phone conversation on the proposed amendment. Copies of the letters, emails and a memo summarizing the comment received via phone are included in Appendix B.

IV. Analysis of Proposed Plan Amendment PA-06-04

Criterion 1 (Conditions in the Scenic Area Have Changed Significantly):

At the time of adoption of the Management Plan in 1991, the Gorge Commission included horse boarding as an allowable use within certain zones of the Scenic Area. Since the adoption of the Management Plan, new information has become available to the public, particularly through the internet and the media, concerning horse abuse. Additionally, legal conditions have changed as animal abuse laws in Oregon and Washington have been clarified and penalties increased. A change in social conditions has also occurred as awareness of and intolerance for animal abuse, and in particular horse abuse, has increased. Finally, and presumably as a result of the above changes, the number of horse rescue organizations operating in Oregon and Washington has greatly increased (see Graph 2, pg 7).

New information and change in social conditions

Since the adoption of the Management Plan, two industries that raise questions about horse abuse - the horse slaughter and the Premarin® industries - have become more well-known and well-documented. Horse slaughter in the United States occurs at three plants (two in Texas, one in Illinois) that purchase live horses at auctions around the country, transport them to their plants, and slaughter them for human consumption. The horse meat is exported primarily to Western Europe and Japan. Horse abuse questions arise over the transport and holding conditions of the horses, the sources of the horses, and how the horses are slaughtered.¹ The horse slaughter industry was called into public question first in 1998 when California voters outlawed horse slaughter for human consumption in their state. National focus was brought to this issue when House Resolution 503, known as The American Horse Slaughter Prevention Act, was introduced to the U.S. House of Representatives in February 2005 and passed in September 2006.² A companion bill, Senate Bill 1915, was introduced in the U.S. Senate in October 2005 and currently awaits a final vote.

Premarin is the most widely used drug for estrogen replacement therapy. Premarin is made from pregnant mare urine, as its name implies. Horse abuse questions arise over the living conditions of the pregnant mares and treatment of the offspring from the mares, which are often unwanted and discarded through the horse slaughter industry. Although Premarin was first introduced in 1942, the first equine welfare organization did not investigate and publish their findings until 1986.³ This organization, HorseAid, was also the first to publish their Premarin data to the internet in 1994. Public awareness of the industry and its potential horse abuse issues has increased since then.

The media is also more willing to cover cases of animal abuse when they occur, which has further increased public awareness of horse abuse. Media coverage of horse abuse often results in increased reports of horse abuse from the public to animal welfare organizations and animal control officers due to the increased awareness of horse abuse.⁴ This also seems to represent a change in attitude towards horse abuse, since the public is more willing to report abuse when they become aware of it. Additionally, data suggests that horse abuse by individual persons has increased since adoption of the Management Plan (see Graph 1 below). The graph shows data from the website pet-abuse.com, which reports and tracks cases of animal abuse.⁵ Each individual case often involves more than one horse.

¹ <www.hsus.org/pets/issues_affecting_our_pets/equine_protection/get_the_facts_on_horse_slaughter.html> Last visited November 20, 2006.

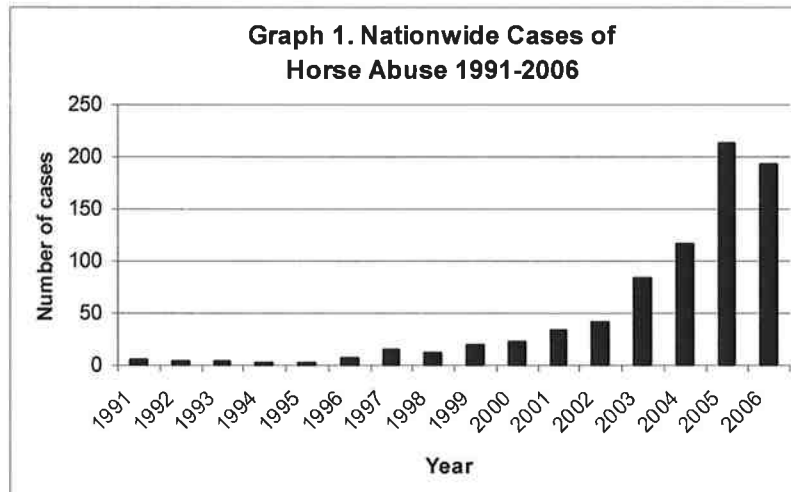
² <www.hsus.org/legislation_laws/federal_legislation/companion_animals/2005_horse_slaughter.html> Last visited November 20, 2006.

³ <www.premarin.org> Last visited November 20, 2006.

⁴ Humane Society of Oregon. Phone interview. June 14, 2006.

⁵ <www.pet-abuse.com/pages/cruelty_database.php>. Last visited December 22, 2006.

The increase in the number of horse abuse cases may be the result of increased awareness and thus reporting of horse abuse rather than the result of more instances of horses being abused. A recent article from *The Seattle Times* also reports that 2006-2007 may be a record year for reported cases of horse abuse and abandonment in Oregon related to the recent, greatly increased price of hay.⁶



Changes in legal conditions

Changes in the laws relating to horse abuse have also recently occurred. Since 2001, both Oregon and Washington have adopted changes to their state statutes on animal abuse that in general have clarified the laws and increased penalties. In the 2005 legislative session, Washington added language to clarify that animal abuse also includes negligence, starvation and dehydration [RCW 15.52.205(1)]. A bill to increase the penalties for animal abuse in Washington was also introduced in 2005 and is pending before the Legislature. Oregon increased the penalties for animal abuse in 2001 [ORS 167.320(4)]. Clarifications and additions to the animal abuse statutes also occurred in 2001 and 2003 (ORS. 167.310 to 167.390).

An interview with Timothy O'Neill⁷, Klickitat County Prosecuting Attorney, illustrated how legal changes, cases of horse abuse and public awareness of horse abuse have dramatically shifted in Klickitat County only since 2004. On February 2, 2004, the Klickitat County Sheriff's Office investigated a report of dead and starving horses at a residence in Trout Lake. Deputies found eight horses that had died of starvation and two horses and one mule in life-threatening conditions from starvation. Although the three live animals were impounded from the property to receive necessary care, one of the horses could not be revived and died several days later. Mr. O'Neill reported that this case reinforced to the citizens of Klickitat County the importance of enforcing the laws against animal cruelty, particularly against horses. Mr. O'Neill could not recall anything about horses being starved to death or abused in Klickitat County before this case. He further reported several county-wide changes as a result of this case, including greater awareness of animal and horse abuse with the public and with law enforcement staff, greater willingness from the public to report animal abuse, and greater public awareness of animal rights and of cruelty to animals being a punishable offense. Mr. O'Neill also

⁶ Associated Press (29 November 2006). "High hay costs push up cases of animal abandonment in Ore." *The Seattle Times*. Retrieved 1 December 2006 from <http://seattletimes.nwsources.com/html/localnews/2003453001_webhorses29.html>.

⁷ Personal phone interview. October 17, 2006.