



**TO:** Columbia River Gorge Commission

**FROM:** Jeff Litwak, Counsel

**DATE:** June 12, 2018

**SUBJECT:** **Action Item:** Adoption of Multnomah, Hood River, Wasco, Clark, and Skamania Counties' Land Use Ordinance Amendments

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### **Action Requested**

Conduct a public hearing on Multnomah, Hood River, Wasco, Clark, and Skamania counties' amendments to their land use ordinances in compliance with revisions to the Management Plan relating to cumulative effects analysis and vote to:

1. Find the counties' ordinance amendments affecting lands in the General Management Area (GMA) consistent with the Management Plan; and
2. Tentatively find the counties' ordinance amendments affecting lands in the Special Management Area (SMA) consistent with the Management Plan and direct staff to forward them to the Secretary of Agriculture for concurrence.

The counties' ordinances are attached to this staff report. The revisions to the Management Plan that necessitated the counties' amendments are also attached. Below, I have created links to each that you may use if you are reading an original .pdf of this staff report.

A motion to adopt the above recommendations requires a majority of the commissioners present at the meeting and at least three commissioners from each state. If the Commission votes to adopt the ordinance amendments, the amendments would go into effect as specified in the counties' ordinances.

If you conclude that all the counties' ordinance amendments are consistent with the Management Plan, you may take a single vote on all of the ordinances.

If you conclude that one or more of the counties' ordinance amendments are not consistent with the Management Plan, then you should do a separate vote for each ordinance that you conclude is not

consistent with the Management Plan, and the Act requires you to give reasons for concluding that an ordinance amendment is not consistent with the Management Plan.

The Act requires that you review counties land use ordinances within 90 days after a county transmits its ordinance to the Commission for review. The counties transmitted their ordinances to the Commission on the following dates:

Multnomah County Ordinance No. 1254, transmitted March 27, 2018

Hood River County Ordinance No. 359, transmitted May 15, 2018

Wasco County Ordinance No. 18-001, transmitted April 20, 2018

Clark County Ordinance No. 2018-03-04, transmitted March 22, 2018

Skamania County Ordinance No. 2018-04, transmitted April 18, 2018

Other requirements for your action on county land use ordinances come from sections 7(b) and 8(h) of the National Scenic Area Act (16 U.S.C. §§ 544e(b) and 544f(h)).

### **Background**

In 2016, the Commission adopted revisions to the Management Plan to address points in a decision from the Oregon Court of Appeals. The Gorge Commission approved amendments to the Gorge Commission's development review rules for Klickitat County in February 2018.

Throughout March, April, and May 2018, the counties adopted these revisions into their National Scenic Area land use ordinances. Additionally, some of the counties have adopted other clean-up items in their ordinances.

There are six attachments to this staff report: the package of revisions to the Management Plan that staff sent to the counties and the five county ordinances. The package of revisions to the Management Plan contains the text of the revisions to the Plan and background on why the Commission revised the Plan. Staff refers you to that document rather than repeat that material here.

### **Analysis of Counties' Amendments**

#### *Multnomah County Ordinance 1254*

Multnomah County adopted the identical text as the Plan revisions. Staff recommends the Commission find Multnomah County's amendments to its GMA provisions consistent with the Management Plan and tentatively find Multnomah County's amendments to its SMA provisions consistent with the Management Plan.

#### *Hood River County Ordinance No. 359*

Hood River County adopted the identical text as the Plan revisions. Staff recommends the Commission find Hood River County's amendments to its GMA provisions consistent with the Management Plan and tentatively find Hood River County's amendments to its SMA provisions consistent with the Management Plan.

*Wasco County Ordinance No. 18-001*

Wasco County adopted the identical text as the Plan revisions and several clean-up items. Wasco County submitted its entire NSA-LUDO to the Commission for review. Wasco County adopted all the revisions in two ordinance actions (the first ordinance action did not adopt all the cumulative effect revisions). Wasco County did not provide a single document showing all the ordinance amendments. Rather than provide you two ordinances to review, Staff highlighted all the clean-up items in the final NSA-LUDO document that Wasco County sent to the Commission and made notes below about the changes. Some of the clean-up items revise the NSA-LUDO to make the language identical to the Management Plan and some fix cross-reference and other typographical errors. A few of the adopted revisions do not show in the NSA-LUDO document that Wasco County sent to the Commission; Staff alerted Wasco County to these situations and Wasco County is updating its document.

*Required Revisions:*

- p. 1-4 Adopted definition of “Adversely Affect”
- p. 1-5 Adopted definition of Air
- pp. 14-29, 14-31 Adopted GMA cultural resources provisions
- p. 14-60 Adopted GMA cumulative effects review requirement for proposed uses in wetlands
- pp. 14-64 to 14-64, 14-67 Adopted cumulative effects review requirement for proposed uses in Stream, ponds, lakes, and riparian areas
- p. 14-72 Adopted GMA cumulative effects review requirement for proposed uses near sensitive wildlife sites
- p. 14-76 Adopted GMA cumulative effects review requirement for proposed uses near sensitive plants
- p. 14-82 Adopted new SMA clarifying language specifying that cumulative effects review is not required for expedited review uses or developments. Wasco County’s placement of this language makes it effective only to water resources whereas the placement of the language in the Management Plan makes it effective to all natural resource reviews (not just water resources reviews). Because Wasco County’s ordinance could be understood to require cumulative effects review for expedited review uses for all other natural resource concerns, it is more protective of resources than the Management Plan, and thus this variation is consistent with the Management Plan.
- p. 14-85 Adopted SMA cumulative effects review requirement for proposed uses in water resources
- p. 14-89 Adopted SMA cumulative effects review requirement for proposed uses near sensitive wildlife sites or rare plants

*Clean-Up Items:*

- pp. 10-3 to 10-4 added text that is in the Management Plan, but had not been in the NSA-LUDO
- p. 14-13 added guideline that was missing in the NSA-LUDO
- p. 14-24 added guideline that was missing in the NSA-LUDO
- p. 14-26 added guideline that was missing in the NSA-LUDO (note this change was adopted but wasn’t added into the NSA-LUDO document sent to the Commission. Staff alerted Wasco County and Wasco County has fixed it).
- p. 14-27 added guideline that was missing in the NSA-LUDO

- pp. 14-32 to 14-34 added policies GMA Cultural Resources policies 10 through 20 from the Management Plan. These are not a necessary part of a county's land use ordinance, but there is no harm in Wasco County adding them.
- p. 14-40 changed "would" to "could" to match the Management Plan
- p. 14-44 added notice requirements that are also elsewhere in the NSA-LUDO and Management Plan
- p. 14-53 changed text to match Management Plan language
- p. 14-61 changed text to match Management Plan language
- p. 14-66 added word to match Management Plan language
- p. 14-67 added words to match Management Plan language
- p. 14-69 added text from GMA Wildlife Goal 1 in the Management Plan. This is not a necessary part of a county's land use ordinance, and Wasco County's ordinance already had some of the text of this Goal; there is no harm in Wasco County adding the rest of the text.
- pp. 14-71 and 14-87 The highlighted provisions on these two pages should be identical. Page 14-71 is the guideline for the GMA. Page 14-87 is the guideline for the SMA. At some point in the past, Wasco County had removed the reference to Wash. Dep't of Wildlife material from the GMA provision, but not the SMA provision. In this current round of ordinance amendments, Wasco County removed the reference to Wash. Dep't of Wildlife material from the SMA provision. Staff recommended Wasco County add that material back and Wasco County accidentally added it to the GMA provision, not the SMA provision. Staff alerted Wasco County to this mistake and Wasco County has committed to adding the reference to Wash. Dep't of Wildlife material to both the GMA and SMA provisions when it does its next code update. Staff recommends the Commission find the ordinance consistent despite this error.
- p. 14-72 changed "local government" (the term used in the Management Plan) to "County"
- p. 14-76 changed "local government" (the term used in the Management Plan) to "County" (two instances on this page).
- p. 14-78 changed "guidelines" to "standards" (note this change was adopted but wasn't added into the NSA-LUDO document sent to the Commission. Staff alerted Wasco County and Wasco County has fixed it).
- p. 14-79 changed "local government" (the term used in the Management Plan) to "County"
- p. 14-80 removed "as proposed" between the highlighted words. "As proposed" is not in the Management Plan.
- p. 14-89 changed "local government" (the term used in the Management Plan) to "County"
- pp. 14-102 to 14-103 added highlighted text that is in the Management Plan but had not been in the NSA-LUDO
- p. 14-104 added highlighted text that is in the Management Plan but had not been in the NSA-LUDO (note the cross reference in this section was adopted as "(see Section 14.400 Landscape Settings)" to reflect the numbering in the NSA-LUDO, but this adopted text was not added into the NSA-LUDO document sent to the Commission. Staff alerted Wasco County and Wasco County has fixed it).
- pp. 14-104 to 14-105 the highlighted text was consolidated into a single provision. It had been separate provisions in the NSA-LUDO. This makes the NSA-LUDO identical to the Management Plan.
- p. 14-105 added this section that is in the Management Plan but had been dispersed throughout the NSA-LUDO. This makes the NSA-LUDO identical to the Management Plan.
- p. 14-106 added guidelines 9 and 12 that are in the Management Plan, but had not been in the NSA-LUDO

- p. 14-106 changed cross-reference in guideline 11 to reflect numbering in the NSA-LUDO.
- p. 14-109 moved this section, which had been in another section of the NSA-LUDO—no substantive change
- pp. 14-110 to 14-111 added text that is in the Management Plan but had not been in the NSA-LUDO

Staff recommends the Commission find Wasco County’s amendments to its GMA provisions consistent with the Management Plan and tentatively find Wasco County’s amendments to its SMA provisions consistent with the Management Plan.

*Clark County Ordinance No. 2018-03-04*

Clark County adopted the identical text as the Plan revisions with a few minor word changes to the wetlands provisions. The word changes are necessary because Clark County organized its National Scenic Area ordinance slightly differently than the Management Plan. The changes are not substantive. Staff recommends the Commission find Clark County’s amendments to its GMA provisions consistent with the Management Plan and tentatively find Clark County’s amendments to its SMA provisions consistent with the Management Plan.

*Skamania County Ordinance No. 2018-04*

Skamania County adopted the identical text as the Plan revisions and fixed cross-references that changed as a result of adopting the Plan revisions. Skamania County also fixed three clean-up items and made one other change to its ordinance discussed below. Skamania County submitted its entire National Scenic Area Land Use Ordinance (Title 22) to the Commission for review; it is a track changes version so you can easily see the changes as you scroll through it. Two of the clean-up items fix typographical errors (pp. 8 & 153) and one fixes a cross-reference error (p. 102).

Skamania County also changed the name used for a cultural resource “reconnaissance survey” to “archaeological survey.” Skamania County’s definition of “archaeological survey” is the same as the Management Plan definition of “reconnaissance survey.” Skamania County consulted with staff about renaming “reconnaissance survey.” Staff recommending against it because “reconnaissance survey” is a term of art used in the National Scenic Area—in other words, we have used the term so long that changing it in just one county could be confusing to Commission staff, U.S. Forest Service staff, the Treaty Tribes, and Oregon SHPO and Washington DAHP. In response to this concern, Skamania County defined “archaeological survey” to say, “An Archaeological survey may also be called a reconnaissance survey.” See page 7 of Skamania County’s land use ordinance. Staff would prefer all counties use the same term, but with this reference in the definition of “archaeological survey,” Staff believes the Commission could find the ordinance consistent with the Management Plan. Staff is not making a recommendation on this specific change.

With the exception of changing the name of “reconnaissance survey” to “archaeological survey,” Staff recommends the Commission find Skamania County’s amendments to its GMA provisions consistent with the Management Plan and tentatively find Skamania County’s amendments to its SMA provisions consistent with the Management Plan.