



**TO:** Columbia River Gorge Commission

**FROM:** Jeff Litwak, Counsel

**DATE:** November 13, 2018

**SUBJECT:** **Action Item:** Approval of Amendment to Legal Boundaries Descriptions Rule

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### **Action Requested**

Conduct a public hearing on proposed amendments to Commission Rule 350-10 and adopt the proposed amendments after the public hearing. The proposed rule incorporates the three appendices that contain the actual legal descriptions.

A motion to adopt requires only a simple majority of the commissioners present at the meeting; there is no super majority requirement to adopt rules. If the Commission votes to adopt the proposed amendments, the amendments would go into effect 30 days after the staff sends notice of the adoption to the states. The rule would go into effect at the beginning of 2019.

The attached proposed amendments include additions and deletions to Commission Rule 350-10 and Appendix C (urban area boundaries). Appendices A and B are new and I chose not to underline the entirety of those appendices for clarity. There are no substantive changes to the urban area boundary revisions. The changes are the result of adding new angle points where the exterior or special management area boundaries are coincident with the urban area boundaries and rewording to make urban area descriptions more consistent with terms, syntax, abbreviations, etc. that the contract surveyors used or the Forest Service surveyor recommended for the exterior and special management area boundaries.

### **Background**

In February 2017, the Commission adopted legal descriptions for the thirteen urban areas in the National Scenic Area. The Commission and Forest Service received many positive comments from the public, stakeholders, and partner agencies about completing that important task. Executive Director Krystyna Wolniakowski and Forest Service NSA Manager Lynn Burditt initiated a project to do legal descriptions for the exterior and special management area boundaries. All of the boundaries specified in the National Scenic Area Act, except the "Dodson-Warrendale Special

Purchase Unit” now have a legal description. Krystyna and Lynn chose not to describe the special purchase unit because it is no longer used. A 2001 amendment to the Act ended special acquisition programs in the National Scenic Area. The Forest Service may still acquire land within the special purchase unit, but it does so under general acquisition authority.

We used the same contractor survey firm, Tenneson Engineering, which did the legal boundary descriptions for the urban areas; this ensured a faster process and consistency in methodology. Throughout their work, we met and discussed specific angle points and prior surveys and documentation. Commission and Forest Service staff reviewed the legal boundary descriptions several times throughout the process.

As a final “check” on the exterior and special management area descriptions, the Forest Service plotted each angle point for the exterior and special management areas and compared those points to the 1986 congressional maps and the 1987 U.S. Forest Service maps. There were only a few small discrepancies, which Gorge Commission staff, Forest Service staff, and the contractors resolved. The Commission has that data layer and we will be prepared to show it to you at the hearing.

Staff filed notices of proposed rulemaking with Oregon Secretary of State and Washington Code Reviser. The states published the notice in the October 2018 Oregon Bulletin and the September 5, 2018 Washington State Register (No. 18-20). These publication dates allow the Commission to hold a public hearing on the proposed rule and vote to adopt at the November 13, 2018 Commission meeting.

Staff held a public workshop to introduce and discuss the legal descriptions. Six people—mostly representatives of counties—attended this workshop. At the workshop, staff discussed the project, the legal descriptions, and went through the draft legal descriptions, focusing on angle points and courses that the attendees wanted to discuss.

### **Summary of the Proposed Rule**

Most of the amendments to Rule 350-10 are necessary to incorporate the exterior and special management area legal boundary descriptions into the rule. Other proposed amendments include:

Rule 350-10-030(4) – a new subsection that specifies the Gorge Commission will maintain a graphical representation of the boundaries, which in practical terms means a GIS data layer. This new section, however, makes clear the graphical representation is not the “official” boundary. The legal boundary descriptions are the new “official” boundaries.

Rule 350-10-050 specifies that several types of natural and manmade process do not change the locations of the NSA boundaries. New subsection (5) specifies that changes in property ownership and changes in property boundaries by land divisions, etc. do not change the locations of the NSA boundaries.

Amendments to the urban area legal boundary descriptions (now labeled Appendix C) include new angle points where the exterior and special management area boundaries hit the urban areas between two prior angle points. The courses described for those angle points necessarily changed as well. Other changes are mostly syntax and style, such as using the same abbreviations used in

the exterior and special management area descriptions. All amendments to Commission Rule 350-10 and the urban area boundaries are shown in strikes and underline.

The new legal boundary descriptions for the exterior and special management area boundaries are in Appendix A (exterior) and Appendix B (special management areas). I did not use underlining for these new descriptions because that would make them harder to read, but we filed them as “new” sections.

### **Comments Received to Date**

As of the date that staff sent this staff report to the Commission, the Commission received one comment—from Friends of the Columbia Gorge. Friends stated that it was pleased the Commission undertook this project and had no substantive comments on the content of the rule. Friends noted that in addition to the Commission publishing the legal boundary descriptions with the Oregon Bulletin and Washington State Register, the Forest Service would need to publish the legal boundary descriptions in the Federal Register.

If staff receives any additional comments on this proposed rule, we will forward to you the comments and any analysis that we are able to do.

### **Next Steps**

After the Commission adopts these legal descriptions, staff will file the final rulemaking paperwork. The Forest Service still indicates that it wants to publish the legal descriptions in the Federal Register, but it needs approval to do so. Staff will also send copies of the legal boundary descriptions to the counties and cities and make its GIS data (which is illustrative only) available to the counties and cities. Finally, staff will forward the legal boundary descriptions and GIS data to the U.S. Census, which will use the information to create the ability to do NSA-specific analyses of the 2020 Census and subsequent census data.