

**DRAFT POLICY FOR
URBAN AREA BOUNDARY REVISIONS
For November 19, 2018 Workshop**

General Provisions

- (1) Land trades and de minimis revisions as specified below constitute “minor revisions” as that term is used in section 4(f) of the National Scenic Area Act. A full revision [REDACTED]
- (2) The following land shall not be revised into an urban area or into the general management area or a special management area:
 - (a) submerged land below the normal pool elevation (above Bonneville Dam) or below ordinary high water mark (below Bonneville Dam) of the Columbia River, as defined in the legal description for the urban area;
 - (b) land designated open space in the general management area or a special management area; and
 - (c) land revised into the general management area or a special management area as part of a land trade or de minimis application.
- (3) The county applying for an urban area boundary revision shall reimburse the Gorge Commission for its reasonable costs in making the urban area boundary revision effective, including, but not limited to costs to revise the legal description and costs of rulemaking, including staff time.
- (4) Frequency of applications
 - (a) After the Commission approves a land trade or de minimis revision, the urban area may not seek another land trade or de minimis revision for five years as measured from the date the Gorge Commission revises the legal description for the urban area or the date the land revised into the urban area is incorporated into the applicable comprehensive plan and zoning ordinance and is available for development, whichever is later.
 - (b) The land revised into an urban area from the prior land trade or de minimis revision shall be developed and used before the Commission will approve another land trade or de minimis revision.
 - (c) The Gorge Commission may delay its consideration of an application for a land trade or de minimis revision to allow the Commission to review multiple applications at the same time.
 - (d) Each urban area is entitled to use land trades, de minimis revisions, and full revisions to the maximum extent allowed in this rule. Use of one type of revision does not

preclude use of another, except that the commission may only approve one revision to any segment of boundary. Cascade Locks and Stevenson are entitled to use land trades, de minimis revisions, and full revisions as provided below without limitation even though the Gorge Commission previously approved urban area boundary revisions for those urban areas.

(5) The Gorge Commission may impose conditions of approval when approving a land trade application. Conditions of approval may require restrictions on use of the land revised into an urban area, may require a county or city to modify existing development or uses on land proposed to be revised into the general management area or a special management area, and may require that the land revised into an urban area is subject to type, density and intensity of development and uses specified in the application or in the decision, if different from the application.

(6) The applicable permitting city or county shall require a development agreement at the time any land revised into an urban area by a land trade or de minimis revision is initially developed or used. The development agreement shall ensure that the land is used for the same type of use asserted in the urban area boundary revision application or decision, if different from the application, for a period of not less than 30 years beginning with occupancy of use. The agreement shall include the Gorge Commission as a party to the development agreement with all rights to enforce the development agreement for the life of the development agreement, the right for the Gorge Commission to designate a successor to its enforcement right if the Gorge Commission is disestablished or unable to enforce the development agreement, and the right for the Gorge Commission or its successor to recover all costs of enforcement, including attorney fees.

(7) Designation of Land Revised into the General Management Area or a Special Management Area

(a) For land revised into the general management area, the Commission shall assign a land use designation, minimum parcel size, landscape setting, and recreation intensity class as part of its approval of an urban area boundary revision. The Gorge Commission will give first consideration to designating such revised land the same as adjacent general management area land.

(b) For land revised into a special management area, the Forest Service will assign a land use designation, landscape setting and recreation intensity class as part of its approval of an urban area boundary revision.

(8) Use of Land Revised into an Urban Area

(a) The land revised into an urban area shall be used for the same type of use as specified in the application for a period of not less than 30 years beginning with occupancy of the use.

(b) If the use of the land cannot continue to be used for the same type of use, the county shall apply to the Gorge Commission to use the land for another proposed type of use. The application shall be for the same type of revision as originally approved. If the

Gorge Commission cannot approve the application, the Gorge Commission may order that the land revised into the urban area shall revert back to its original general management area designation, including land use designation, minimum parcel size, and other designations, at the time of the original application, or may recommend the same remedies if the land was originally in a special management area. If the land was originally in a special management area, the U.S. Forest Service shall also approve the application to change the use and may order any available remedy. The Gorge Commission's order shall address the status of current development and land uses on the reversion land and may require that the development be removed, modified or be subject to the "existing uses" provisions of the county or Gorge Commission's National Scenic Area land use ordinance, or any other remedy. Land revised into the general management area or a special management area as part of a land trade or de minimis application shall remain in the general management area or special management area and does not revert back to the urban area.

- (9) The Gorge Commission shall not approve a revision if the revision would cause a parcel remaining in the general management area or a special management to have no reasonable development or use potential.

Land Trades

- (1) A land trade does not increase the overall size of an urban area as measured by acres. The overall size of an urban area may become smaller as a result of a land trade.
- (a) A land trade may involve non-contiguous land and shall not revise more than one percent of the size of the urban area or 10 acres, whichever is less. For the purpose of this requirement, the size of each urban area is given at the end of the legal description for the urban area in Appendix C to Commission Rule 350-10 in effect at the time of the first land trade or de minimis revision to that urban area.
 - (b) An urban area may apply for more than one land trade. The cumulative size of all land trade applications to an urban area shall not exceed the size permitted in subsection (a).
 - (c) A land trade shall involve only a revision between land in an urban area and land in the general management area. Land in a special management area is not entitled to be revised into an urban area through a land trade.
 - (d) A land trade shall involve only land that is adjacent to the boundary of an urban area. For the purpose of this requirement, land is considered adjacent when at least 33 percent of the circumference of the land to be revised into an urban area and 33% of the circumference of the land to be revised into the general management area is coterminous with the boundary of the urban area. The land to be revised in an urban area shall be generally rectangular or triangular in shape and shall not result in the urban area surrounding general management area or special management area land on more than two sides.

- (e) A land trade shall not reduce the size of an existing parcel that meets the minimum parcel size to a size below the minimum parcel size for the area of the parcel remaining in the general management area.
- (2) Required characteristics of land proposed for a land trade:
- (a) Land revised into an urban area shall meet the standards required in subsections (3) through (6) below.
 - (b) Land revised into the general management area shall:
 - (1) be undeveloped or have minimal development or uses that generally comply with the land use standards in the Management Plan and do not preclude reasonable future development or land uses consistent with the Management Plan; and
 - (2) not have development or uses that adversely affect the scenic, cultural, natural, or recreation resources, or treaty rights, on the subject land or adjacent or nearby general management area or special management areas as determined by review of the existing development and uses on the land using the standards in the Management Plan for review of scenic, cultural, natural, and recreation resources, and treaty rights; and
 - (3) not have development or uses that conflict with use or preservation of adjacent or nearby land within the general management area or a special management area. Conflicts include, but are not limited to, odor, noise, light, and risk of air or water pollution.
- (3) Interpretation and Application of 4(f) Criterion 1: A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan
- (a) A land trade is presumed to satisfy demonstrable need. Land trades provide for additional urban population growth or economic needs while using only the same amount of land as designated in the National Scenic Area Act.
 - (b) An application for a land trade shall specify the intended use for the land proposed to be revised into the urban area.
 - (c)
 - (d)

(4) Interpretation and Application of 4(f) Criterion 2: Revision of urban area boundaries is consistent with the standards established in Section 6 and the purposes of the National Scenic Area Act;

- (a) The planned type, density and intensity of use of land revised into an urban area must not have adverse effect to scenic, cultural, natural and recreation resources on the subject land or adjacent or nearby land in the general management area or a special management area. Adverse effect shall be determined by compliance with the standards in the Management Plan for review of cultural, natural, and recreation resources. The standards in the Management Plan for review of scenic resources shall apply to the maximum extent feasible, recognizing that urban types, density, and intensity of uses may not be able to fully meet the scenic resources standards.
- (b) The planned type, density and intensity of use of the land must have no effect on treaty rights as determined by compliance with the standards in the Management Plan for protection of treaty rights.
- (c) An application for a land trade shall include analysis of effect to scenic, cultural, natural and recreation resources, and treaty rights, of the intended use for the land proposed to be revised into the urban area, including reports from the resource professionals and tribes as required by the Management Plan.
- (d)
- (e)

(5) Interpretation and Application of 4(f) Criterion 3: Revision of urban area boundaries will result in maximum efficiency of land uses within and on the fringe of existing urban areas;

- (a) Land revised into an urban area through a land trade shall not be used for single family residential development.
- (b) Roads, parking, utilities, and other infrastructure supporting development of the land revised into the urban area shall not exceed [REDACTED] [WHAT IS THE APPROPRIATE MEASUREMENT?]
- (c)
- (d)

(6) Interpretation and Application of 4(f) Criterion 4: Revision of urban area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

- (a) Land proposed to be revised into an urban area shall not be currently used for agricultural use, except grazing, and shall not be suitable for orchard or row crops as “suitable” is defined in the Management Plan.

- (b) Land proposed to be revised into an urban area shall not have merchantable timber on more than 20% of the land area to be revised. For the purpose of this provision, merchantable timber includes reforestation required by a state forest practices act, saplings and trees being grown for the purpose of timber harvest in the future; and

No more than 50 percent of the land proposed to be revised into an urban area shall be suitable for growing merchantable timber. Suitability is defined in the Management Plan.

Land proposed to be revised into an urban area shall not be enrolled in a state's forest land tax deferral program.

[LINK (b) WITH OAR AND WAC??]

[OAR 629-610-0090: Oregon does not require reforestation if the applicant obtains permits for other uses within 12 months following a cut; establishes the use within 24 months of completion of operations, and must be maintained for 6 years following completion of operations]

[WAC 222-20-050: Washington reforestation rules do not apply if an application to harvest indicates that within 3 years, the land will convert to a use not compatible with timber operations., or a landowner decides to convert within six years after receiving approval of a forest practices application

- (c)

- (d)

De Minimis Revisions

(1) The purpose of a de minimis revision is to make land within the urban area function more efficiently and effectively for planned uses in the urban area adjacent to or close to the boundary of an urban area by siting a road or infrastructure for public facilities and services, making an urban area parcel buildable, or making the urban area coterminous with natural or built features, or is necessary to make the urban area boundary coterminous with the exterior boundary of the National Scenic Area and adjacent to land outside the National Scenic Area that is currently planned for and currently available for use as urban land.

- (a) Revision of each segment of an urban area boundary is considered a separate de minimis revision. A county may apply for more than one de minimis revision. The sum total of all de minimis revisions in perpetuity to each urban area may increase the size of the urban area by no more than one percent of the size of the urban area or by no more than 20 acres, whichever is less. For the purpose of this requirement, the size of each urban area is given at the end of the legal description for the urban area in

Appendix C to Commission Rule 350-10 at the time of application for the first land trade or de minimis revision to that urban area.

- (b) At least 33 percent of the circumference of the land to be revised into an urban area shall be coterminous with the boundary of the urban area. The land to be revised in an urban area shall be generally rectangular or triangular in shape and shall not result in the urban area surrounding general management area or special management area land on more than two sides.
- (c) A de minimis revision may reduce the size of an urban area by revising land from an urban area into the general management area or a special management area. Reducing the size of an urban area by a de minimis revision or a land trade does not correspondingly increase the amount of land that may be revised into the urban area through a de minimis revision.
- (d) A de minimis revision in which land is revised from a special management area into an urban area is subject to the following limitations:
 - (1) The Gorge Commission shall not approve a de minimis revision involving a special management area parcel that is currently developed with a major development action, as that term is defined in the National Scenic Area Act, if the parcel is currently 40 acres or greater in size and the de minimis revision would leave the current development in the special management area and reduce the size of the parcel remaining in the special management area to less than 40 acres in size.
 - (2) If a de minimis revision involves a parcel that is not currently developed with a major development action, a de minimis revision may reduce the size of the original parcel to less than 40 acres remaining in the special management area only if the landowner(s) of the special management area parcel shall acknowledge and consent in writing to the prohibition in the National Scenic Area Act against major development actions on parcels less than 40 acres in size.

[(2) GIVES MORE FLEXIBILITY THAN THE LOT LINE ADJUSTMENT STANDARDS FOR THE SMA IN THE MANAGEMENT PLAN]
 - (3) A county applying for a de minimis revision that involves a special management area land must obtain approval from the U.S. Forest Service in addition to approval from the Gorge Commission. The U.S. Forest Service may use its own procedures and standards that may differ from the procedure and standards in this Commission Rule.
- (e) A de minimis revision shall not reduce the size of an existing parcel in the general management area that meets the minimum parcel size to a size below the minimum parcel size for the area of the parcel remaining in the general management area.

- (f) A county may apply for multiple de minimis revisions to the same urban area at the same time. A county shall include all proposed de minimis revisions to the same urban area in a single application. Proposed de minimis revisions to more than one urban area shall require a separate application for each urban area.
- (2) Required characteristics of land proposed for a de minimis revision:
 - (a) Land revised into an urban area shall meet the standards required in subsections (3) through (6) below.
 - (b) Land revised into the general management area or a special management area shall:
 - (1) be undeveloped or have minimal development or uses that generally comply with the land use standards in the Management Plan and do not preclude reasonable future development or land uses consistent with the Management Plan; and
 - (2) not have development or uses that adversely affect the scenic, cultural, natural, or recreation resources, or treaty rights, on the subject land or adjacent or nearby general management area or special management areas as determined by review of the existing development and uses on the land using the standards in the Management Plan for review of scenic, cultural, natural, and recreation resources, and treaty rights; and
 - ((3) not have development or uses that conflict with use or preservation of adjacent or nearby land within a special management area or the general management area. Conflicts include, but are not limited to, odor, noise, light, and risk of air or water pollution.
- (3) Interpretation and Application of 4(f) Criterion 1: A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan
 - (a) A de minimis revision is needed when there is no practicable alternative to make land within the urban area function efficiently and effectively for its planned use except by using general management area or special management area land for siting roads and infrastructure for public facilities and services, making an urban area parcel buildable, making the urban area coterminous with nearby natural or built features, or is solely necessary as a means to revise the urban area boundary to be coterminous with the exterior boundary of the National Scenic Area and adjacent to land outside the National Scenic Area that is currently planned for and currently available for use as urban land. The definition of “practicable” in the Management Plan applies to this provision.

(b) An application for a de minimis revision shall specify the intended use for the land proposed to be revised into the urban area.

(c)

(d)

(4) Interpretation and Application of 4(f) Criterion 2: Revision of urban area boundaries is consistent with the standards established in Section 6 and the purposes of the National Scenic Area Act;

(a) The planned type, density and intensity of use of the land must not have adverse effect to scenic, cultural, natural and recreation resources on the subject land or adjacent or nearby land in the general management area or a special management area. Adverse effect shall be determined by compliance with the standards in the Management Plan for review of cultural, natural, and recreation resources. The standards in the Management Plan for review of scenic resources shall apply to the maximum extent feasible, recognizing that urban types, density, and intensity of uses may not be able to fully meet the scenic resources standards.

(b) The planned type, density and intensity of use of the land must have no effect on treaty rights as determined by compliance with the standards in the Management Plan for protection of treaty rights.

(c) An application for a land trade shall include analysis of effect to scenic, cultural, natural and recreation resources, and treaty rights, of the intended use for the land proposed to be revised into the urban area, including reports from the resource professionals and tribes as required by the Management Plan.

(d)

(e)

(5) Interpretation and Application of 4(f) Criterion 3: Revision of urban area boundaries will result in maximum efficiency of land uses within and on the fringe of existing urban areas;

(a) Development and use of land revised into an urban area through a de minimis revision shall be limited to roads and infrastructure for public facilities and public services. Land revised into an urban area through a de minimis revision shall not be used for new buildings or for uses that would conflict with nearby or adjacent general management area or special management area. Conflicts include, but are not limited to, odor, noise, light and risk of air or water pollution.

(b) Roads, parking, utilities, and other infrastructure supporting development of the land revised into the urban area shall not exceed [REDACTED] [WHAT IS THE APPROPRIATE MEASUREMENT?]

(c)

(d)

(6) Interpretation and Application of 4(f) Criterion 4: Revision of urban area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

(a) Land proposed to be revised into an urban area shall not be currently used for agricultural use, except grazing, and shall not be suitable for orchard or row crops as “suitability” is determined in the Management Plan.

(b) Land proposed to be revised into an urban area shall not have merchantable timber on more than 20% of the land area to be revised. For the purpose of this provision, merchantable timber includes reforestation required by a state forest practices act, saplings and trees being grown for the purpose of timber harvest in the future; and

No more than 50 percent of the land proposed to be revised into an urban area shall be suitable for growing merchantable timber. Suitability is defined in the Management Plan.

Land proposed to be revised into an urban area shall not be enrolled in a state’s forest land tax deferral program.

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[OAR 629-610-0090: Oregon does not require reforestation if the applicant obtains permits for other uses within 12 months following a cut; establishes the use within 24 months of completion of operations, and must be maintained for 6 years following completion of operations]

[WAC 222-20-050: Washington reforestation rules do not apply if an application to harvest indicates that within 3 years, the land will convert to a use not compatible with timber operations, or a landowner decides to convert within six years after receiving approval of a forest practices application]

(c)

(d)

Full Revisions

(1) A full revision is a revision to an urban area boundary that does not qualify as a land trade or de minimis revision. The application shall satisfy the following criteria. The criteria from section 4(f)(2)(A) through (D) of the National Scenic Area Act are numbered below in subsections (3) through (6). The text below each criterion is the Commission’s statement of how it interprets and

how it will apply the criterion to a specific application, and what analysis is necessary to demonstrate compliance.

(2) Coordination with the States' Planning Requirements

(a)

(b)

(3) Interpretation and Application of Criterion 1: A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan

(a) This is an either-or criterion. An applicant can demonstrate that its application satisfies this criterion by demonstrating need for additional land based either on long range population growth in the urban area or economic need of the urban area.

(b) An applicant shall demonstrate need using the methods, formulas, factors, and specified ranges required by the Oregon Land Conservation and Development Commission for revising urban growth boundaries in compliance with Oregon Statewide Planning Goal 14. Applicants shall use the requirements of Oregon Administrative Rule chapter 660, division 038 as modified by subsection (c) below. This applies to urban areas in Oregon and Washington, except that a county shall use the Office of Financial Management population projection at the low end of the projected range.

(c) National Scenic Area Factors:

(1) [From 2009 Rules Committee Recommendation¹] 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.

Possible "Nearby Urban Areas"

North Bonneville, Stevenson, Cascade Locks

Carson, Home Valley

¹ The 2009 Rules Committee Recommendation contained this language in the section on "prioritization of land," the term used to determine which lands would be revised into an urban area after the urban area demonstrated a need for additional land. The recommendation referenced this language as also requiring urban areas to consider availability of land in nearby urban areas.

White Salmon, Bingen, Hood River, Mosier
Lyle, Dallesport, Wishram, The Dalles

- (2) Mandate specific affordability measures from Table 5: OAR 660-038-0190(5) (attached)
- (3) Require urban areas to plan for tribal housing, including using existing programs for financing construction and tribal member purchasing of homes. (still need to talk with NAYA Family Center; HUD Office of Native American Programs (ONAP); and others that handle tribal housing planning, construction, financing, home ownership programs, etc.)
- (4) Define Constrained Land to include land with sensitive NSA resources, agriculture, forest, and open space (this reduces the supply of land available for expansions).
- (5) Require SNCR resource improvement as opposed to mere no adverse effect.
- (6)

(d)

(e)

(4) Interpretation and Application of Criterion 2: Revision of urban area boundaries is consistent with the standards established in Section 6 and the purposes of the National Scenic Area Act;

(a)

(b)

(5) Interpretation and Application of Criterion 3: Revision of urban area boundaries will result in maximum efficiency of land uses within and on the fringe of existing urban areas;

(a)

(b)

(6) Interpretation and Application of Criterion 4: Revision of urban area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

(a)

(b)