

STAFF REPORT

TO: Columbia River Gorge Commission
FROM: Jeff Litwak, Legal Counsel
Aiden Forsi, Land Use Planner
DATE: November 12, 2019
SUBJECT: **Work Session*:** Gorge 2020 - Urban Area Boundary Revision Policy

Background

At the August 2019 Commission Meeting, staff presented an update on the Urban Area Boundary Revision Policy focus topic. The Commission heard public comment and had a discussion on next steps. The Commission instructed staff to pause public workshops on the focus topic, and to bring the topic back to the Commission in November for discussion on the definition of “minor revisions” in section 4(f) of the National Scenic Area Act.

Language in the National Scenic Area Act regarding revision of urban area boundaries

Section 4(f) of the National Scenic Area Act contains the requirements for the Commission to revise urban area boundaries. The text of the Act is:

(f) Revision of urban area boundaries

- (1) Upon application of a county and in consultation with the Secretary, the Commission may make minor revisions to the boundaries of any urban area identified in subsection (e) of this section. A majority vote of two-thirds of the members of the Commission, including a majority of the members appointed from each State, shall be required to approve any revision of urban area boundaries.
- (2) The Commission may revise the boundaries of an urban area only if it finds that—
 - (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 544d of this title and the purposes of sections 544 to 544p of this title;
- (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.

Section 544d of the Act, referenced above refers to the standards in the Management Plan. The purposes referenced above refer to the purposes of the Act.

Previous Attempts by the Commission to Define “Minor Revision”

In 1992, the Commission adopted a handbook as guidance for counties to use when applying for an urban area boundary revision—it was not intended as a regulatory document. The handbook defined “minor revisions” as

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.

The handbook has not been changed since it was initially adopted in 1992. The final handbook is on page 00097 of the Background Notebook that staff developed at the start of the Gorge 2020 review process for urban area boundary revision policy. The Background Notebook is available on the Commission’s website at <http://www.gorgecommission.org/management-plan/gorge2020/> (click on focus topics and scroll down to the urban areas topic).

In 2009, the Gorge Commission’s Rules Committee put considerable effort into attempting to define “minor revision,” but ultimately recommended only changing the word “or” to “and” in the Handbook definition. The Commission considered this recommendation and the Rules Committee’s other recommendations for revising the Commission’s guidance, but did not make any changes. The minutes from those meetings are available in the Background Notebook beginning on page 000310, which includes the list of potential definitions of “minor revision” that staff are requesting the Commission to review. The minutes and list of potential definitions are attached to this report.

As part of the Gorge 2020 plan review process, and with an understanding of the history of issues with defining the term, Commission staff constructed a revision process around other aspects of the 4(f) criteria before trying to define “minor revision.” Staff have not attempted to define the term as part of the Gorge 2020 review process.

Discussion Topic

In 2009 the Gorge Commission’s Rules Committee brainstormed a list of potential definitions to the term “minor revision.” The list is attached to this report. These definitions vary in many ways but may be broadly categorized as either objective or subjective definitions of the term. The Commission might start its discussion with whether the definition of “minor revisions” should be an objective standard like an acreage limitation, or a subjective standard like avoiding adverse effects to protected resources.

You should review the 2009 list for inspiration and be prepared for a discussion of specific language to consider as a definition of “minor revisions,” or a description of the objective or subjective factors that the Commission should consider when evaluating applications for minor revisions to urban area boundaries. Staff does not have recommendations for the Commission. This discussion will inform staff’s work in developing urban area boundary revision policy for your review in the future. You are not being asked to develop any policy language at this time.

As a reminder, the Commission is considering boundary revision policy only for areas where urban areas are adjacent to land in the General Management Area. Only the U.S. Forest Service has authority in the Act to revise Special Management Areas, so the Commission’s policy cannot apply to Special Management Areas unless the U.S. Forest Service joins in the Commission’s policy.

Attachments

Excerpts of 2009 Rules Committee meeting notes, June 2009 staff report and June 2009 Gorge Commission meeting minutes.

Meeting Notes
Rules Committee
January 7, 2009
3:00 p.m.
Columbia River Gorge Commission Office
White Salmon, WA

Committee Members Present: Judy Davis, Joyce Reinig, Jeff Condit, Walt Loehrke, Sara Grigsby.

Others present: Jill Arens, Jennifer Kaden, Jeff Litwak

Public present: Michael Lang, Dan Durow, Dave Berger, Derrick Tokos, Steven Andersen, Anne Debbaut

Committee Chair Judy Davis called the meeting to order at 3 p.m.

Jeff Litwak discussed two emergency rules involving submittal of application for plan amendments and urban area boundary revisions that the Commission will consider on Jan. 13, and a change to which economic development certification applications should be reviewed under the expedited process. The Rules Committee asked staff to present the economic development certification changes to the full Commission on Jan. 13 as well.

The Rules Committee then conducted a brainstorming session to begin its discussion of defining the term "minor" for plan amendments. Members of the Rules Committee, staff, and the public in the room were part of the brainstorming.

Major Revision Brainstorming

- Doesn't protect/enhance SNCRs (Criteria B)
- Really big
- Existing handbook definition – substantial expansion
- Something in SMA
- Adversely affects SNCRs
- Takes prime forest/farm/open space
- Strip development – corridor
- Metro definition of minor (opposite) – greater than 2.5 acres
- Links 2 urban areas together
- Net loss of acreage in NSA
- Isn't justified by need
- Requires additional significant infrastructure, e.g. new arterial

Minor Revision Brainstorming

- Handbook definition
- Justified by need (demonstrated)
- Small in size, land area
- Less than 10% of urban area
- 3 acres
- Small in impact
- No net loss – acreage
- No net loss – SNCRs

- Meets exceptions established
- Impacts less than 1% of NSA (size)
 - at one time
 - cumulative
- Varying standards for different size urban areas
- Process criteria vary by size
- Meets 4(f) criteria
- Doesn't impact wildlife habitat, corridors
- Doesn't impact sensitive plants
- Doesn't impact cultural plants, resources, fishing
- Allows urban areas to grow outside NSA, allows pathway to outside NSA
- Enhances SNCRs
- Demonstrates adequate SNCRS protection within urban area
- METRO's definition of minor revision
- Correct boundary bisecting parcels
- Includes parcels in city limits
- Technical fixes
- Revocable if protection isn't enforced
- A revision that better protects SNCRs (in net)
- Not scenically significant – already developed settings (urbanesque)
- Low priority areas – weighted by priority of lands
- Trade-offs/swaps to protect resources even outside NSA (conservation easement, e.g.)
- Minimal infrastructure changes, needs
- Fulfills second purpose of Act
- Less than 20 year land need
- Meets the straight face test
- 'X'% or no net loss
- Consistent with standards of Act
- Squeezes but not strangles urban area
- Meets ORS/OARS test – consider goal 14
- Doesn't change demographics/urban area character (community)
- Meets/consider Growth Management test (WA)
- Borrows or considers what is already written
- Retain community character
- Minor in short and long-term/overtime
 - not an incremental revision
 - cumulative
- Freezes cultural evolution of community
- Demonstrated capacity to serve area, ability to serve with infrastructure
- Geological issues – e.g. geohazards
- Revisions that include flexible options for cities to grow (outside box), e.g. flexibility in state rules, interstate development

Using a Number (acreage) Brainstorming

PRO

Clear and objective
Zero – flexibility

CON

Cumulative impact
Situational – urban areas vary in size, need

No other criteria are numeric
Hard to justify particular number; arbitrary
Doesn't deal with impacts
More equitable to use %

Using Percentage (acreage) Brainstorming

PRO

Doesn't penalize larger urban areas
Clear, objective

CON

Situational
No other criteria are numeric
Hard to justify a particular number or percentage

No Net Loss/Exchanges

PRO

Could provide protection of SNCRS inside urban areas
Applies for apples exchange (sensitive land in urban areas wouldn't be urbanized)

CON

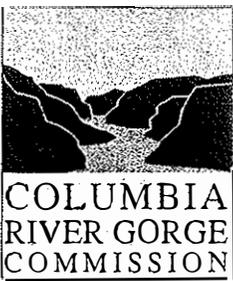
Need to find a trade
Difficult to ensure protection over time if trade land is outside NSA

No net loss

- Acreage
- Resource

Question – is there an enforceable way to protect resources equivalent to NSA?

The Rules Committee set its next meeting for 3:00 p.m. Tuesday, January 13, 2009, immediately following the Gorge Commission meeting. Location – Hood River County Administration Building.



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.

June 2009 Gorge Commission Meeting Minutes and Public Comments

The Commissioners asked clarifying questions and discussed the Wasco County Enforcement Ordinance.

Commissioner Middaugh made a motion to find the ordinance consistent with the National Scenic Area Act and the Management Plan. Commissioner Davis seconded the motion.

A vote was taken and was approved unanimously (9 ayes).

Harold Abbe-aye

Judy Davis-aye

Sara Grigsby-aye

Walt Loehrke-aye

Carl McNew-aye

Jim Middaugh-aye

Joe Palena-aye

Joyce Reinig-aye

Barbara Roberts-aye

Break

Rules Committee Report

Rules Committee Chair Judy Davis and Planner Jennifer Ball Kaden provided a summary of the Rules Committee recommendation to revise the Urban Areas Boundary Revisions Handbook and to adopt an accompanying statement of guiding principles (see attachment E).

Commissioner Middaugh said he had lots of questions and suggestions and asked how to proceed. The Commission discussed the process to publicly address questions and discuss suggested changes. Commissioner Davis suggested the Commission hear public comment and then discuss ideas and further staff work.

Chair Reinig said due to budget constraints impacting the agency's work plan, there are very limited resources to work on such a complex issue. Further, the Commission has publicly announced that it will not accept Urban Area Revision applications due to budget constraints.

Commissioner Abbe said the issue is complex and the item will be better handled during Plan Review.

The Commission conducted a public hearing on the Rules Committee recommendation.

Public Comment

Thomas Nicolai of Portland, OR provided comments on the proposed revisions (see attachment F).

Dave Berger of Lyle, WA said he appreciates the opportunity to provide comments at both the Commission and Committee meetings. He said cumulative effects must be addressed and suggested a broader composition of Rules Committee members.

Dan Durow of the City of The Dalles, OR said changing the word from "or" to "and" in the interpretation of "minor revision" is a substantial change which he does not support for several reasons. He urged the Commission not to make this recommended change.

Todd Cornett, Wasco County Planning Director provided comments that are generally supportive of the proposed handbook revisions (see attachment G).

Mary Repar of Stevenson, WA provided comments and does not support the proposed revisions and additions to the handbook (see attachment H).

Michael Lang, Friends of the Gorge said the Scenic Area Act limits Urban Area boundary revisions to "minor" revisions. He said revising the advisory handbook does not truly assist the public and is not what the Rules Committee was tasked to do. He suggested the Commission and Rules Committee focus on rule amendments rather than handbook revisions.

Cindy Walbridge of the City of Hood River, OR said the City is bordered by high value farmland and the Scenic Area. She provided comments on the proposed handbook revisions that do not support the proposed revisions and additions to the handbook (see attachment I).

Gary Fish of Oregon Department of Land Conservation and Development (DLCD) said on behalf of the DLCD Director, he advises a slow approach to this complex issue. He said if funding constraints are an issue, it would be better not to undertake this work and recommends not adopting handbook changes without further consultation with Oregon and Washington.

Lunch 12-1:15 p.m.

Chair Reinig called the meeting to order at 1:15 p.m.

Rules Committee Report-continued

Commissioner Davis suggested postponing further consideration of this item until the agency workplan is discussed. The Commission discussed this suggestion.

Commissioner Loehrke said our workplan currently shows that there is no capacity to work on this issue.

Commissioner Middaugh made a motion to postpone work on the Urban Area Boundary Revision Handbook until the Commission discusses the agency work plan and agency priorities. Commissioner McNew seconded the motion.

A vote was taken and approved unanimously (10 ayes).