

May 22, 2020

VIA EMAIL

Columbia River Gorge Commission
c/o connie.acker@gorgecommission.org

Re: Joint Comments on Gorge 2020 Urban Area Boundary Revisions

Dear Chair Liberty and Commissioners:

The signatories to this letter provide these joint comments on the draft Gorge 2020 Urban Area Boundary Revisions presented to the Columbia River Gorge Commission (“Commission”) for its work session on May 12, 2020. We each have commented or participated in some capacity in the May 12, 2020 work session, and in anticipation of the upcoming CRGC work session on May 26, 2020, we wish to provide the Commission with these additional, collective comments and suggestions.

Defer any amendment to the Urban Area Boundary Revision policies.

We all believe the Commission should stop work on the proposed amendments to the urban area boundary revisions language in the Columbia Gorge Management Plan (“Plan”) and defer that boundary revision language until after the Commission finalizes and implements the updated Plan. The redline language as presented to the Commission at the May 12 work session may touch on the policy topics that the Commission has discussed over the course of Gorge 2020 review cycle, but the proposed language would effectively punt key policy decisions to rulemaking and *ad hoc*, case-by-case considerations. This approach has raised significant concerns among a range of stakeholders, from Friends of the Gorge to each of the signatories of this letter (as expressed during the May 12 work session or in written comments).

The Commission seems to be operating on its own agenda, now pushing forward incomplete urban area policy on what appears to be an artificial timeline based on commissioner terms and the U.S. Forest Service deadlines when the Commission is already years late on its periodic review. Taking more time for policy making on urban area boundaries is the responsible path, as the Commission’s work will have permanent ramifications on the future of the Gorge’s human communities and natural environments. In the end, not all stakeholders may agree on the adopted language -- but at a minimum, any amendment should give stakeholders and the public clear policy direction and definitive guidance for future growth of Gorge communities. The Commission needs to coordinate with state agencies now, rather than defer these key conversations until down the road, as is currently contemplated by draft policy 7.

It has been expressed many times through the Gorge 2020 process, that there is a shared objective of any amendment to the urban area boundary section of the Plan was to provide greater clarity for future applications. Unfortunately, the May 12 work session redline does not meet this shared objective. Instead, we feel that the May 12 redline would worsen the situation. We recognize and appreciate the considerable amount of work and thought has already gone into the May 12 redline, but we respectfully request that the Commission table this provision for now as it continues the remainder of the Gorge 2020 work.

Revise the May 12 redline to reflect clear policy direction and definitive positions on future growth of the Gorge’s urban areas.

If the Commission opts to proceed on amending the urban area boundary policies, we request that the Commission revise the May 12 work session redline before sending it out for formal public comment in June. In its May 12, 2020 comment letter to the Commission, the Port of The Dalles (“Port”) proposed specific redline revisions. We support these proposed redlines, and in this letter we wish to further illustrate why the Port’s proposed language reflects clear policy direction that would reduce uncertainty for our respective communities and public agencies.

Generally, the language in the May 12 redline gave the impression that the Commission was asserting its authority and foreshadowing that it may opt to not process any request for an urban boundary revision. For example, draft policy 1 indicated that the Commission could opt not to accept any request because “it doesn’t have to” under the Act. Draft policy 5 then implies that the Commission could block a request because “it doesn’t have any money” within its budget. The Commission cannot impose procedural hurdles to render the language of the Act meaningless. The Act contemplates growth in urban areas and reflects specific congressional intent to protect the economy of the Gorge’s urban areas. It imposed high hurdles in the form of the 4(f) criteria to ensure that such growth was not done to the detriment of the SNCRs. The Commission does not need to impose procedural hurdles when robust substantive hurdles already exist in the form of the 4(f) criteria.

With this framework in mind, we propose revised language.

Blue bold = proposed language and red strikeout = deleted language.

Introduction

We propose revisions based on policy language currently contained in the Introduction of the Management Plan and consistent with the expressed vision.

~~The National Scenic Area Act authorizes the Gorge Commission to make minor revisions to the boundaries of any **of the 13 cities and towns identified as “urban areas” in the Act.** Urban Area, subject to the criteria and procedural requirements in section 4(f) of the Act. In doing so, the Act **calls for enables the Gorge Commission to recognize human presence and the desire for prosperous cities and towns in the Gorge amidst a spectacular landscape with remarkable resources. It is the Commission’s obligation to strike the delicate balance of resource protection and sustainable growth of urban areas, consistent with both purposes of the Act.** to protect and enhance for the scenic, natural, cultural, and recreation resources; agricultural land, forest land, and open space of the Columbia River Gorge, while supporting and serving the needs of the thirteen Urban Areas. The following policies describe principles for how the Commission interprets and will apply the criteria in section 4(f) of the Act.~~

Proposed Policy 1

As drafted, policy 1 extrapolates one interpretation of the Act into an unnecessary and unsupported statement about the Commission’s supposed authority to ignore requests from its stakeholders and communities. To avoid this unnecessarily combative stance, we simply suggest language that reframes how a county may submit a request to the Commission for consideration.

~~1. The National Scenic Area Act does not require the Gorge Commission to consider requests to revise Urban Area boundaries. The Act does not entitle a county or any person or entity to have the Gorge Commission consider a request to revise an Urban Area boundary.~~

- 1. A county may apply to the Gorge Commission for a minor urban area boundary revision upon providing the Gorge Commission at least six months’ notice of its intent to file an application. The county shall include in the notice a proposed timeline for Commission review of the application and a summary of the boundary revision including approximate geographic location, acreage, and future uses within the revised area.**

Proposed Policy 2

The proposed revision to policy 2 would include language referencing Appendix C (containing the urban area legal boundaries) and noting that the rule may be amended from time to time (e.g., upon approval of an urban area boundary revision the rule would need to be amended to reflect the amended boundary).

- ~~2. The legal boundary descriptions in Appendix C of Commission Rule 350-10 (as amended through December 31, 2018 and may be amended from time to time) are the Urban Area boundaries and acreage calculations that counties must use in applications to revise Urban Area boundaries.~~

Proposed Policy 3

The language should track the authorization in 544(c) of the Act governing revisions to SMA boundaries, rather than setting forth a new interpretation of federal law.

3. ~~The Gorge Commission can only approve applications to revise a boundary of an Urban Area adjacent to the General Management Area. Revisions to a boundary between an Urban Area and a Special Management Area require Forest Service coordination, consultation and approval under section 4(c) of the Act in addition to Gorge Commission approval under section 4(f)(2)(A)-(D).~~ **The Gorge Commission has authority to review and approve applications to revise a boundary of an Urban Area adjacent to the General Management Area. Revisions to a boundary between an Urban Area and a Special Management Area are subject to review and approval by the Secretary in consultation with the Commission.**

Proposed Policy 4 and Policy 5

As drafted, policy 4 and 5 present procedural hurdles that could bar applications. To avoid unnecessary debate about what the Commission can and cannot do, we suggest revised language that addresses the Commission's concerns about money and funding.

4. ~~The Gorge Commission shall seek funding in its biennial budget to support any Urban Area boundary revision application after receiving a county's intent to submit an application. If funding is not available either because of a budget shortage or because it was not included in the biennial budget given the budget cycle, the Gorge Commission shall enter into a cost reimbursement agreement with the applicant to cover the costs of processing an application until the funding is obtained through the biennial budget process. Counties shall inform the Gorge Commission of their intent to seek an Urban Area boundary revision in time for the Gorge Commission to seek sufficient funding in its biennial budget for reviewing the boundary revision application.~~ **The Gorge Commission shall seek funding in its biennial budget to support any Urban Area boundary revision application after receiving a county's intent to submit an application. If funding is not available either because of a budget shortage or because it was not included in the biennial budget given the budget cycle, the Gorge Commission shall enter into a cost reimbursement agreement with the applicant to cover the costs of processing an application until the funding is obtained through the biennial budget process.**
5. ~~At the beginning of each biennial budget, the Gorge Commission will determine whether its funding is sufficient to allow it to analyze one or more Urban Area boundary adjustment applications during that biennium and communicate its determination to the counties.~~

Proposed Policy 6

Again, proposed policy 6 presents a procedural hurdle that could potentially bar applications to the Commission from its constituent communities. Rather than arguing about what the Commission may require, we suggest letting an applicant decide the timing of an application,

subject to the requirements in policy 1 (notice) and policy 4 (budget). Depending on agency consultation and other considerations, an applicant may seek to file an application with the Commission prior to filing with the state, concurrent, or subsequent to obtaining state approval.

- 6. An applicant for an urban area boundary revision may elect when to file an application with the Gorge Commission. An application to the Commission may precede an application to the state, be concurrent with an application to the state, or be subsequent to an application with the state for corresponding state approval of the urban boundary revision. The Commission shall condition the effectiveness of the Commission's approval for any urban area boundary revision on the applicant receiving the corresponding state approval. ~~The Gorge Commission will only consider applications to revise Urban Area boundaries in conjunction with state-required periodic plan updates or other times expressly specified in state law for revising urban growth or urban area.~~**

Proposed Policy 7

We request that the Commission address this coordination issue before adopting any amendments to the urban area boundary policies. In the most recent draft, proposed policy 7 improperly defers a policy choice about how the Commission will coordinate with state law. The Commission must make this choice, not kick the can.

Proposed Policy 8

As the Commissioners know, the meaning of “minor” in the Act has been a decades old debate. However, if Congress had intended ‘minor’ to amount to some acreage threshold, then that intent would be shown in the language of the statute or in the legislative record. Instead, the Commission is empowered to appropriately limit urban expansion through the Act through the substantive criteria set forth by Congress in 4(f). We support the idea of having a safe harbor – an acreage or size threshold that the Commission will always consider minor. However, an acreage threshold cannot be the only pathway for qualifying as ‘minor.’ We know the Commissioners would not intend to commodify the remarkable lands under its jurisdiction. Unfortunately, this proposed one-size-fits-all acreage threshold effectively treats every acre as the same and interchangeable, contradicting both the commissioners’ stated goals and the purposes of the Act as a whole. We maintain that the Act can be read, based on a plain language, that “minor” in (f)(1) is met if the applicant demonstrates compliance with 4(f)(2) criteria. Nevertheless, given what is an apparent, ongoing controversy over such a reading, we encourage the Commission to look to its existing guidance for providing an alternative to the safe harbor.

Please note that the below-proposed use of “shall” versus “may” is intentional, with the effect of providing two possible pathways for demonstrating “minor” – a safe-harbor pathway and a discretionary pathway.

~~8. The Gorge Commission will determine whether a proposed Urban Area boundary revision is minor pursuant to section 4(f) of the National Scenic Area Act on a case-by-case basis.~~

~~A. Generally, a~~ **A revision to an Urban Area boundary shall may be considered minor if (a) the revision involves an expansion of 20 acres or 1 percent of the total area within the Urban Area, whichever is less, (b)**

~~i. the revision involves no net change in the total area of the Urban Area, or (c), or~~

~~ii. if the revision is cumulatively 20 acres or 1% of the total area of the Urban Area, whichever is less, or~~

~~iii. if the revision involves transferring Urban Area acreage between two Urban Areas, provided that the transfer results in no net loss of the total National Scenic Area-wide acreage in the General Management Area.] THE COMMISSION DID NOT COMPLETE ITS DISCUSSION WHETHER TO INCLUDE THIS CONCEPT OF “MINOR.”~~

In addition, the Commission may consider a revision to an Urban Area boundary minor if the revision does not result in a substantial expansion of an Urban Area or have a significant effect on surrounding lands outside of the Urban Area.

~~B. The Gorge Commission will consider revisions that differ from this general guidance on a case-by-case basis.~~

Proposed Policy 9

We have no comments

Proposed Policy 10

We have serious concerns about the Commission's ability to require one urban area to consider the buildable lands of another, particularly if the analysis requires consideration of land in a different state. This raises considerable legal questions. We encourage the Commission to take a different direction on proposed policy 10, as suggested below leaving the specifics of a "needs" determination to a later day in rulemaking.

~~10. Compliance with section 4(f)(2)(A), demonstrating need to accommodate for long-range urban population growth requirements or economic needs may be satisfied using either Oregon or Washington's requirements for determining need for state-level applications to expand an applicant's urban area boundary. The consistent with the management plan within an Urban Area, will be determined case-by-case.~~

~~A. Oregon's and Washington's processes for determining need require similar analyses of residential and economic land need based on population growth and employment forecasts, identification of development opportunities and constraints, and provisions to evaluate need for public lands to support residential and economic uses. For all Urban Areas, in both Oregon and Washington, the~~

~~Gorge Commission will generally follow the processes and ranges specified in Oregon Administrative Rule 660-038, which may be refined by rule. By rule, the Gorge Commission may revise specific Oregon factors and add specific National Scenic Area factors.~~

~~B. Urban Areas that adjoin or are near to one of the three Columbia River bridges in the National Scenic Area must, at a minimum, consider land supply and need of the other Urban Areas that adjoin or are near to that bridge and other nearby Urban Areas.~~

~~C. For all applications, the analysis used and the Commission's review must incorporate the proposed service and labor market areas.~~

Proposed Policy 12

As drafted, proposed policy 12 simply defers policy choices to a later rulemaking or application review process. To correct this, we proposes the following revisions:

~~12. Compliance with section 4(f)(2)(B), consistency with the standards and purposes in the Act may be satisfied by direct findings demonstrating that the proposed revision~~

is consistent with the standards and purposes when considered collectively. Findings of compliance with each standard are not required to demonstrate compliance with section 4(f)(2)(B). ~~used to develop the Management Plan and the purposes of the Act, will be determined on a case-by-case basis. The Commission recognizes that the application of the standards and purposes of the Act in the Management Plan may not be appropriate for determining compliance with section 4(f)(2)(B). The Commission may use the procedures and requirements in the Management Plan for guidance but is not bound to the procedures and requirements in the Management Plan for Urban Area boundary applications. By rule, the Commission may specify requirements to comply with section 4(f)(2)(B).~~

Proposed Policy 13

Like proposed policy 12, proposed policy 13 defers policy choices that the Commission should be making now. To correct this, the language should provide specific considerations for satisfying (4)(f)(2)(C):

13. Compliance with section 4(f)(2)(C), demonstrating that the proposed revisions would result in maximum efficiency of land uses within and on the fringe of existing Urban Areas, may be satisfied by providing information on the proposed zoning requirements for the expanded area like minimum parcel size, lot coverage, minimum density, floor area ratios, and other development standards along with draft plans for transportation and public utility service to be finalized and implemented upon the Commission's approval of the urban area boundary revision. ~~will be determined on a case-by-case basis. The Gorge Commission may require a local government to adopt enforceable conditions of approval to ensure land added to an Urban Area satisfies section 4(f)(2)(C). By rule, the Commission may establish factors to evaluate whether proposed revisions to the boundary of an Urban Area result in the maximum efficiency of land uses.~~

Proposed Policy 14

Again, like proposed policy 12 and 13, proposed policy 14 defers policy choices the Commission should be making now. To correct this, the language should provide specific considerations for satisfying 4(f)(2)(D):

14. ~~To achieve e~~Compliance with section 4(f)(2)(D), demonstrating that applications to revise the revisions to boundaries of an Urban Area shall not result in the significant reduction of agricultural lands, forest lands, or open spaces may be satisfied by demonstrating that the agricultural, forest or open space removed

from the General Management Area has low resource value, is underutilized, lacks resources protected by 544a(1), or has qualities or characteristics that are better suited for urban area uses. shall prioritize revisions in areas where there would be no reduction of land used, suitable, or designated for agriculture, forest, and open space. The Commission by rule may establish a priority of lands to be considered for revising into Urban Areas.

We realize the Commission has a difficult task before it. Making policy is challenging, and completely satisfying all interested parties is never possible. However, by sharing this letter with you, we wish to express our earnest belief that with further consideration, the draft language could become more workable for many more interested constituents, stakeholders and communities at large. We maintain that the Commission can reach a balanced approach on urban area policy, protecting our region's resources and its economy, just as contemplated in Congress' adoption of the Act and our states' adoptions of the Compact.

Thank you for your consideration.

Very truly yours,

Mayor Rich Mays
City of The Dalles



Andrea Klaas
Executive Director
Port of The Dalles



Chair Scott Hege
Board of County Commissioners
Wasco County



Angie Brewer
Planning Director
Wasco County



Interim Chair Jim Sizemore
Board of County Commissioners
Klickitat County



Mo-chi Lindblad
Planning Director
Klickitat County



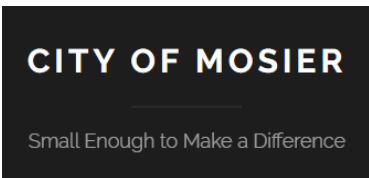
Chair Bob Hamlin
Board of County Commissioners
Skamania County



Alan Peters
Assistant Planning Director
Skamania County



Colleen Coleman
City Manager
City of Mosier



Nick Kraemer
City Planner
City of Mosier

