



September 3, 2020

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VIA EMAIL: GORGE2020@GORGECOMMISSION.ORG

Columbia River Gorge Commission
#1 Town & Country Square
57 NE Wauna Avenue
White Salmon, WA 98672

**Re: Gorge 2020 Revisions to the Columbia River Gorge National Scenic Area
Management Plan**

Dear Commissioners:

This letter is on behalf of SDS Co. LLC, Broughton Lumber Company, Oregon Forest & Industries Council, and Oregon Small Woodlands Association. It is our understanding that Commission will vote on the proposed revisions to the Columbia River Gorge National Scenic Area Management Plan (“Gorge 2020”) on September 8, 2020. We strongly oppose certain revisions in Gorge 2020 affecting private, county, and state forest lands, practices, and resource management in the General Management Area (“GMA”). The Commission has ignored previous comments expressing our concerns. The Commission’s actions violate the Columbia River Gorge National Scenic Area Act, (the “Act”), exceed the Commission’s legal authority, and conflict with the Washington and Oregon State Forest Practices Acts (“FPAs”) and implementing regulations.¹ To avoid legal action, we recommend that the Commission properly consider and address our concerns before adopting Gorge 2020.

The Act limits the Commission’s legal authority and prescribes its duties. First and foremost, the Commission has a duty to adopt a management plan that “include[s] provisions to protect and enhance forest lands for forest uses and allow, but not require, conversion of forest lands to agricultural lands, recreation development or open spaces.”² Therefore, the Commission must produce a land use management plan that includes “protective provisions” for forest uses.³ Second, nothing in the Act, and therefore the management plan, “shall affect the rights and

¹ 16 U.S.C. § 544 *et seq.*; ORS 527.610 *et seq.*; RCW 76.09 *et seq.*

² 16 U.S.C. § 544e(d)(2).

³ *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Comm’n*, 346 Or. 366, 370, 213 P.3d 1164, 1168 (2009) (reviewing the 2004 management plan revisions and remanding provisions inconsistent with the Act).

responsibilities of non-Federal timber land owners under the Oregon and Washington Forest Practices Acts or any county regulations which under applicable State law supersede such Acts.”⁴ Actions that affect the rights and responsibilities of non-Federal timber landowners in contravention of the Washington and Oregon FPAs and other preemptive regulations exceed the Commission’s authority and cannot be legally upheld. Finally, the Commission must implement the Act’s dual purpose to protect and enhance resources and protect and support economic development.⁵

Gorge 2020 does not ensure that forest practices in the GMA will be protected. In fact, it does the opposite. The proposed revisions remove the existing forest protection policies to protect forest lands from uses on nearby lands that conflict with the production of forest products and from conversion of forest lands to residential use.⁶ The plan *must* include provisions to protect and enhance forest lands for forest uses; therefore, these provisions are essential.⁷ In addition, the Commission adopted a revision during the August 12 work session, without any public input, prohibiting dwellings on certain forest lands and removing the policy allowing dwellings as necessary to promote efficient growing, propagation, and harvest of tree species.⁸

The Commission’s intent to substitute protection of forest land for forest uses with resource conservation measures is evidenced by revisions imposing regulation on non-federal forest lands.⁹ Gorge 2020 proposes that the first objective for water resources is to “use regulations to avoid adverse effects of development and land use within and near water resources.”¹⁰ Similarly, the second objective includes a revision to provide landowners whose property contains or is near water resources with information about “the rationale for regulating new resources in water resources and buffer zones, including cultivation.”¹¹ During the August 12 work session, the Commission adopted a modification to the water resources goals to achieve “no loss of wetlands acreage and functions.”¹² Again, the Commission adopted that modification without public input. The modification required staff to propose dozens of changes to the natural resources chapter to implement the new standard.¹³ The draft proposes changes to water buffers, including that “[p]roposed uses adjacent to [water resources] *shall* preserve an undisturbed buffer zone that is wide enough to protect aquatic and riparian areas.”¹⁴ Proposing fixed, rather than flexible, buffers is over-protective of water resources and under-protective of forest uses. These revisions

⁴ 16 U.S.C. § 544o(c).

⁵ 16 U.S.C. § 544a.

⁶ Redline of the Management Plan for the Columbia River Gorge National Scenic Area, as Amended through September 2020, 233 (Aug. 27, 2020) (“Redline”).

⁷ 16 U.S.C. § 544e(d)(2).

⁸ *Id.* at 234.

⁹ 16 U.S.C. § 544a.

¹⁰ Redline at 113.

¹¹ *Id.*

¹² Redline, at 113.

¹³ See Staff Report, Work Session and Action Item: Gorge 2020 Management Plan Proposed Amendments and Final Edits for Commission Approval, 2 (Sept. 8, 2020).

¹⁴ Redline, at 115 (emphasis added).

impose new standards and requirements beyond the Commission’s authority that conflict with the FPAs and other state policies and regulations and disregard the effect on forest lands and uses, a theme reflected throughout Gorge 2020.

The Commission’s revisions fail to consider the impact of changes to the wildlife habitat chapter that significantly expand restrictions on forest practices. Like the water resources chapter, Gorge 2020 proposes an objective to “[u]se regulations to avoid adverse effects of development and land use within and near Priority Habitat or sensitive wildlife sites” while adding “winter range” to the Priority Habitat list.¹⁵ The revisions propose wildlife habitat standards and requirements that would restrict forest practices in many areas of the GMA regardless of existing habitat laws and regulations including plans and permits.

The climate chapter proposes to adopt a policy for forest resources to “protect[] forested lands for timber production which provides for carbon storage [including] siting and development standards, land conversion policies, and other approaches.”¹⁶ This provision purports to give the Commission regulatory authority over forest lands. The Commission has little to no regulatory authority under the Act, which requires the counties to implement the Management Plan by adopting local regulations.¹⁷ Furthermore, state management agencies have exclusive regulatory authority over forestry practices in the National Scenic Area.¹⁸

The Commission’s utter lack of response to these concerns demonstrates its failure to comply with public notice and comment requirements. The Commission “shall conduct public hearings and solicit public comment prior to final adoption of the management plan.” 16 U.S.C. § 544d(e). Soliciting public comment without considering the content of those comments is mere perfunctory formality and does not satisfy the Commission’s duty under the Act. The eleventh-hour revisions, specifically to the wetland loss standards and forest lands policies, which received *no* public input, further exemplifies the inadequacy of public proceedings. That procedural deficiency is a sufficient basis to challenge the legality of Gorge 2020, independent of the substantive issues.

We urge the Commission to remove the unlawful provisions from Gorge 2020 and ensure adequate protection of forest lands for forest uses as required by the Act. Delaying adoption of Gorge 2020 to consider and respond to legitimate public concerns could allow the Commission to avoid judicial review under Oregon, Washington, and federal judicial review provisions. If the Commission ignores these concerns and adopts Gorge 2020 as written, we intend to seek judicial review under Section 16 of the Act and other applicable authorities and hereby provide notice of intent to sue under 16 U.S.C. § 544n(b)(3).

¹⁵ *Id.* at 129; 159.

¹⁶ Redline at 397.

¹⁷ *See* 16 U.S.C. § 544c(b) (Commission’s limited regulatory authority); 16 U.S.C. § 544e (County authority to adopt local land use ordinances consistent with the management plan)

¹⁸ 16 U.S.C. § 544o(c).

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Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tim McMahan', with a long horizontal line extending to the right.

Timothy L. McMahan
on behalf of SDS Co. LLC and Broughton Lumber Company

A handwritten signature in black ink, appearing to read 'Mike Eliason', with a long horizontal line extending to the right.

Mike Eliason
for Kristina McNitt, President, Oregon Forest & Industries Council

A handwritten signature in black ink, appearing to read 'Jim James', with a long horizontal line extending to the right.

Jim James
Executive Director, Oregon Small Woodlands Association