



**TO:** Columbia River Gorge Commission  
**FROM:** Jeff Litwak, Counsel  
Aiden Forsi, Land Use Planner  
**DATE:** May 12, 2020  
**SUBJECT:** **Work Session\*** - Gorge 2020 Urban Area Boundary Chapter Edits

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### **Action Requested**

Staff is requesting that the Commission endorse proposed revisions for public review or modify the revisions to reflect its preference. Endorsed revisions will be included in the public comment draft and may be revised before they are presented to the Commission for adoption in August.

Staff recommends the Commission first complete its discussion about a policy point described below and then, after resolving that, discuss the overall proposed policy language.

### **Background**

In 2018 and 2019, at the direction of the Commission, staff held a series of staff-led discussions with the goal of developing as much of a consensus on urban area boundary revision policy as possible. For summaries of the meeting materials, including meeting summaries, see <http://www.gorgecommission.org/management-plan/gorge2020/>. In November 2019, the Gorge Commission changed its approach and began Commission conversations on urban area boundary revision policy. The Commission discussed this topic at its November 2019, January 2020 and February 2020 meetings, providing high-level guidance for staff to use when drafting new policy as part of Gorge 2020.

### **Proposed Revisions and Request for Commission Endorsement**

Attached to this report are the proposed revisions to the “Revision of Urban Area Boundaries” section of Part IV, Chapter 1 of the Management Plan. These revisions completely replace the existing language in that section of the Management Plan. The replacement text addresses the guidance from the Commission’s discussions incorporating the points of consensus. The Commission touched on elements of each of the four criteria in section 4(f) of the National Scenic Area Act. Staff intends to use this framework to develop administrative rules with additional procedure and possibly substantive standards after the conclusion of Plan Review.

There is one item in proposed policy 8 (highlighted in blue text in the draft) that the Commission began discussion about, but did not complete its discussion—whether a revision that 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, should generally be considered “minor” pursuant to section 4(f) in the National Scenic Area Act.

One additional note. This draft only includes proposed revisions to the Urban Area Boundary policies. Staff is working on proposed clarifications and updates to other sections in the overall Gorge Commission Role chapter where the Urban Area Boundary policies are located. Those changes are not shown in this draft.

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CHAPTER

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# Gorge Commission Role

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Congress assigned to the Gorge Commission a number of duties to implement the Scenic Area Act. These include ensuring compliance with the Management Plan, revising the

Management Plan when needed, changing Urban Area boundaries, and hearing appeals of county decisions. The policies in this chapter define the manner in which these duties will be discharged.

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## AMENDMENT OF THE MANAGEMENT PLAN

Congress gave the Gorge Commission the authority to amend the Management Plan, after adoption, if it determines that conditions within the Scenic Area have changed significantly.

### **Policies**

1. The Gorge Commission may amend the Management Plan, upon application by any person or upon its own motion, if it determines that conditions within the Scenic Area have changed significantly since adoption of the Management Plan. Plan amendments must be consistent with the Scenic Area Act and other provisions of the plan.
  2. The Gorge Commission shall consider a proposal to amend the Management Plan at a hearing held for that purpose only after consultation with the Forest Service, the Indian tribes, and the appropriate county or counties.
  3. The Gorge Commission shall consider a plan amendment upon a final judicial determination that a taking of private property has occurred as a result of application of the Management Plan. The judicial determination shall be deemed a significant change in conditions under Section 6(h) of the Scenic Area Act.
  4. The Gorge Commission shall submit amendments of the Management Plan to the Secretary of Agriculture in accordance with Section 6(h) of the Scenic Area Act.
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## **REVISION OF THE MANAGEMENT PLAN**

Congress directed the Gorge Commission to review the Management Plan at least every 10 years to determine whether it should be revised.

### **Policies**

1. The Gorge Commission shall review the Management Plan in accordance with the Scenic Area Act.
2. As part of its review, the Gorge Commission shall consult the Indian tribes, the states of Oregon and Washington, and the counties during the review to solicit their views on whether the Management Plan should be revised and how it should be revised.
3. As part of its review, the Gorge Commission shall hold one or more public hearings to solicit the views of the public as to whether and how the Management Plan should be revised.
4. The Gorge Commission shall collaborate with the USDA Forest Service to determine whether revisions should be made to the Management Plan.
5. If the Gorge Commission revises the Management Plan during its review, it shall submit the revised Management Plan to the Secretary of Agriculture in accordance with Section 6(g) of the Scenic Area Act.

## **MONITORING IMPLEMENTATION OF THE MANAGEMENT PLAN**

Once the Gorge Commission has adopted the Management Plan and the counties have put ordinances in place to give it effect, Congress and the people of the Gorge and the nation are entitled to know whether the Management Plan is working. The Gorge Commission shares responsibility with the Forest Service to monitor and evaluate the implementation of the Management Plan.

Congress expressly directed the Gorge Commission to monitor implementation of the Management Plan by the counties:

The Commission shall monitor activities of counties pursuant to this Act and shall take such actions as it determines are necessary to ensure compliance [Section 15(a)(1)].

It is not just the counties, however, that have implementation duties under the Scenic Area Act and the Management Plan. The Forest Service, other federal agencies, state

agencies, local governments, and the Gorge Commission itself all have responsibilities after the Management Plan is adopted. Activities by counties and these agencies will, to a large extent, determine the success or failure of the Scenic Area Act.

The Gorge Commission, in cooperation with the Forest Service, the counties, the Indian tribes, local governments, and state and federal agencies, must establish and carry out a program of monitoring and evaluating the implementation of the Management Plan.

### **Policies**

1. The Gorge Commission shall work with the Forest Service, the counties, the Indian tribes, local governments, and state and federal agencies to establish a program for monitoring and evaluating the implementation of the Management Plan and the Scenic Area Act.
2. The Gorge Commission shall design its monitoring and evaluation program to accomplish the following purposes:
  - A. Determine whether the Management Plan is protecting the scenic, cultural, natural, and recreation resources of the Scenic Area.
  - B. Determine whether the Management Plan supports and protects the economy of the Columbia River Gorge area.
  - C. Determine whether the counties are properly implementing the Management Plan.
  - D. Evaluate the Management Plan for possible revisions at the time of periodic review of the Management Plan as required by the Scenic Area Act.
  - E. Determine whether the enhancement measures and programs called for in the Management Plan have in fact enhanced the scenic, cultural, natural, and recreation resources of the Scenic Area.
  - F. Ensure compliance with orders issued by the Gorge Commission in development reviews and enforcement proceedings.
3. As part of its monitoring and evaluation program, the Gorge Commission shall evaluate county development review decisions. In consultation with the counties, the Gorge Commission shall develop a method to record and evaluate the decisions. The Gorge Commission shall first discuss the results of its evaluation with each county.
4. The Gorge Commission shall monitor land use appeals taken to county elected officials in which the appellant asserts a taking claim based upon a requirement in the Management Plan. Upon request by a county, the Gorge Commission shall extend appropriate assistance to the county.

5. The Executive Director of the Gorge Commission or her designee may appeal a county land use decision or participate in an appeal of a county land use decision filed by another party. In such an appeal, the Executive Director does not represent the position or stated direction of the Columbia River Gorge Commission. The appeal shall be pursuant to the county's appeal process and the county's final decision may be appealed to the Gorge Commission at the conclusion of the county's appeal process.
6. In cooperation with the Forest Service, the Gorge Commission shall keep current and work to improve the database in the inventories that form the basis of the Management Plan.
7. The Gorge Commission shall work with Gorge counties and the States of Washington and Oregon to identify and reconcile differences in direction to county governments from the Scenic Area Act, the Bi-State Compact, the Management Plan, and other state statutes.

## **CIVIL PENALTIES**

Congress authorized the Gorge Commission to assess a civil penalty in order to prevent violations of the Management Plan, a county ordinance, or any Gorge Commission order or implementation measure. |

### **Policies**

1. The Gorge Commission shall adopt rules to implement the requirements of the Scenic Area Act related to enforcement after consultation with the Secretary, the counties, and the Indian tribes and only after public hearings.

## **APPEALS TO THE GORGE COMMISSION**

Congress authorized persons and entities to appeal decisions relating to the implementation of the Scenic Area Act.

### **Policies**

1. The Gorge Commission shall adopt rules to implement the appeals provisions in the Scenic Area Act after consultation with the Secretary, the counties, and the Indian tribes and only after public hearings.
2. The Gorge Commission shall hear appeals of final enforcement actions relating to implementation of the Management Plan.

## **REVISION OF URBAN AREA BOUNDARIES**

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Congress designated 13 cities and towns as "Urban Areas": Cascade Locks, Hood River, Mosier, and The Dalles, Oregon; and Bingen, Carson, Dallesport, Home Valley, Lyle, North Bonneville, Stevenson, White Salmon, and Wishram, Washington. Urban Areas are exempt from regulation under the Management Plan. Congress established the boundaries of the Urban Areas when it enacted the Scenic Area Act. However, it authorized the Gorge Commission to make minor revisions to the Urban Area boundaries. Congress also set forth in the Scenic Area Act a process and criteria for use by the Gorge Commission in carrying out the revision process. The following policies govern the revision of Urban Area boundaries. The National Scenic Area Act authorizes the Gorge Commission to make minor revisions to the boundaries of any Urban Area, subject to the criteria and procedural requirements in section 4(f) of the Act. In doing so, the Act enables the Gorge Commission 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.

## **Policies**

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.
2. The legal descriptions in Commission Rule 350-10 are the Urban Area boundaries and acreage calculations that counties must use in applications to revise Urban Area boundaries.
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).
4. 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.
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.
6. 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

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boundaries.

7. The Gorge Commission will consult with Oregon’s Department of Land Conservation and Development and Washington’s Department of Commerce Growth Management Services to determine an appropriate process to meet the Gorge Commission’s standards as well as state standards.
  
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 revision to an Urban Area boundary may be considered minor if:
    - i. the revision involves no net change in the total area of the Urban Area, 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.”
  
  - B. The Gorge Commission will consider revisions that differ from this general guidance on a case-by-case basis.
  
9. Land formerly in an Urban Area that is transferred into the General Management Area should not contain development or urban facilities that is inconsistent with the purposes and standards in sections 3 and 6 of the Act.
  
10. Compliance with section 4(f)(2)(A), demonstrating need for long-range population growth requirements or economic needs 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. 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.

11. The Gorge Commission may require the local government to adopt enforceable conditions of approval to ensure land added to an Urban Area is used only to satisfy the demonstrated needs that were the basis for adjustment.

12. Compliance with section 4(f)(2)(B), consistency with the standards in the Act 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).

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, 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.

14. To achieve compliance with section 4(f)(2)(D), applications to revise the boundaries of an Urban Area 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.

~~2. The Commission shall adopt rules that implement the requirements of the Scenic Area Act related to the revisions of Urban Area boundaries.~~

~~3. The Gorge Commission may make minor revisions to the boundaries of Urban~~

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~~Areas upon a majority vote of two-thirds of the members of the Gorge Commission, including a majority of the members from each state.~~

~~— A county may apply to the Gorge Commission to make a minor revision in the boundary of an Urban Area within the county's jurisdiction.~~

- ~~3. Before revising an Urban Area boundary, the Gorge Commission shall consult with the Secretary of Agriculture prior to any hearing on the revision.~~
- ~~3. The Gorge Commission shall consider an application for a minor revision to an Urban Area boundary at a hearing held for that purpose. The Gorge Commission shall adopt procedures for urban boundary revision hearings.~~
- ~~3. The Gorge Commission shall review and consider proposed revisions to Urban Area boundaries that do not qualify for revision under Section 4(f) of the Scenic Area Act. After review, and after a public hearing on the matter, the Gorge Commission shall consider appropriate recommendations to Congress on the boundaries. The Gorge Commission shall attempt to complete these reviews within 5 months after adoption of the Management Plan.~~

### ***Guidelines***

- ~~0. The Commission may revise the boundaries of an Urban Area only if it finds that all of the following conditions exist and that the proposal is consistent with Commission rules related to revisions of Urban Area boundaries:
  - ~~. A demonstrable need exists to accommodate long-range urban population-growth requirements or economic needs consistent with the Management Plan.~~
  - ~~. Revision of Urban Area boundaries would be consistent with the purposes of the Scenic Area Act and the standards established in Section 6 of the Act.~~
  - ~~. Revision of Urban Area boundaries would result in maximum efficiency of land uses within and on the fringe of existing Urban Areas.~~
  - ~~. Revision of Urban Area boundaries would not result in the significant reduction of agricultural lands, forest lands, or open spaces.~~~~

## **REVISION OF SCENIC AREA BOUNDARIES**

The Scenic Area Act does not contain administrative procedures or substantive criteria for revising the exterior boundaries of the Scenic Area. Congressional action will be required before lands can be added to or removed from the Scenic Area.

The Gorge Commission recognizes that circumstances may exist or arise that necessitate a change in the boundaries of the Scenic Area. The Gorge Commission will

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consider proposed boundary revisions on a case-by-case basis. Recommendations for revising the boundaries of the Scenic Area will be forwarded to Congress.

### **Policy**

1. The Gorge Commission shall review and consider proposed revisions to the boundary of the Scenic Area for appropriate recommendations to Congress. The Gorge Commission shall consider first any proposed revision involving land within an urban service boundary established prior to enactment of the Scenic Area Act.

## **COUNTY ORDINANCES**

### **Policies**

1. Counties may adopt ordinances with provisions that vary from the policies and guidelines in the Management Plan as long as the ordinances provide greater protection for the scenic, cultural, natural, and recreation resources of the Scenic Area. Notwithstanding the designation policies in Part II of the Management Plan, the Gorge Commission shall, upon request from a local government, apply a more restrictive designation.
2. A county and a city may enter into an agreement to allow the other to implement a land use ordinance that applies to the city and that has been approved or adopted by the Gorge Commission under Section 8 of the Scenic Area Act.
3. Counties may grant variances to provisions in their land use ordinances that are not required by a policy or guideline in the Management Plan.
4. The Gorge Commission shall encourage the States of Washington and Oregon to make funds available to the counties to assist in the implementation of the Scenic Area Act and the Management Plan.
5. The Gorge Commission shall seek funds and an interagency agreement with the Forest Service to provide the services of resource professionals, such as biologists and archaeologists, to assist local governments and landowners to carry out the policies and guidelines in the Management Plan.

## **PUBLIC INVOLVEMENT**

The Gorge Commission believes that timely and appropriate public involvement is key to the long-range success of the Scenic Area Act.

The purpose of the goals and policies in this chapter is to ensure a formal ongoing public involvement program.

### **GMA Goals**

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1. Provide for and consider a variety of viewpoints in decision making.
2. Encourage an informed public.
3. Consult and coordinate with other governmental jurisdictions, including the Forest Service, Indian tribal governments, county boards, city councils, and other state and federal agencies.

#### **GMA Policies**

1. A time for public comment shall be provided at all regular Gorge Commission business meetings. Meetings shall be rotated among suitable meeting spaces to make it convenient for residents of different areas to attend.
  2. Notice of Gorge Commission meetings shall be distributed to all interested people and the media, without charge. Notices shall describe, in plain language, the topics the Gorge Commission will discuss and which topics are open for public comment. Notices shall also be provided to county planning offices and public libraries for posting for public review.
  3. Informational materials describing Gorge Commission activities and planning decisions shall be developed.
  4. A community outreach program shall be conducted. Activities may include maintaining a speakers' bureau, meeting with county advisory committees, and participating in school programs.
  5. Advice shall be provided to interested counties in designing and implementing their public involvement activities.
  6. Formal public involvement and consultation activities shall be provided at major planning milestones.
    - A. Formal public hearings shall be held before the Gorge Commission takes action on county land use ordinances, amends the Management Plan, or reviews and periodically revises the Management Plan. Any interested person shall be able to testify before the Gorge Commission.
    - B. Written public comment shall be encouraged, and a comment period shall precede all major planning decisions. Commission rules should define the required comment period.
    - C. Public comment shall be encouraged before the Gorge Commission takes action on county land use ordinances. The Gorge Commission shall approve land use ordinances at public hearings.
    - D. Public workshops shall be held to encourage review of and comment on other Gorge Commission decisions. Workshops shall be conveniently scheduled to encourage participation by Gorge residents and other interested people.
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- E. Revisions to Urban Area boundaries shall be considered after a formal public hearing by the Gorge Commission. Formal hearings shall be preceded by an informal hearing for general public comment. All interested people shall be able to make their comments known.
- 7. Periodic meetings of Gorge county planners and planning directors shall be scheduled to encourage ongoing discussion of issues and concerns.
- 8. Periodic consultation meetings shall be scheduled with Indian tribal governments to encourage ongoing discussion of issues and concerns.
- 9. Periodic consultation meetings shall be scheduled with county governing boards to encourage ongoing discussion of issues and concerns.
- 10. The two states shall be consulted about application of economic development grants and loans, restoration of the Historic Columbia River Highway, and activities of other state agencies.
- 11. The Commission should collaborate with the USDA Forest Service on all projects of mutual interest.
- 12. In designing implementation programs, public comment and assistance shall be solicited.