

**Note to reviewer:**

This draft of Part IV, Chapter 1 of the Management Plan, presented to the Gorge Commission on May 26, 2020, is an example of the streamlining and clarification revisions made by the Gorge Commission staff as part of the Gorge 2020 Management Plan Review. Other chapters of the plan that have not been presented to the Commission may contain a similar scope and similar quantity of revisions. These revisions are intended to reduce unnecessary text in the Management Plan, and to improve the utility of the Management Plan.

This draft also contains the staff's proposed revisions to the Urban Area Boundary Revision policies. This is purely for consistency with language that the Commission has seen but not fully discussed, and inclusion of the language in this draft does not constitute the Commission's endorsement of that language for public review. The revisions to the Urban Area Boundary Revision policies that the Commission endorses for public review will be included in this chapter and made available on June 1, 2020.

DRAFT

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CHAPTER

1

# Gorge Commission Role

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Congress assigned to the Gorge Commission a number of duties to implement the National 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.~~ define the manner in which the Gorge Commission will carry out these duties.— The Gorge Commission implements some of these policies directly and some of these policies through its Gorge Commission rules.

## AMENDMENT OF THE MANAGEMENT PLAN

In section 6(h) of the National Scenic Area Act, Congress gave the Gorge Commission the authority to amend the Management Plan, ~~after adoption, at any time~~ if it determines that conditions within the National Scenic Area have changed significantly.

### **Policies**

1. The Gorge Commission may amend the Management Plan, upon application by any person or upon its own initiative. The National Scenic Area Act does not require the Gorge Commission to consider amendments to the Management Plan. The Act does not entitle any person or entity to have the Gorge Commission consider an application to amend the Management Plan. ~~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~~ four Columbia River Treaty 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 National Scenic Area Act.
4. ~~The Gorge Commission shall submit~~ must approve amendments ~~of to~~ the Management Plan ~~to the Secretary of Agriculture in accordance with Section 6(h) of the Scenic Area Act by the same majority voting and concurrence requirements specified in sections 6(c) and 6(f) of the National Scenic Area Act for adoption of the Management Plan.~~

## REVISION OF THE MANAGEMENT PLAN

In section 6(g) of the National Scenic Area Act, Congress directed the Gorge Commission to review the Management Plan no sooner than five years after adoption of the Management Plan, but at least every ~~40~~ ten years to determine whether it should be revised.

### **Policies**

1. The Gorge Commission shall review the Management Plan ~~in accordance with the~~

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Scenic Area Act, between five and ten years after adopting the latest revision to the Management Plan.

2. As part of its review, the Gorge Commission shall consult the four Columbia River Treaty Tribes~~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 must adopt the revisions by the same majority voting and concurrence requirements specified in sections 6(c) and 6(f) of the National Scenic Area Act for adoption of the Management Plan. ~~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, the states of Oregon and Washington and the people of the Gorge and the nation are entitled to know ~~whether~~ how the Management Plan is working. The Gorge Commission shares responsibility with the Forest Service to monitor and evaluate the implementation of the Management Plan.

In section 15(a)(1) of the National Scenic Area Act, 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 National 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 all of~~ these agencies entities will, to a large extent, determine the success ~~or failure~~ of the National Scenic Area Act and Management Plan.

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

## **Policies**

1. The Gorge Commission shall work with the Forest Service, the counties, the four Columbia River Treaty Tribes~~Indian tribes~~, local governments, and state and federal agencies to establish a program for monitoring and evaluating the implementation of the National Scenic Area Act and 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 National Scenic Area.
  - B. Determine whether the Management Plan supports and protects the economy of the Columbia River Gorge area.
  - C. Determine whether the counties and other implementing entities are properly implementing the Management Plan.
  - D. Evaluate the Management Plan for possible revisions ~~at the time of periodic review of when the Gorge Commission and Forest Service review~~ the Management Plan as required by the National 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 National Scenic Area.
  - F. Ensure compliance with orders issued by the Gorge Commission in development reviews, ~~and~~ enforcement proceedings, and other matters.
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 regulatory taking claim based upon a requirement in the Management Plan. ~~Upon request by a county, t~~The Gorge Commission shall extend appropriate assistance to the county in such taking claims consistent with the Gorge Commission's appellate responsibility in section 15(a)(2) of the National Scenic Area Act.
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

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represent the position ~~or stated direction~~ of the ~~Columbia River~~ Gorge Commission, and the Gorge Commission shall not direct the Executive Director's handling of the appeal. 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, resource inventories and data that form the basis of the Management Plan, maintain and improve access to information and data that support implementation of the Goals, Objectives, Policies and Guidelines 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 National Scenic Area Act, the Bi-State Compact, the Management Plan, authorities and ~~other~~ state statutes and regulations.

### **CIVIL PENALTIES**

In section 15(a)(3) of the National Scenic Area Act, Congress authorized the Gorge Commission to assess ~~a civil penalty~~ to persons and entities who willfully violate 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 National Scenic Area Act related to enforcement ~~procedure after consultation with the Secretary, the counties, and the Indian tribes and only after public hearings.~~
2. The Gorge Commission's enforcement rules shall specify factors for determining an appropriate civil penalty, including whether the alleged violator has had past violations, whether the alleged violation has voluntarily undertaken measures to remedy the violation or mitigate harm of the violation, the nature and severity of the violation, and whether the alleged violation is continuous.

### **APPEALS TO THE GORGE COMMISSION**

In section 15(a)(2) of the National Scenic Area Act, Congress authorized persons and entities to appeal decisions relating to the implementation of the National Scenic Area Act to the Gorge Commission.

## **Policies**

1. Section 15(a)(2) of the National Scenic Area Act is a mandatory duty of Gorge Commission. The Gorge Commission shall decide all appeals in which the Gorge Commission has jurisdiction. The Gorge Commission shall adopt rules to implement the appeals provisions in the National 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.
3. The Gorge Commission shall hear appeals of final decisions of a city that relate to the implementation of the National Scenic Area Act through any formal or informal arrangement in which a city implements a county's National Scenic Area land use ordinance within the city's jurisdiction.

## **REVISION OF URBAN AREA BOUNDARIES**

~~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 Gorge Commission Rule 350-10 are the Urban Area boundaries and acreage calculations that counties must use in applications to

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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 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
  - 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 Gorge 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 Gorge 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 Gorge 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 Gorge 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 Gorge 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 Gorge Commission by rule may establish a priority of lands to be considered for revising into Urban Areas.

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### ***Guidelines***

- 1.— ~~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.— ~~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 purposes of the Scenic Area Act and the standards established in Section 6 of the Act.~~
  - C.— ~~Revision of Urban Area boundaries would result in maximum efficiency of land uses within and on the fringe of existing Urban Areas.~~
  - D.— ~~Revision of Urban Area boundaries would not result in the significant reduction of agricultural lands, forest lands, or open spaces.~~

## **REVISION OF NATIONAL SCENIC AREA BOUNDARIES**

The National Scenic Area Act does not ~~contain authorize~~ administrative revisions of procedures or substantive criteria for revising the exterior boundaryies of the National Scenic Area. Congressional action ~~will be required before lands can be added to or removed~~ is necessary to add land to or remove land from the National Scenic Area.

The Gorge Commission recognizes that circumstances may exist or arise that necessitate a change in the boundaries of the National Scenic Area. The Gorge Commission will may consider proposed exterior boundary revisions on a case-by-case basis. and forward appropriate Rrecommendations for revising the exterior boundaryies ~~of the Scenic Area will be forwarded~~ to Congress.

### ***Policy***

- ~~1. The Gorge Commission shall Prior to reviewing and considering a proposed revisions to the exterior boundary of the National Scenic Area ~~for appropriate recommendations to Congress.~~ The Gorge Commission shall first consider alternatives to revising the exterior boundary. ~~first any proposed revision involving land within an urban service boundary established prior to enactment of the Scenic Area Act.~~~~
2. Persons and entities presenting a proposed revision to the exterior boundary of the National Scenic Area to the Gorge Commission shall concurrently consult with the Forest Service about the proposed revision.
3. A Gorge Commission recommendation about revising an exterior boundary is not a binding or final action of the Gorge Commission and is not subject to judicial review.

## COUNTY ORDINANCES

In sections 7(b) and 8(i) of the National Scenic Area Act, Congress requires the Gorge Commission to review the Gorge counties' land use ordinances implementing the Management Plan for consistency with the Management Plan.

### **Policies**

- 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 National 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.
- A county and a city may enter into an intergovernmental agreement to allow the other to implement a National Scenic Area land use ordinance that applies to National Scenic Area land within the city jurisdiction~~and that has been approved or adopted by the Gorge Commission under Section 8 of the Scenic Area Act.~~ Counties shall consult with the Gorge Commission and Forest Service before adopting the intergovernmental agreement. The Gorge Commission does not need to approve the intergovernmental agreement.
- Counties may grant variances to provisions in their land use ordinances that are not required by a policy or guideline in the Management Plan.
- 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 National Scenic Area Act and the Management Plan.
- ~~The Gorge Commission shall seek funds and an interagency agreement with the~~

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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 National Scenic Area Act. ~~The Gorge Commission strives to provide for and consider a variety of viewpoints in decision making, encourages an informed public, and commits to consult and coordinate with other governmental jurisdictions, including, but not limited to the Forest Service, the four Columbia River Treaty Tribes~~ Indian tribal governments, county boards, city councils, and other local, state and federal agencies.

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

#### **GMA Goals**

- ~~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.
- ~~1.2.~~ The Gorge Commission shall rotate Mmeetings ~~shall be rotated~~ among suitable meeting spaces throughout the National Scenic Area or nearby communities and may conduct meetings by electronic means, such as videoconferencing to make it convenient for residents of different areas to attend and participate.
- ~~2.3.~~ 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.
- ~~3.4.~~ Informational materials describing Gorge Commission activities and planning decisions shall be developed.

- 4.5. A community outreach program shall be conducted. Activities may include maintaining a speakers' bureau, meeting with county advisory committees, and participating in school programs.
- 5.6. Advice shall be provided to interested counties in designing and implementing their public involvement activities.
- 6.7. 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, revises an Urban Area boundary, approves a county land use ordinance, 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. Gorge 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.C.~~ 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.
- ~~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.~~
- 7.8. Periodic meetings of Gorge county planners and planning directors shall be scheduled to encourage ongoing discussion of issues and concerns.
- 8.9. Periodic consultation meetings shall be scheduled with ~~Indian tribal governments~~the four Columbia River Treaty Tribes to encourage ongoing discussion of issues and concerns.
- 9.10. Periodic consultation meetings shall be scheduled with county governing boards to encourage ongoing discussion of issues and concerns.
- 10.11. 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.
- 11.12. The Gorge Commission should collaborate with the USDA Forest Service

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on all projects of mutual interest.

12.13. In designing implementation programs, public comment and assistance shall be solicited.

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