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VIA EMAIL ONLY

Columbia River Gorge Commission

ATTN: Connie Acker

E-Mail: Connie.Acker@gorgecommission.org

Re: **Comments on Gorge 2020 Amendments to the Management Plan for the Columbia River Gorge National Scenic Area**

Dear Chair Liberty and Commissioners:

On behalf of ZP#5, LLC,¹ property owner of the Washougal Pit, Jordan Ramis PC submits the following comments to the Columbia River Gorge Commission (“Commission”) and its individual members on the Gorge 2020 amendments to the Management Plan for the Columbia River Gorge National Scenic Area (“NSA” or “Scenic Area”). ZP#5 has been an active stakeholder in the Gorge 2020 process submitting public comments into the record, attending Commission meetings, and offering oral testimony regarding topics of the Gorge 2020 update. Nonetheless, the Gorge 2020 amendments to the Management Plan (“Amendments”) still raise serious concerns for the future of new and existing mining activity in the NSA.

Our primary concern continues to be the replacement of the word “shall” with “may” in the provisions relating to the new production and/or development of mineral resources, and the expansion of existing quarries. See DRAFT MANAGEMENT PLAN, 40 (2020). In its August 11-12, 2020 staff report, Gorge Commission staff summarily dismissed our concern, stating that “[t]he term ‘may be permitted’ is the common terminology for guidelines where development may be permitted when consistent with the goals, objectives, policies and guidelines of the Management Plan.” GORGE 2020 PUBLIC COMMENTS STAFF REPORT, 36 (August 11-12, 2020). If that is the case, *officially incorporate the position into the Management Plan*. Staff’s cursory and informal interpretation of the distinction between “shall” and “may” does not adequately address this critical language change, which affects the rights and obligations of ZP#5 and other mineral resources users within the NSA.² The Commission should decline to adopt this language change.

In addition to this critical language change, staff has circumvented the public notice and comment process in amending the guidelines for the expansion, exploration, development, and production of mineral resources within the NSA. Subsequent to the June 2020 formal comment period and seemingly without explanation or consultation with the Commission, staff has expanded the buffer distance from key viewing areas (“KVAs”) where mining uses are not permitted. The language change is detailed below.

¹ Judith Zimmerly, Manager.

² Indeed, even Bryan Garner, the legal writing scholar and editor of *Black’s Law Dictionary* wrote that “*shall*” is among the most heavily litigated words in the English language.”

6. ~~7.~~ Expansion of existing quarries and exploration, development (extraction and excavation), and production of mineral resources~~new production and/or~~

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development of mineral resources proposed on sites more than 43 miles from the nearest key viewing areas from which it is visible may be allowed upon a demonstration that:

This change from three to four miles dramatically alters where mining uses are allowed within the Scenic Area and is tantamount to prohibiting mining in the majority of the NSA. This 25% increase in buffering from KVAs was not discussed or noticed for public comment, instead it is yet another attempt by the Commission to achieve its goal of prohibiting mining within the NSA.

As has been made clear by our previous comments, the clear and unambiguous language of Section 6d(d)(9) of the National Scenic Area Act ("the Act") requires the Commission to consider mining within the NSA. The Act also mandates that the Commission provide for the protection and support of the local economies of the Gorge by encouraging growth in urban areas and allowing for future economic development. 16 U.S.C. § 544a. This proposed amendment is an attempt by the Commission to sidestep its nondiscretionary duty under the Act to provide for mining within the NSA and support local natural resource-based industry. This arbitrary and completely unfounded change cannot be upheld.

Finally, the Gorge 2020 process has failed to afford meaningful opportunities for public involvement. The Commission has pushed this Management Plan update through in the midst of a global pandemic, violating both Oregon and Washington's Stay at Home Orders. We refer to our previous comments on this deficiency, detailed in length in our July 2 Public Comment.

Although it is unlikely this comment will be considered by the Commission in its headlong rush to the finish line, we again urge the Commission to delay the Gorge 2020 process and thoroughly consider the issues raised within this Comment and by the numerous other stakeholders who continue to have concerns with the adequacy of this Management Plan update. We thank you for considering these comments.

Very truly yours,
JORDAN RAMIS PC



Jamie D. Howsley
cc: Judith Zimmerly
Keenan Ordon-Bakalian
Jeff Litwak