



## MEMORANDUM

**TO:** Columbia River Gorge Commission

**FROM:** Joanna Kaiserman, NSA Land Use Planner

**DATE:** November 13, 2018

**SUBJECT:** "Gorge2020" Land Uses and Development Reviews - Key Issues

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### Background

At the September 11, 2018 Commission meeting, staff provided a brief background presentation on the "Land Uses and Development Review Process" focus topic to provide context and opportunities for the Commission to give direction and the public to comment. Staff requested the Commission's feedback on the proposed approach to this focus topic and asked the Commission to identify specific issues that the Commission is most interested in learning more about.

This memo is an update on staff's work following the Commission's feedback at the September meeting. It also provides information requested by the Commission and outlines the next steps that staff will be taking to address each issue. At the end of the memo is a summary of Consider.It responses to land use topics and a summary of next steps.

As part of this focus topic, Commission and Forest Service staff will consult with NSA county planners to identify and work through the technical fixes to the plan. This will be an iterative process of staff bringing topics to county planners and others with specific expertise or interest for discussion and developing draft recommendations for revisions to the Plan. Staff will present recommendations to the Commission and provide an opportunity for follow-up discussions with the Commission, with public comment, at a future Commission meeting in spring 2019.

### Key Issues

The Commission identified the following as the key issues within this focus topic that the Commission would like to learn more about and discuss at future Commission meetings.

- Wind and solar power generation for home and agricultural use
- Master planning for phased development or new agricultural uses
- Existing and emerging uses not currently addressed in the Management Plan
- Mining and quarries

- Commercial uses
- Land use designations
- Cluster developments
- Accessory structures
- Coal trains
- Climate change (land use standard aspects of climate change in NSA- risk reduction standards; mitigation for climate change emissions, adaptation)
- Enforcement

### **Staff Approaches to Key Issues**

Staff reviewed the topics identified by the Commission and identified which can be technical fixes, which need more information and discussion, and which can be addressed outside of the “Gorge 2020” Plan review. For each item, staff provides some context, and next steps.

#### Solar and Wind Power

Solar panels for residential use is an item that is occasionally brought up by landowners and county planners. Commission staff and county planners review solar panels for residential use as an addition if attached to a dwelling and as a structure if detached from a dwelling. In both the GMA and SMA, wind machines for frost control in conjunction with agricultural use are allowed outright.

Staff acknowledges the recent rise in the use of wind and solar energy in the NSA and anticipates an increased popularity of these uses in the future as energy generation is moving more towards renewable sources. Having clear and objective standards in the Plan specifically for solar panels and wind turbines would clarify the Commission’s approach to these uses and facilitate consistent implementation of standards throughout the NSA.

Staff hired a planning intern in 2017 to conduct an analysis and provide a summary of the use of solar panels in the NSA and suggest policy recommendations. Staff can provide a presentation of this work at a future Commission meeting if the Commission requests this.

*Next steps:* Staff will discuss with the county planners, recent applicants, and other interested persons how to develop clear and consistent standards for reviewing solar and wind power projects. Staff will bring future work on this topic to the Commission for review with a chance for public comment.

#### Master Planning

Staff has been discussing whether to explore a concept in which applicants for regional projects (such as ODOT, WDOT, railroads, and other similar landowners and project developers that cross several county boundaries) can seek master plan approval for their long-term plan for improvements, replacements, expansions, etc. that would be valid for a longer period of time than the standard two-year approval for other National Scenic Area approvals. The benefit is that Commission and county staff could better evaluate cumulative effects and require appropriate avoidance or mitigation. Commission staff and county staff can coordinate a single master plan approval, or Commission staff can review the entirety of a proposal even if portions would be other counties.

Staff is also discussing longer approvals for phased development and master planning in relation to agricultural uses. Landowners of agricultural land, especially large parcels, will often have a master

plan or a vision for phased development for their property. If landowners share their master plan or vision upfront, planners can better evaluate potential resource protection issues and cumulative effects and can help prevent issues in the future.

*Next steps:* Staff will continue to explore the benefits and potential drawbacks to master planned projects in the National Scenic Area; discuss master planning with agricultural interests, the state DOTs, and railroads to better define the concept; and discuss with county planners. Staff will bring future work on this topic to the Commission for review with an opportunity for public comment.

### Existing and Emerging Uses

During public scoping, staff heard about specific land uses that landowners want the Commission to discuss in the Plan review process. Commissioners requested a list of these uses that are not currently addressed in the Plan. The land uses that the public requested the Commission and Forest Service to add to the Plan or clarify in the Plan include the following:

- Cideries and other value-added agriculture
- Guest quarters and accessory dwelling units (ADUs)
- Recreation facilities for sports not currently addressed in the Management Plan such as paragliding, kiteboarding, canyoneering, kayaking and canoeing, rock climbing, etc.
- Docks and other developments on/over the Columbia River and tributaries
- Agritourism

*Next steps:* Staff will work with county planners to determine if clarifications need to be made in the Plan to allow for uses not specifically addressed in the Plan and discuss the potential for language in the Plan that could be flexible enough to allow for emerging uses without needing to amend the Plan to add new uses as they arise. Staff will bring future work on this topic to the Commission for review with an opportunity for public comment.

### Mining and Quarries

The Commission expressed concern about current Management Plan development standards for mining and quarries. The expansion of existing quarries and new production and development of mineral resources is an allowed use in some GMA land use designations. There have been legal questions dating back to the adoption of the Management Plan in 1991 whether mining operations established pre-Act that have a current state permit need to apply for an NSA permit to expand or continue to operate. Members of the public asked the Commission to consider prohibiting mining activities in the National Scenic Area.

The Act and the Management Plan have provisions that address mining. Section 6(d)(9) of the National Scenic Area Act states that the Plan shall "Require that the exploration, development and production of mineral resources, and the reclamation of lands thereafter, take place without adversely affecting the scenic, cultural, recreation and natural resources of the scenic area." The Plan in Chapter 1 Scenic Resources/GMA Objectives currently states that the Commission "will establish a program to phase out existing quarries and associated activities and develop reclamation plans for such quarries at sites where the Gorge Commission determines that such uses adversely affect scenic resources on land visible from key viewing areas" but does not prohibit new production or expansion of existing quarries as long as they are visually subordinate and do not adversely affect other resources.

*Next steps:* The Commission currently has two pending appeals related to mining activity in the NSA and staff will postpone discussion of this topic with the Commission until the appeals are

resolved, probably in late spring 2019. Postponing Commission discussion ensures that the Commission decides the appeals based on the county record and parties' briefs, not staff's research and communications, and may help the Commission refine the issues that need the Commission's attention during Plan review. Staff will continue to study mining issues and report back to the Commission after the Commission resolves the appeals.

### Commercial Events

Commercial events are currently allowed in the GMA except on lands designated Open Space, Commercial Forest, or Agriculture-Special, subject to compliance with the specific commercial events standards and the scenic, cultural, natural and recreation resource protection guidelines applicable to all development. The Plan defines commercial events as "weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel." Temporary structures are allowed for commercial events if they are placed no more than two days before the event and removed no more than two days after, or up to 90 days if fully screened from KVAs. County planners have asked the Commission to further define "small-scale gathering." For example, county planners have asked whether a temporary or special event, such as a festival, would be considered a commercial or a private event. Having more clear and objective guidelines about commercial uses would help planners implement these guidelines more consistently.

*Next steps:* Staff will work with county planners to clarify the standards for commercial events to ease their implementation. Staff will bring future work on this topic to the Commission for review with an opportunity for the public to comment.

### Land Use Designations

Friends of the Columbia Gorge requested the Commission, "Zone lands acquired by public agencies as open space or recreation, based on the land use designation policies." At the September Commission meeting, the Commission asked staff to consider this topic. Currently, the Management Plan has land use designation policies, which describe the characteristics of land appropriate for each land use designation. Requiring an open space or recreation land use designation will require changing some designation policies.

*Next steps:* Staff will start initial consultations with public agencies to solicit feedback on this issue and will study the current designation policies. Staff will bring this work to the Commission for review with an opportunity for the public to comment.

### Cluster Developments

The Commission raised the question whether allowing cluster developments in agriculture and forest land use designations is consistent with resource protections. The Plan allows for cluster developments only in the Small-Scale Agriculture and Small Woodland land use designations. After reviewing the inventory of land in those LUDs that would qualify for cluster development, Commission staff found that there are very few opportunities left in those LUDs.

*Next steps:* Staff will research the few opportunities remaining for cluster development and report back to the Commission. The Commission can then discuss whether to remove the cluster developments standards from the Plan or clarify and revise the standards to meet resource policy objectives.

### Use of Accessory Buildings

The Commission is concerned that accessory buildings are being used as dwellings or accessory dwellings units (ADUs), which the Plan does not currently allow.

The Plan has guidelines for allowable square footage for accessory buildings, either 1,500 or 2,500 combined total square footage for all accessory buildings on a parcel, depending on the size of the parcel. The Plan does not permit occupancy in accessory buildings as dwellings or ADUs. These standards are clear and enforceable.

The Plan also has standards for dwellings, usually one single family dwelling per parcel, (except for unique circumstances including hardship dwellings, life estates, a dwelling for farm operator's relative, agricultural labor housing, or duplexes in Rural Center land use designations). The Commission does not have a definition for an Accessory Dwelling Unit, but the Commission does have a definition for dwelling unit: "A single unit designed for occupancy by one family and having not more than one cooking area or kitchen."

Because the Commission only typically allows one dwelling per parcel, ADUs are not allowed because they typically require and request a kitchen or cooking area. Staff has interpreted this rule, specifically in Klickitat County, to mean an accessory building is not an ADU if it does not include a "cooking area." A cooking area has been interpreted to mean a range or stove typically but can also include a refrigerator or sink depending on the situation. (For example, a bar sink and mini fridge in combination has not been interpreted to be a cooking area). Multiple counties – including Klickitat and Skamania in 2018 – have adopted ordinances addressing ADUs and allowing them in most county land use designations. The county ordinances typically have size requirements for ADUs and require the ADUs to be within a certain proximity to the primarily dwelling.

*Next steps:* There are two issues here. One is an enforcement issue—whether accessory buildings are currently being used as dwellings or ADUs; the other is a policy issue whether to specifically permit ADUs in the National Scenic Area, which could address the first issue. The first issue relating to current enforcement is an administration issue to handle outside of Gorge 2020. The second issue is a topic that staff will discuss with county planners to gather information about how they address these issues. Staff will bring future work on this topics to the Commission for review and public comment.

### Coal Trains

*Next steps:* Staff will report back to the Commission after the pending litigation is resolved. A court decision or settlement could address some of the Commission's concerns or require actions that would put the Commission in a position of holding another appeal hearing, or some of both.

### Climate Change

At the February 2018 Commission meeting, staff invited a panel of climate science and policy experts to make presentations and stimulate discussion on how to incorporate climate adaptation and resilience into the Gorge 2020 Management Plan. The Commission requested staff to focus on land use standards through the lens of climate change and discuss how the Plan can be modified to include the application of climate science. The Commission brought up the topics of risk reduction standards, mitigation for emissions, building resilience, and adaptation. Land use issues include planning for more severe weather events; pressure for new energy facilities or use of individual renewables; pressure to harden Columbia River and tributary river banks to protect land; and possible increases in population growth throughout the Pacific Northwest from climate refugees,

which will increase pressure for urban growth in urban areas, increase recreational use of the National Scenic Area, and place pressures on sensitive resources.

This issue ties in with a discussion that the Natural Resources technical team is currently having about fire-related planning and policy. Commission and the Forest Service staff have convened a team of regional fire experts to review the current fire protection policies in the Plan.

Staff has also met with the treaty tribes and attended meetings where the tribes are developing their climate models and strategic plans. Staff hopes to continue to meet with the tribes on this issue. In addition, staff will be working with county planners to determine how to address climate change in the Plan's land use standards.

*Next steps:* Staff will make a presentation in spring 2019 at a Commission meeting with suggestions of a practical approach for Plan review. Right now, staff is anticipating examples from the land trust community, climate science centers, the tribes who are preparing their own climate adaptation plans, and other policy scholars.

#### Development Review Process

Staff is reviewing the standards that counties must use for accepting and reviewing development proposals for efficiencies and to consider how to get more uniform application of the Management Plan standards throughout the entire National Scenic Area.

*Next steps:* Staff is doing much of this work internally and will use existing regular Gorge planning director and Gorge planner meetings to discuss process issues. Staff will bring any recommendations for changes to the Commission for review with an opportunity for the public to comment.

#### Enforcement

Commissioners requested information about the status of post-permit compliance monitoring and enforcement in the NSA. Staff is preparing a separate report to the Commission to be presented at the December 2018 Commission meeting. For Gorge 2020, staff will evaluate existing, revised, and new policies and standards to see whether they create an incentive for landowners to avoid the permitting system; whether landowners see value in compliance with the new and revised standards, and whether the policies and standards are easy to comply with and enforce and present this work to the Commission for review with an opportunity for the public to comment.

#### Illegal Parcels

Some guidelines in the Plan require findings documenting that a parcel is a legal parcel. Staff is aware of a few situations in Klickitat County in which landowners sold portions of their property without National Scenic Area land division approval. These were done a long time ago—mostly in the 1980s and 1990s when Klickitat County was issuing plat approvals and recording deeds without notifying the Commission or ensuring that an applicant received National Scenic Area approval. In the early 2000s, the Commission and Klickitat County settled litigation with an agreement that Klickitat County would hold off issuing approvals until an applicant has received a National Scenic Area approval, and we are unaware of new illegal parcels since the settlement. Staff only becomes aware of the illegal parcels created in the 1980s and 1990s when researching whether an applicant has a legal parcel when reviewing development proposals. The issue is that to correct the illegal parcels requires some unwinding of the old deeds and transactions, some of which predate the current landowner.

*Next steps:* Staff intends to study the problem and propose a policy solution or alternatives to the Commission. The policy solution could range from simply recognizing the illegal lots as parcels, to changing land use designations and minimum parcel sizes so that landowners can legalize parcels, to developing a process for handling each situation on an individual basis, or other concepts. Staff will do much of the work internally and with Klickitat County planners and present it to the Commission for review with an opportunity for public comment.

### **Review of Consider.It Responses:**

Consider.It is an online platform for gathering opinions from the general public. As part of the public engagement strategy for Gorge2020, Commission staff launched a Consider.It page on the Gorge2020 website to solicit feedback from the public on the deep dive focus topics. Staff wrote statements based on issues raised during public scoping. The statements do not represent staff recommendations or the opinion of the Commission. The statements are italicized below, followed by direct public comment responses for each.

#### *1. The Management Plan should provide standards for uses that do not appear in the Plan but have been allowed, such as solar panels for home or agricultural uses and cideries/distilleries.*

##### *Pros:*

- Yes, management standards should be flexible and not restricted only to when the Plan is being revised. New standards make it more efficient and make the plan revision process easier.
- Cideries/distilleries in conjunction with an orchard or farm producing the raw material should have standards in the plan.
- Solar panels and metal roofs should be allowed in most places, but where they are located and how should have some standards.

##### *Cons:*

- The management plan should not be allowed to control everything, i.e. solar panels.
- The scenic plan should be amended before unlisted uses are permitted.

#### *2. There are additional types of developments that should be eligible for expedited review.*

##### *Pros:*

- Allowing additional types of developments under expedited review could encourage compliance.
- We should create an expedited process for uses to enhance and protect what uses currently allowed: tourism, agriculture, natural resources.
- Transportation facilities such as barriers, rock fall protection and cable barrier should be considered as expedited uses.

##### *Cons:*

- No fast tracking should be permitted for any type of land use application with the exception of developments that would address road or highway safety such as rock fall or flooding and erosion.

#### *3. The Management Plan should promote commercial event space and small commercial operations.*

##### *Pros:*

- The Gorge and should be enjoyed by many, but commercial opportunities should be disbursed to spread the impacts.
- There is a need for integrating recreation promotion with the Economic Development purpose of the Act to benefit the locals and communities.

##### *Con:*

- Commercial events can have huge negative impacts on small, agricultural communities. Commercial operations outside the urban areas may impact their "in town," competition.

## **Summary of Next Steps**

### *Outside Commission meetings*

- Commission and Forest Service staff will consult with county planners for this focus topic to gather input on the following identified key topics:
  1. Wind and solar power generation for home and/or agricultural use;
  2. Master planning for phased development or new agricultural uses;
  3. Existing and emerging uses not currently addressed in the Plan;
  4. Commercial uses; accessory structures; and
  5. Climate change adaptation as it pertains to land use policy.

Commission and Forest Service staff will develop recommendations in consultation with county planners and others with specific expertise or interest for revisions to the Plan and present these recommendations to the Commission at future Commission meetings for discussion and consideration.

### *At Commission meetings*

- Staff will present the research and policy alternatives and drafts. If the Commission requests more information about a particular topic, staff will plan in-depth presentations at future Commission meetings about topics the Commission wants to learn more about and invite public comment after those presentations. We hope to gain a common understanding among Commissioners, staff, county planners, and the public about the unique land use and future development needs in the NSA.