

**DRAFT POLICY FOR  
URBAN AREA BOUNDARY REVISIONS  
For August 14, 2019 Workshop**

**Land Trades**

- (1) A land trade does not increase the overall size of an urban area as measured by acres. The overall size of an urban area may become smaller as a result of a land trade. Land trades with the following characteristics constitute “minor revisions” as that term is used in section 4(f) of the National Scenic Area Act.
- (a) A land trade shall not revise more than one percent of the size of the urban area or 20 acres, whichever is less and may involve non-contiguous land. For this requirement, the size of each urban area is given at the end of the legal description for the urban area in Appendix C to Commission Rule 350-10 in effect as of December 31, 2018.
  - (b) A county may apply for more than one land trade in an urban area. The cumulative size of all land trade applications to an urban area shall not exceed the size permitted in subsection (a).
  - (c) A land trade shall involve only a revision between land in an urban area and land in the general management area. Land in a special management area shall not be revised into an urban area through a land trade. Land that is outside the exterior boundary of the National Scenic Area shall not be revised into an urban area through a land trade.
  - (d) For urban areas above Bonneville Dam, a land trade shall not involve land below the normal pool elevation as defined in the legal description for the urban area. For urban areas and portions of urban areas below Bonneville Dam, a land trade shall not involve land below the ordinary high water mark of the Columbia River as defined in the legal description for the urban area. [Cascade Locks has islands within its urban area. Should this policy allow those islands to be traded into the GMA]
  - (e) A land trade shall not involve land designated open space in the general management area or any state, regional, or local park.
  - (f) No more than 25 percent of a land trade application to an urban area shall involve a linear feature, such as, but not limited to, highways and roads, electric transmission lines, pipelines, railroads, or their easements and rights-of-way. This subsection includes linear features that have been abandoned, relinquished, or vacated within the past 10 years.
  - (g) No more than 25 percent of a land trade application to an urban area shall include land below the ordinary high water mark, or bank of any river, creek, other watercourse, ravine, or other linear feature that forms the boundary of an urban area.

- (h) A land trade shall involve only land that is adjacent to the boundary of an urban area. For this requirement, land is considered adjacent when at least 33 percent of the circumference of the land to be revised into an urban area and 33 percent of the circumference of the land to be revised into the general management area is coterminous with the boundary of the urban area. The land to be revised into an urban area shall be generally rectangular, semi-circular, or triangular in shape and shall not result in the urban area surrounding general management area or special management area land by less than 90 degrees as generally measured along the length of segment of urban area boundary surrounding general management area or special management area.
  - (i) A land trade shall not reduce the size of an existing parcel that meets the minimum parcel size to a size below the minimum parcel size for the area of the parcel remaining in the general management area.
  - (j) Only one land trade is permitted to any segment of boundary.
- (2) Frequency of land trades
- (a) After the Gorge Commission approves a land trade, the urban area may not apply for another land trade until the following conditions are met:
    - (1) two years have passed as measured from the date of the Gorge Commission's decision or the date the land revised into the urban area is incorporated into the applicable comprehensive plan and zoning ordinance and is available for development, whichever is later; and
    - (2) the land revised into an urban area from the prior land trade shall be developed and used. Land is developed and used when there is a development agreement in place, pursuant to subsection (4) below, and construction is vested under applicable state law.
  - (b) The Gorge Commission may delay its consideration of an application for a land trade to allow the Commission to review multiple applications at the same time.
- (3) Required characteristics of land proposed for a land trade:
- (a) Land revised into an urban area shall meet the standards required in subsections (7) through (10) below.
  - (b) Land revised into the general management area shall:
    - (1) be undeveloped or have minimal development or uses that generally comply with the land use standards in the Management Plan and do not preclude

reasonable future development or land uses consistent with the Management Plan; and

- (2) not have development or uses that adversely affect the scenic, cultural, natural, or recreation resources, or treaty rights, on the subject land or adjacent or nearby general management area or special management areas as determined by review of the existing development and uses on the land using the standards in the Management Plan for review of scenic, cultural, natural, and recreation resources, and treaty rights; and
- (3) not have development or uses that conflict with use or preservation of adjacent or nearby land within the general management area or a special management area. Conflicts include, but are not limited to, odor, noise, light, and risk of air or water pollution.

(4) Use of Land Revised into an Urban Area

- (a) The land revised into an urban area shall be used for the same type of use as specified in the urban area boundary revision application or decision, if the decision is different from the application, for a period of not less than 30 years beginning with occupancy of the use.
- (b) The applicable permitting city or county shall require a development agreement at the time any land revised into an urban area is initially developed or used. The development agreement shall ensure that the land is used for the same type of use asserted in the urban area boundary revision application or decision, if the decision is different from the application, for a period of not less than 30 years beginning with occupancy of use. The agreement shall include the Gorge Commission as a party to the development agreement with all rights to enforce the development agreement for the life of the development agreement, the right for the Gorge Commission to designate a successor to its enforcement right if the Gorge Commission is disestablished or unable to enforce the development agreement, and the right for the Gorge Commission or its successor to recover all costs of enforcement, including attorney fees.
- (c) If the use of the land cannot continue to be used for the same type of use, the county shall apply to the Gorge Commission to use the land for another proposed type of use. If the Gorge Commission cannot approve the application, the Gorge Commission may order that the land revised into the urban area shall revert to its original general management area designation, including land use designation, minimum parcel size, and other designations, at the time of the original application. The Gorge Commission's order shall address the status of current development and land uses on the reversion land and may require that the development be removed, modified or be subject to the "existing uses" provisions of the county or Gorge Commission's National Scenic Area land use ordinance, or any other remedy. Land revised into the

general management area as part of the original application shall remain in the general management area and does not revert to the urban area.

(5) The Gorge Commission may impose conditions of approval when approving a land trade application. Conditions of approval may require restrictions on use of the land revised into an urban area, may require a county or city to modify existing development or uses on land proposed to be revised into the general management area and may require that the land revised into an urban area is subject to type, density and intensity of development and uses specified in the application, or in the decision if the decision is different from the application.

(6) For land revised into the general management area, the Commission shall assign a land use designation, minimum parcel size, landscape setting, and recreation intensity class as part of its approval of an urban area boundary revision. The Gorge Commission will give first consideration to designating such revised land the same as adjacent general management area land.

(7) Interpretation and Application of 4(f) Criterion 1: A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;

- (a) A land trade is presumed to satisfy demonstrable need. Land trades provide for additional urban population growth or economic needs while using only the same amount of land as designated in the National Scenic Area Act.
- (b) An application for a land trade shall specify the intended use for the land proposed to be revised into the urban area and how the proposed land trade and proposed uses will accommodate long-range urban population growth requirements or economic needs.

(8) Interpretation and Application of 4(f) Criterion 2: Revision of urban area boundaries is consistent with the standards established in Section 6 and the purposes of the National Scenic Area Act;

- (a) The planned type, density and intensity of use of land revised into an urban area must not have adverse effect to scenic, cultural, natural and recreation resources on the subject land or adjacent or nearby land in the general management area or a special management area. Adverse effect to adjacent or nearby land in the general management area or a special management area shall be determined by compliance with the standards in the Management Plan for review of cultural, natural, and recreation resources. The standards in the Management Plan for review of adverse effects to scenic resources on the land revised into the urban area shall apply to the maximum extent feasible, recognizing that urban types, density, and intensity of uses may not be able to fully meet the scenic resources standards.
- (b) The planned type, density and intensity of use of the land must have no effect on treaty rights as determined by compliance with the standards in the Management Plan for protection of treaty rights.

- (c) An application for a land trade shall include analysis of effect to scenic, cultural, natural and recreation resources, and treaty rights, of the intended use for the land proposed to be revised into the urban area, including reports from the resource professionals and tribes as required by the Management Plan. The application shall also analyze effect to scenic, cultural, natural and recreation resources and treaty rights of adjacent and nearby lands in the general management area and special management areas.

(9) Interpretation and Application of 4(f) Criterion 3: Revision of urban area boundaries will result in maximum efficiency of land uses within and on the fringe of existing urban areas;

- (a) An application for a land trade shall specify how the intended use for the land proposed to be revised into the urban area is the most efficient use of the land to accommodate long-range urban population growth requirements or economic needs of the urban area and how the intended use will increase the efficiency of use of existing urban area land.
- (b) Land revised into an urban area may only be used for single family residential development when the urban area concurrently revises its code to use one of the “National Scenic Area Factors” specified in the “full revisions” section below that is not already being used or to use one of the factors to a greater extent.

(10) Interpretation and Application of 4(f) Criterion 4: Revision of urban area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

- (a) Land proposed to be revised into an urban area shall not be currently used for agricultural use, except grazing, and shall not be suitable for orchard or row crops as “suitable” is defined in the Management Plan.
- (b) Land proposed to be revised into an urban area shall not have merchantable timber on more than 20% of the land area to be revised. For the purpose of this provision, merchantable timber includes reforestation required by a state forest practices act, saplings and trees being grown for the purpose of timber harvest in the future; and
- (c) Land proposed to be revised into an urban area shall not have more than 50 percent of the land suitable for growing merchantable timber as “suitable” is defined in the Management Plan.

[FURTHER LINK (b) and (c) WITH OAR AND WAC??]

[OAR 629-610-0090: Oregon does not require reforestation if the applicant obtains permits for other uses within 12 months following a cut; establishes the use within 24 months of completion of operations, and must be maintained for 6 years following completion of operations]

[WAC 222-20-050: Washington reforestation rules do not apply if an application to harvest indicates that within 3 years, the land will convert to a use not compatible with timber operations, or a landowner decides to convert within six years after receiving approval of a forest practices application]

- (d) Land proposed to be revised into an urban area shall not be enrolled in a state's agricultural or forest land tax deferral program.

(11) Application for Land Trade

- (a) A county must apply for the land trade. There is no required form. The application shall include the acknowledgement and consent of all affected landowners, including owners of partial interest in land (e.g., conservation easements and utility easements).
- (b) The burden of production and burden of proof is on the county to demonstrate compliance with all requirements for a land trade. The application, including supporting materials, shall demonstrate compliance with all requirements for a land trade.
- (c) In addition to the requirements for a land trade, the county applying for the land trade shall:
  - (1) analyze whether the revision would cause a parcel or the portion of a parcel remaining in the general management area to have no reasonable development or use potential. If the revision would cause a parcel or the portion of a parcel remaining in the general management area to have no reasonable development or use potential, all owners of the land remaining in the general management area shall sign a written acknowledgment that they understand the land remaining in the general management area cannot be developed or used and consent to the same.
  - (2)
  - (3)
- (d) The county applying for the land trade shall reimburse the Gorge Commission for its reasonable costs in making the urban area boundary revision effective, including, but not limited to costs to revise the legal description and costs of rulemaking, including staff time.

**Regional Planning to Accommodate Long-Range Urban Population Growth or Economic Needs**

(1) An application for an urban area boundary revision other than a land trade shall be submitted only after an applicant concludes a regional planning process. The purpose of requiring a regional planning process is to identify regional solutions that accommodate long-range urban population growth or economic needs. The outcome of a regional planning process may not be an application for an urban area boundary revision if there are other ways to accommodate regional long-range urban population growth or economic needs. In this way, regional partners can achieve mutually beneficial long-range planning goals while protecting National Scenic Area resources.

(2) Characteristics of a Regional Planning Process

- (a) The urban area seeking a revision and the county in which the urban area is located shall be the joint convening entity for the regional planning process. Other entities may be co-conveners.
- (b) Participants in the regional planning process: The convener shall invite nearby urban areas as described in (2)(b) in this section, counties in which those nearby urban areas are located, Gorge Commission staff, and U.S. Forest Service staff. The convening entity should consider inviting other cities, special districts, Oregon’s Department of Land Conservation and Development; Washington’s Department of Commerce Growth Management Services, and non-governmental organizations to participate in the regional planning process. The Gorge Commission and U.S. Forest Service staff may also invite other government entities that may be affected by the outcome of the regional planning process.
- (c) Prior to the first formal meeting of the participants, the convening entity shall develop a statement of the goals of the regional planning process, a workplan, and a funding plan. The workplan shall plan for public engagement and for the process to be completed within two years and the funding plan shall demonstrate that the process is fully funded for the duration of the process.
- (d) At the first formal meeting, the convener shall request the participants approve the statement of goals of the regional planning process, the workplan and the funding plan.

(2) Guidelines for the Regional Planning Process

- (a) The regional planning process shall determine need using the methods, formulas, factors, and specified ranges required by the Oregon Land Conservation and Development Commission for revising urban growth boundaries in compliance with Oregon Statewide Planning Goal 14. The regional planning process shall use the requirements of Oregon Administrative Rule chapter 660, division 038 (as the Oregon Land Conservation and Development Commission may revise it over time) as modified by the requirements in subsections (b) through (e) below. This applies to

urban areas in Oregon and Washington, except that the regional planning process shall use the Washington Office of Financial Management population projection at the low end of the projected range.

- (b) **[Possible]** “Nearby Urban Areas”  
North Bonneville, Stevenson, Cascade Locks  
Carson, Home Valley  
White Salmon, Bingen, Hood River, Mosier  
Dallesport, The Dalles  
[Link Lyle to White Salmon group or Dallesport group?]  
[Link Wishram to Dallesport group or leave free-standing?]

A nearby urban area that does not participate in a regional planning process shall not be excluded from analysis of demonstrable regional need. The convening entity shall attempt to gather relevant information from the non-participating urban areas.

- (c) **Mandate specific measures or allow the urban area to select a required number of measures from Table 5:** OAR 660-038-0190(5) (as the Oregon Land Conservation and Development Commission may revise it over time)
- (d) The regional planning process shall plan for tribal housing, including using existing programs for financing construction and tribal member purchasing of homes. **[still need to talk with NAYA Family Center; HUD Office of Native American Programs (ONAP); and others that handle tribal housing planning, construction, financing, home ownership programs, etc.]**
- (e) Define Constrained Land to include land with sensitive NSA resources, agriculture, forest, and open space (this reduces the supply of land available for expansions).
- (f)
- (g)

(3) Outcome of a Regional Planning Process

- (a) The principal outcome would be recommendations describing how the region can accommodate long-range urban population growth or economic needs.

A list of actions that participants agree to take that do not require an urban area boundary revision, with indicators to measure progress towards completing those actions.

If the recommendations include an urban area boundary revision, the urban area shall show there is no alternative to an urban area boundary revision.

The regional planning process should strive to reach consensus among the participants of how the urban area boundary revision meets the requirements of the National Scenic Area Act. [What is consensus?]

If the regional planning process cannot reach consensus, [..]