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VIA EMAIL ONLY

Columbia River Gorge Commission  
Commissioner Bowen Blair  
Commissioner Lynn Burditt  
Commissioner Sondra Clark  
Commissioner Lorrie Dekay  
Commissioner Dan Eriksen  
Commissioner Robin Grimwade  
Commissioner Tamara Kaufman  
Commissioner Robert Liberty  
Commissioner Jerry Meninick  
Commissioner Carina Miller  
Commissioner Michael Mills  
Commissioner Rodger Nichols  
Commissioner Janet Wainwright

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

Dear Chair Liberty and Commissioners:

On behalf of ZP#5, LLC,<sup>1</sup> 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 draft amendments to the Management Plan for the Columbia River Gorge National Scenic Area (“NSA” or “Scenic Area”). The Gorge 2020 amendments to the Management Plan (“Amendments”) raise serious concerns for the future of new and existing mining activity in the NSA.

The purpose of the Columbia River Gorge National Scenic Area Act (the “Act”) is twofold. The Act requires the preservation of the Gorge’s scenic, natural, cultural, and recreation resources (“SNCRs”), while simultaneously providing 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.

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<sup>1</sup> Judith Zimmerly, Manager.

As a stakeholder that has been intimately involved in the Gorge 2020 process, it has become clear that the Commission has abandoned its mandate to protect and enhance local Gorge economies. The Amendments belie the Commission's intention to adopt a "no growth" policy for urban areas, curtail forest practices, and restrict the exploration, development, and production of mineral resources. The promulgation of the Amendments violates both the spirit and plain language of the Act. In adopting the Act, Congress clearly recognized there must be balance between the twin purposes of preservation and economic development within the Scenic Area. The Commission and its members have forgotten their role in ensuring this balance remains.

Of particular concern are the language changes to the General Management Area Policies, within the Scenic Resources Chapter. The revisions have replaced 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, 39 (2020). This change was not noted in any summary document posted on the Commission's website and effectively imbues the Commission with discretion to approve or deny an application for a new mining use, or expansion of an existing use, regardless of demonstrated compliance with all Scenic Resource provisions. This is impermissible and a clear violation of Act.

These revisions directly impact the rights and responsibilities of existing and prospective mining uses within the NSA, including the Washougal Pit. The Act unambiguously provides for the exploration, development, and production of mineral resources. 16 U.S.C. § 544d(d)(9). Upon demonstration that a prospective or existing mining use can occur without adversely affecting the SNCRs, it *must* be approved. *This is not discretionary*. However, the proposed Amendments abrogate the plain language of the Act—they provide the Commission with discretion to approve or deny an application, apparently on a whim. Simply put, a mining use "may" be permitted, upon demonstration of compliance with the standards for Scenic Resource protection. Nothing has been articulated to explain what more a prospective applicant can do to obtain land use approval, beyond demonstrating compliance with all relevant review criteria. Even then, an application *may* be denied. One must ask the question—under what authority?

In addition to the mining-related revisions, the Amendments also disregard provisions of the Act which protect and promote forest practices and urban area economic development. On those issues, we support comments submitted by Davis, Wright, Tremaine LLP and Stoel Rives LLP, addressing essential economic activities within the NSA.

Beyond violating the Act, the Amendments also violate Washington's Growth Management Act, RCW 36.70A (the "GMA"). The Amendments restrict and disincentivize forest practices and mining within the NSA and limit any prospect of growth for local Gorge economies. This is in complete opposition to the GMA's mandate to maintain and enhance natural resource-based industries and encourage economic development and growth of urban areas. See RCW 36.70A.020. Incorporating these Amendments into the Management Plan is tantamount to explicitly instructing Washington's Gorge Counties to adopt local land use ordinances which violate the GMA.

The Commission's actions during the Gorge 2020 process lack transparency. The Commission has abjectly failed to consult and engage with relevant state agencies, stakeholders, or consider the

recommendations of its own staff.<sup>2</sup> No meaningful public outreach effort has occurred, and the Commission has repeatedly violated state open public meetings laws by holding meetings and work sessions in an effort to push through the Management Plan update with minimal public involvement, and in the midst of a global pandemic. Even without the advent of the COVID-19 crisis and attendant Stay at Home Orders, the Commission's public involvement and comment process raises concerns about compliance with state public meeting laws. See RCW 42.30 and ORS 192.

Clark, Skamania, and Klickitat Counties—which comprise half of the Gorge Counties—have been limited to “ordinary and routine” business, consistent with Governor Inslee’s Proclamation 20-28. Nothing about the Gorge 2020 process can be characterized as “ordinary and routine.” Moreover, there is no statutory deadline controlling when the Management Plan update must be completed. Rather, the Commission is being driven by personal agendas and expiring Commissioner terms to complete the Gorge 2020 process—to the detriment of stakeholders and the public. The COVID-19 pandemic has significantly impacted the lives of many Gorge residents. By the time Gorge residents emerge from this crisis, they will find that unbeknown to them, the Commission has adopted Amendments to the Management Plan that will significantly alter their rights and responsibilities for years to come.

The serious issues detailed above have also been raised by other comments submitted by stakeholders and the interested public. These comments have not been addressed or acknowledged in public hearings by the Commission or staff. Instead, these comments have been summarily dismissed by the Commission with almost no consideration as to their substance.<sup>3</sup> The veracity of the Commission's commitment to transparent and meaningful public involvement in the Gorge 2020 process has clearly been called in to question.

The Commission must remember its statutory mandate to plan for and manage economic development within the NSA. In their current form, the Amendments will drastically impact the viability of natural resource-based industry within the Scenic Area. Certainly, the Act places high importance on the preservation and protection of the SNCRs. In turn, people living and working in the Gorge benefit tremendously from the pristine natural beauty of the NSA. However, the Act has a dual mandate to preserve and promote economic development within the Scenic Area. Natural resource-based industry is a cornerstone of the Gorge economy and critical to the livelihood of its citizens. The Amendments, nor the recent comments of the Commission, reflect this crucial fact.

The Commission's failure to manage for the dual purposes of preservation and economic development is a clear violation of the text of the Act and conflicts with legislative intent. We request that the Commission (1) decline to adopt the language change from “shall” to “may”, detailed above and included on page 39 of the Draft Management Plan; (2) repeal or modify the provisions of the Amendments that violate state and federal law; (3) adopt a comprehensive public outreach program and increase efforts to engage with relevant stakeholders, including state and federal agencies; (4)

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<sup>2</sup> The Commission and its individual members' efforts to ban mining activity in the NSA, or at the least, restrict the transport and use of material to the boundaries of the scenic area—in the face of repeated statements by staff that the Commission lacked such authority under the Act—was a particularly egregious instance of their refusal to consider staff input on applicable legal constraints.

<sup>3</sup> At the June 30, 2020 Executive Committee meeting, Chair Liberty made clear that the time for public comment has passed, in stating “[n]ot comments, we’re way beyond that.” (This was in response to another Commissioner voicing interest in delaying a final vote on the Management Plan until adequate public involvement could be ensured).

provide substantive responses to the issues raised in this letter, as well as those raised in other public comments; and (5) extend the period for public comment and defer adoption of the revised Management Plan until such comments can be adequately considered.

The Commission and its individual members need to recognize the legal limits and mandates established by Congress. The casual disregard of the law is likely to result in years of wasteful appeals and litigation. The Commission lacks plenary powers and should act accordingly. We thank you for considering these comments.

Very truly yours,

JORDAN RAMIS PC



Jamie D. Howsley

cc: Judith Zimmerly  
Keenan Ordon-Bakalian  
Representative Jaime Herrera Beutler, United States  
Senator Ann Rivers, Washington  
Representative Larry Hoff, Washington  
Steve Shipsey  
Clark County Council  
Washington State Department of Natural Resources  
Jeff Litwak