



MEMORANDUM

TO: Gorge Commission

FROM: Krystyna Wolniakowski, Executive Director
Jeff Litwak, Counsel

DATE: May 8, 2018

SUBJECT: **Action Item:** Gorge2020 – Urban Area Boundary Revision Focus Topic
Foundational Questions for Urban Area Boundary Revision Policy

Action Requested

Discuss several foundational questions and give your perspectives to staff during two public workshops to take place at the May 8 and June 12, 2018 Gorge Commission meetings. The questions for the May meeting are below; questions for the June 12, 2018 meeting will be provided prior to that meeting.

Background

As part of Gorge2020, the Commission expressed interest in developing an urban area boundary policy to define how counties within the National Scenic Area would need to comply with the criteria in the National Scenic Area Act for revising urban area boundaries.

At the April 2018 Commission meeting, staff presented a background notebook containing salient documents relating to the Commission's development of urban area boundary revision policy during the past 30 years and a brief staff report. You will want to refer to this background notebook as you review this staff report.

Staff recommended the Commission start the policy conversation by discussing a few foundational questions that will give a broad framework for urban area policy. This staff report and your discussion at the May Commission meeting is the beginning of that policy conversation.

Vision for Urban Areas

The Oregon Consensus and Ruckelshaus Center Urban Area Policy Assessment recommended the Commission develop an integrated community vision for urban areas and recognized that much effort has already been put into developing that vision. See page 509 of your background notebook, which refers to the Commission's vision statement in the Management Plan and the vision statements developed by the Columbia River Future Forum (pages 455–467 of your background notebook).

The Commission discussed its vision for urban areas and an urban area boundary revision policy at its June 2014 Workshop to kick off the Oregon Consensus and Ruckelshaus Center urban area policy assessment (see pages 457–458 of your background notebook). This vision is similar to the Management Plan vision statement and Gorge community's vision and strategies developed in the Columbia Gorge Future Forum.

The common themes in all the visions has not changed since 1991. The Commission and the greater Gorge community share a vision for healthy, vibrant, sustainable communities. Staff recommends you use these prior visioning efforts rather than attempt to recreate a new vision.

Discussion Model

To help staff and the participants in the staff workshops develop a broad policy framework, staff needs your perspective on some foundational questions. For the questions that you cannot reach consensus on, your conversation will be helpful because the staff and participants in staff workshops need to know the different perspectives to craft a draft policy and alternatives.

Recognizing that foundational questions present a range of possible perspectives rather than pure "yes/no" or "choice a or b" issues, staff is asking that you consider your preference along a continuum for each question. This mirrors the approach we are using with Consider.it.

At the Commission meeting, staff recommends you use the PRES model for your discussion. Staff will do a short refresher of the training you received in early 2013 where you learned this model. Staff recommends the following process for each foundational question:

1. Staff will present a question and explain why that question is foundational.
2. You will get 2 minutes to write down your thoughts and then you will give a 45–60 second PRES statement to share your thoughts—PRES stands for Point, Reason, Example, and Summary.
3. Anyone in the audience who wants to participate may also give a PRES statement to give individual 45–60 second PRES statements (staff will pass around a microphone).
4. Commissioners may then ask clarifying questions of each other and of participants in the audience.

5. Staff will summarize all the PRES statements and note where there is general agreement to help focus commissioners' discussion on elements where there is not general agreement. Commissioners will discuss the foundational question and may ask clarifying questions of audience participants.

Staff will record commissioners' and audience participants' perspectives on flip charts. Unfortunately, we can't record perspectives and comments directly into Consider.it in real time.

Foundational Questions

At the April 2018 meeting, several commissioners suggested starting with questions that the Commission was likely to reach consensus on to give momentum for the more difficult questions. To that end, staff suggests you take the following questions in order. At the June 2018 meeting, staff will have additional questions for you to discuss.

1. Would you prefer to review urban area boundary revision applications using a formal process that resembles your process for handling appeals of county development review decisions, or using a less formal process that resembles a public hearing.

This question relates to the process in Commission Rule 350-40 (see pages 3–7 of your background notebook). Changes will require the Commission to do rulemaking to revise Commission Rule 350-40, which is separate from revising the Management Plan.

The National Scenic Area Act does not specify what process the Commission must use to review applications for urban area boundary revisions. Your current review and hearing process is a less-formal process because it simply provides for basic notice, public comment, and commission discussion before reaching a decision. Different formal processes have many different characteristics. Some common characteristics include:

- a prohibition against *ex parte* contacts (communication with persons outside the decision-making proceeding);
- a requirement for the Commission's permission to participate in the proceeding as a party or a limited party (limited parties may only offer evidence and testimony on specific issues in the proceeding)
- cross-examination or questioning of persons offering evidence or testifying in a hearing (when evidence and testimony are permitted).
- motions by parties requesting a decision maker take some action do something, and orders on the motions by the decision maker.

With an informal process you can generally have more direct contact with and more back-and-forth conversation with an applicant and interested persons. Informal processes usually are less costly to and less time-intensive because the Chair would not be issuing interim orders on motions.

You do not need to discuss specific characteristics of a proceeding that you would like to see. If the Commission can give a sense of what type of process it would like, the staff workshops can design a review process with appropriate characteristics.

| 1 | 2 | 3 | 4 | 5 |
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| Less Formal | | | | More Formal |

2. Would you prefer urban area policy to use clear and objective standards versus flexibly applied standards.

This question relates to the content of revised standards for counties to demonstrate compliance with the 4(f) criteria. Reread the *Urban Area Boundary Revisions Handbook* (1992) (see pages 97–115 of your background notebook). You do not need to discuss now whether the standards should be guidance or binding regulations.

None of the National Scenic Area Act authorities require a specific type of standards. The benefit of clear and objective standards is that counties would know what precise assumptions (or range of assumptions) to make when preparing an application for an urban area boundary revision. Clear and objective standards are also easier to apply. However, a trade-off with using clear and objective standards is some loss in flexibility and consideration of unique circumstances.

Truly flexible standards (often called “performance standards”) typically specify a desired outcome without specifying how to reach that outcome. An example of a flexible standard is the requirement that development be “visually subordinate” as seen from key viewing areas. The Plan lists factors to consider (size, height, shape, color, reflectivity, siting, etc.), giving flexibility in how to achieve the visually subordinate standard, but does not specify a maximum height or specific color.

An example of a clear and objective standard in the Management Plan is the 2500 square-foot limit on accessory buildings. This is a non-flexible number. But even this non-flexible number gives some flexibility because it does not specify how many accessory buildings (accessory to residential use) a landowner may construct.

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| More Flexible | | | | More Clear and Objective |

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3. Are urban area boundaries principally a tool for managing growth in the National Scenic Area or principally a tool for preserving GMA and SMA land within the National Scenic Area?

Commissioner Blair suggested this question during the April 2018 Historical Review. You may think about this question as whether the National Scenic Area Act envisions urban areas continually growing outward over time or whether the National Scenic Area Act envisions the existing boundaries of urban areas to be mostly the final geographic extent of the urban areas to protect general and special management area over time.

This is an important distinction because this question will inform how you interpret and apply the criteria in the National Scenic Area Act for revising urban areas. Principally, Oregon urban growth boundaries and Washington’s urban growth areas are growth management tools for the states. Both states seek to drive growth into existing urbanized areas before growing onto non-urbanized land. But there’s always the ability to keep growing outward. If the Commission views urban areas principally as a tool for growth management, then Oregon and Washington’s authorities and methods for revising Oregon urban growth boundaries and Washington’s urban growth areas could be models for demonstrating compliance with the 4(f) criteria. However, if the Commission views urban areas principally as a means of preserving general management area and special management areas in the National Scenic Area for uses allowed by the Management Plan, then Oregon and Washington’s authorities and methods will have less relevance in interpreting and applying the 4(f) criteria.

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| Urban area boundaries are mostly firm | | | | | Boundaries are a growth management Tool |

Next Steps

Staff will compile the notes from the discussion of these first three questions and make them available to Commissioners after the meeting and will post on our website for the public. Commissioners are encouraged to review the notes prior to reading the June 10, 2018 staff report which will include the additional foundational questions. Staff will post these foundational questions on the Gorge2020 Consider.it webpage. Staff encourages commissioners and the public to offer additional perspectives through Consider.it.