



May 9, 2024

Columbia River Gorge Commission
P.O. Box 730
1 Town & Country Square
57 NE Wauna Avenue
White Salmon, WA 98672
Via email only to info@gorgecommission.org

Re: Comments on Proposed Plan Amendment Involving Minimum Parcel Sizes in Wasco County

Dear Gorge Commissioners:

According to the meeting agenda, a public hearing is scheduled for the Commission's May 14, 2024 Commission meeting "on a proposed Plan amendment to change the minimum parcel size of lands in Wasco County from 80 acres to 40 acres to conform with new deer winter range maps."¹

Friends of the Columbia Gorge ("Friends") has concerns with the process that is being used for this proposed plan amendment. To be clear, Friends does not contest the substance of the proposed plan amendment, but is concerned that the Commission's procedural rules for plan amendments are not being followed here.

In addition to the substantive requirements in the National Scenic Area Act and the Management Plan, the Commission is required to follow the procedures in its rules. Making changes to the Management Plan is a weighty undertaking, and this is reflected in the Commission Rules governing the plan amendment process. These rules are detailed and comprehensive. While Friends does not contest the substance of the proposed plan amendment, Friends does expect the Commission to follow its rules here. Otherwise, it will set a practical precedent that the rules are unimportant and are merely guidance.

Commission Rules Chapter 350, Division 50 contains the required procedures for reviewing and deciding proposed plan amendments. For every proposed plan amendment, there must be an "[o]rigin of [a]pplications," Commission Rule 350-50-040, which means the person who is requesting or applying for the proposed plan amendment. Here, it is unclear who is considered to be the "origin" for the proposed plan amendment, but the most likely possibilities are the Wasco County Planning Director or the Commission staff. The April 12, 2024 memorandum from the Commission staff (at page 4) mentions a specific communication on a specific date, November 8, 2023, between the Wasco County Planning Director and the Gorge Commission. It is unclear whether this November 8, 2023 communication is considered to be the "origin" of the proposed plan amendment, and whether it was

¹ It is not yet clear whether a "PA" file number has been assigned to the proposed plan amendment.

made in writing. If so, a copy should have been attached to the memo or made public, to apprise the Commissioners and interested persons as to the “origin” of the proposed plan amendment, who made the request, and to whom at the Commission (staff and/or Commissioners) the request was addressed.

After receiving a request for a plan amendment, the Executive Director must determine whether the proposed plan amendment is legislative or quasi-judicial. Commission Rule 350-50-040(4). At the Commission’s public informational meeting on May 7, 2024, Commission staff were unable to answer any questions about whether the Director had made that required determination, or whether the proposed plan amendment is being reviewed as a legislative or quasi-judicial plan amendment.²

Nor is any of that information disclosed in the Commission staff’s April 12, 2024 memorandum on the proposed plan amendment. In fact, the memorandum completely omits any mention of the Commission’s procedures and review processes for plan amendments, and jumps to the substantive criteria for potentially amending the Plan.

Friends has subsequently learned, via the Commission’s counsel, that the Commission Director has apparently determined to review the proposed plan amendment as a proposal for a legislative plan amendment. However, the Commission has not yet publicly released or described in writing any such determination. If and when the Commission Director determines under Commission Rule 350-50-040(4) that a proposed plan amendment is legislative, the Director must “track” these requests. Commission Rule 350-50-060(2).³ Then, the Commission, at least once each biennium, must review and determine which, if any, legislative plan amendments to handle as an application to amend the Management Plan. Commission Rule 350-50-060(2). After soliciting “public comment during its work planning concerning [which, if any] legislative amendments to initiate,” “[t]he decision to initiate a legislative amendment is at the sole discretion of the Commission.” Commission Rule 350-50-060(2). Where Commission Rule 350-50-050(2) refers to “the Commission,” this is a reference to the Commissioners rather than the Commission staff, because the Commissioners are responsible for adopting the agency’s work plans.

At the Commission’s January 9, 2024 monthly meeting, the Commission took public comment on a proposed work plan, and then voted unanimously to adopt a work plan for the 2024–25 biennium. Leading up to and at that meeting, the Commission received requests from multiple persons to add specific proposed plan amendments to the work plan, but the Commissioners declined to do so for those requests.

² [A] quasi-judicial amendment shall be one that proposes to change the land use designation, recreation intensity class or landscape setting on one or any clearly identifiable set of parcels that share a similar set of facts, and the change does not establish new policies, or one that proposes to change policy that would apply to one or a small number of clearly identifiable parcels that share a similar set of facts. All other amendments shall be considered a legislative amendment.” Commission Rule 350-50-040(3).

³ “The Executive Director shall track requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.” Commission Rule 350-50-060(2).

On April 2, 2024, the Commission released and posted the Commission’s meeting agenda for its April 9, 2024 monthly meeting, which listed a work session for the proposed plan amendment at the April 9 meeting, and which also stated “a hearing will be held at the May 14, 2024, Commission meeting for adoption.” It is unclear who decided to schedule this hearing, but that decision was apparently made on or before April 2, 2024.

At the April 9, 2024 meeting, Commission staff presented the proposed plan amendment to the Commissioners, and explained to the Commissioners that a public hearing would be held on May 14, 2024.

Again, “[t]he decision [whether] to initiate a legislative amendment is at the sole discretion of the Commission,” meaning the Commissioners (as distinguished from the Commission staff). Commission Rule 350-50-060(2). Despite that requirement, Friends is not aware that the Commissioners ever made any decision, or took any vote, or ratified any decision by the Commission Director, to initiate the process for this proposed plan amendment. Until such a vote is taken, the legislative plan amendment process cannot begin. This is important, because under the Commission Rules the Commissioners are the designated “gatekeepers” in deciding whether to add any plan amendments to the Commission’s work plan (or to the Commission’s workload in between the adoption of work plans), and if so, how many proposed plan amendments and which ones.

Although it appears that the Commission may not be following the prescribed process here, this is easy to cure. The Commission could, and should, simply vote at its May meeting whether to initiate the process. After that, “the Executive Director shall process a legislative amendment pursuant to sections 080 through 120” of Division 50. Commission Rule 350-50-060(3). Those sections contain detailed requirements for notice (CR 350-50-080), public comment (CR 350-50-085), the contents of the staff report (CR 350-50-090), notice and conduct of hearings (CR 350-50-100), and review by the Forest Service (CR 350-50-120). If the Commission decides at the May meeting that this proposed plan amendment should be initiated, then it would likely be possible to hold a hearing at either the June or July monthly Commission meeting and vote on the merits of the proposed plan amendment then.

Friends asks the Commission to take the legally required steps as outlined above in order to follow the prescribed process for review and consideration of plan amendments. Thank you for the opportunity to comment.

Sincerely,



Nathan Baker
Senior Staff Attorney



Steve McCoy
Staff Attorney