

TO: Columbia River Gorge Commission

FROM: Krystyna U. Wolniakowski, Executive Director
Jeff Litwak, Legal Counsel

DATE: December 16, 2025

SUBJECT: Staff Report and Draft Plan Amendment

Attached is the November 12, 2025, Staff Report and Text of a Management Plan Amendment to Clarify and Address Landowners' Needs for Disaster Recovery. You received this for review for the November 12, 2025, Commission meeting.

Below, staff is showing you three recommended refinements based on consultation to date and additional public comment received. Staff also identifies an issue raised during consultation that is still unresolved

Recommended Refinements to the Plan Amendment Text

Staff recommends refining proposed Guideline 4.C on page 39 of the staff report by adding the two highlighted bits of text. The first addition responds to a concern that staff discussed in its consultation meeting with the Confederated Tribes of the Umatilla Indian Reservation to ensure a more comprehensive approach to the intent of the proposed guideline that placement of recreational vehicles and temporary structures cannot require grading on the parcel. The second addition responds to a comment by Friends of the Columbia Gorge that the last sentence of this provision could be understood to require a local government to approve placement of a recreational vehicle or a temporary structure even if it did not meet the requirements in the provision. That was not staff's intent, so this new phrase addresses that.

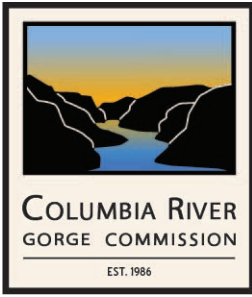
4.C. The recreational vehicle and temporary structure shall be placed outside of resource sites and buffer zones on the subject parcel; **must use existing access on the parcel**; must not require a permanent foundation or grading, including ground disturbing actions for placement of water, sewage disposal, or other infrastructure; and shall comply with all applicable state and county requirements. The local government shall approve the placement of a recreational vehicle and temporary structure **that meet these requirements**.

Recommended Refinement to the Plan Amendment Staff Report

Staff also wants to emphasize that the significant change of conditions in the National Scenic Area that justify this plan amendment (as required by section 6(h) of the National Scenic Area Act) is the combination of all the factors described in the staff report and throughout the staff report. Specifically, staff's learning of redundancies, potential conflicts, and the need to clarify the standards for structures destroyed by disaster is not singularly sufficient new information to justify a plan amendment. Staff can address this at your meeting if you would like.

Unresolved Issue

The Confederated Tribes of the Umatilla Indian Reservation expressed concern that the provisions allowing for replacement structures to extend beyond the footprint of the existing dwelling could impact cultural and natural resources on parcels where the parcel has not been previously surveyed. Staff is still working on this issue and will be prepared to discuss it at the December 16 meeting.



MEMORANDUM

November 12, 2025

TO: Columbia River Gorge Commission
Interested Persons

FROM: Krystyna Wolniakowski, Executive Director
Jeff Litwak, Counsel
Bryce Guske, Senior Land Use Planner
Mackenzie Aamodt, Land Use Planner

SUBJECT: Staff Report and Text of a Management Plan Amendment to Clarify and Address Landowners’ Needs for Disaster Recovery

TABLE OF CONTENTS

Action Requested and Recommended Motion2

Background3

Summary of the Plan Amendment4

 Replacement Structures in the Current Management Plan.....4

 Replacements in the Proposed Plan Amendment.....4

Criteria for Plan Amendment.....6

Compliance with the Procedural Requirements for a Plan Amendment.....7

 Compliance with Commission Rule 350-50-080.....7

 Compliance with Commission Rule 350-50-090.....7

 Compliance with Commission Rule 350-50-100(1)7

 Compliance with Commission Rule 350-50-100(3)8

Analysis of the Plan Amendment with the Criteria in Commission Rule 350-50-030.....8

 350-50-030(1) - Conditions in the National Scenic Area have significantly
 changed.8

 350-50-030(2) - The proposed amendment is consistent with the purposes and
 standards of the Scenic Area Act. 19

350-50-030(3) - No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists.....	24
Justification for Immediate and Direct Implementation of the Plan Amendment	30
Appendix A Proposed Plan Amendment Text	33
Appendix B Table of Comments Received During the Comment Period and Responses	42

ACTION REQUESTED AND RECOMMENDED MOTION

This staff report discusses the proposed plan amendment. **Attachment A** to this staff report is the text of the proposed plan amendment. On November 12, 2025, the Gorge Commission will conduct a public hearing and possibly vote on the proposed plan amendment.

At the hearing, the staff will present the proposed plan amendment; the Gorge Commission will then hear from the tribal governments that want to speak about the proposed plan amendment; the Gorge Commission will then hear public comment; and finally, the Gorge Commission will deliberate and possibly vote on the proposed plan amendment.

The Gorge Commission may revise the text of the plan amendment at the hearing; however, the Gorge Commission would need to allow tribal and public comment on any revisions that substantially alter the text in this staff report. The Gorge Commission may accept that public comment at the hearing.

Staff, the Forest Service, and Wasco County present the proposed plan amendment jointly. The Gorge Commission has discretion to decide the plan amendment text for the General Management Area (GMA). Commissioner Mickley, as the Forest Supervisor for the USDA Forest Service, Columbia River Gorge National Scenic Area, must amend the provisions as applied to the Special Management Areas (SMA). The Gorge Commission’s adoption of the plan amendment must include without change the SMA amendments that Commissioner Mickley provides to the Commission. Commissioner Mickley intends to forward the text in Appendix A to the Gorge Commission for the SMA but reserves the right to adjust the text as applied to the SMA.

Recommended Motion:

Adopt the proposed plan amendment in Appendix A [with any text changes the Commission wants to make] and direct each county and the Gorge Commission to amend its National Scenic Area land use ordinance to adopt the plan amendment and directly apply the plan amendment immediately after the Secretary of Agriculture concurs with the plan amendment and after submitting its notice of intent to amend its land use ordinance in accordance with the National Scenic Area Act.

This staff report explains the background for the plan amendment, recommends findings showing that the proposed plan amendment is consistent with the criteria in the National Scenic Area Act and the Gorge Commission’s plan amendment rules, and recommends a statement justifying the immediate implementation of the plan amendment prior to the counties and Gorge Commission

amending their National Scenic Area ordinances. Appendix A is the text of the proposed plan amendment and Appendix B is a summary chart of comments received during the comment period.

If the Gorge Commission adopts the proposed plan amendment, staff will prepare a final order for the Chair's signature and forward the final order, this staff report, and the adopted text to the Forest Service for concurrence.

BACKGROUND

At the July 2025 Gorge Commission meeting, staff informed the Gorge Commission that it would research whether the Management Plan adequately provides for Gorge communities and landowners to recover and rebuild after a disaster. This was in response to the devastating Rowena fire in June 2025 in a large area of National Scenic Area land in Wasco County. The Gorge Commission decided to initiate a plan amendment. And then, tragically, a few days after the July meeting, the Burdoin fire erupted and raced through a large area of National Scenic Area land in Klickitat County. In both fires, dozens of landowners and residents lost their homes and other structures, and more.

Staff researched recovery and rebuilding in Oregon, Washington, and other states and communities that have suffered recent disasters, and talked to Gorge landowners, Gorge counties, state agencies, and others about what changes the National Scenic Area Management Plan may need to help with recovery from these and other disasters. Principally, staff heard and learned that streamlining permitting was critically important. While staff was developing its streamlining concepts, Wasco County was also identifying streamlining concepts based on its experience assisting landowners with their recovery from the Rowena fire. Staff and Wasco County shared their work with each other and discovered that their individual efforts had identified many of the same issues and landowner experiences. Staff and Wasco County began collaborating on a joint effort to develop this proposed plan amendment.

Staff and Wasco County presented a summary of their research at the September 9, 2025, Gorge Commission meeting. Staff recommended that the Management Plan needs procedural and substantive clarifications, and to allow landowners to have additional options for temporary housing. Staff presented several concepts that it had developed with Wasco County and the Forest Service to clarify or change procedural and substantive provisions applicable to replacement structures and to add authority for placement of temporary housing and temporary structures.

After the September 9, 2025, Gorge Commission meeting, staff, the Forest Service, and Wasco County jointly developed draft text of the plan amendment.

On September 22, 2025, staff sent out a draft staff report and the draft text of the plan amendment for public comment in accordance with the Gorge Commission's rules for legislative plan amendments in Commission Rules 350-50-080 to 350-050-100. Staff also sent the draft staff report and draft text to the tribal councils and cultural and natural resource staff at the tribes and sent this final staff report and the proposed plan amendment text to the tribal councils and staff, together with requests to consult. Staff has not received responses to this outreach. Staff, the Forest Service, and Wasco County revised the draft text to create the proposed plan amendment text and this staff report to respond to the public comments. A summary of comments received during the comment period and staff's responses is in **Appendix B**. Staff has received new comments since the close of

the public comment period and those are provided to the Commission separately. The Commission will also hear oral comments and may receive additional written comments at the hearing.

SUMMARY OF THE PLAN AMENDMENT

The proposed plan amendment has two principal parts. First, the proposed plan amendment provides a path for a landowner whose home and other structures were destroyed by disaster to use the expedited review process for permitting a replacement home and other structures. This first part is in proposed Existing Uses and Discontinued Uses Guideline 3 and an addition to the list of uses allowed through expedited review. Second, the proposed plan amendment expressly allows a landowner to place a recreational vehicle and a temporary structure for storage for temporary use. This second part is in proposed Existing Uses and Discontinued Uses Guideline 4. Other guidelines are added or revised. Proposed guideline allows most non-residential, non-structural uses to continue and proposed guideline 6 allows extended use of a campground space for a landowner who lost their home in a disaster.

Replacement Structures in the Current Management Plan

The current Management Plan (2020) allows two different types of replacement structures. First, the Management Plan allows replacement of any existing structure¹ provided that the structure would be used for the same purpose as the original structure. This allows a landowner to tear down an old structure and build a new one so long as it retains the same use and complies with the standards for scenic, cultural, natural, and recreation resources, and tribal treaty rights. The review process for these replacements is the standard review process.

Second, the Management Plan allows replacement of a structure that was damaged or destroyed by a disaster. For these replacements, the Management Plan specifies that the replacement structure must only comply with scenic resource standards for color, reflectivity, and landscaping. To qualify for this simpler review, the replacement must be in the same location and must be the same size and same height as the original structure, with slight variations permitted. Replacement of a destroyed structure that is in a different location, a different size, or taller in height than the original structure is reviewed for compliance with all resource protection standards and tribal treaty rights using the standard review process.

Replacements in the Proposed Plan Amendment

The proposed plan amendment addresses replacement of a structure that was destroyed by disaster (the second type of replacement described above). The proposed plan amendment clarifies several provisions, updates the differences between the replacement structure and the original structure that would still qualify for the simpler review, and allows placement of a recreational vehicle and temporary structure on a disaster-affected parcel for temporary use. Where possible, the proposed provisions link to existing provisions in the Management Plan, either directly by

¹ The Management Plan defines “structure” as “That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, patios, driveways, and additions/alterations to structures, including repaving or resurfacing roads, driveways, and patios.”

reference, or indirectly by using the same terms and standards. Thus, some proposed provisions allow differences to a replacement structure that are comparable to new development or limited like new development. A bullet-point summary of the principal proposed plan amendment changes and clarifications is below:

Process Clarifications and Changes for Replacement of Structures Destroyed by Disaster

- Clarifies that a replacement structure that is in the same location and that does not exceed the size, footprint, and height (with some variations as specified) of the original structure is reviewed using expedited review procedures.
- Lengthens the time from two years to apply plus two years to build a replacement structure to simply ten years to commence rebuilding a replacement structure.
- Specifies that most existing non-residential land uses, such as a home occupation, remain an existing use if the use is inactive while the replacement structure is being rebuilt.

Standards Clarifications and Changes for Replacement of Structures Destroyed by Disaster

- Clarifies that a replacement structure that is in the same location and does not exceed the size, footprint, and height of the original structure is reviewed only for color, reflectivity, and landscaping standards, and no other land use designation or resource protection standards.
- Clarifies the standards that constitute the same location, size, footprint, and height of the original structure, and what variations are permitted.
- Removes the provision allowing an engineering opinion to specify a new location for a replacement building (the current Management Plan already requires a full review if the location changes, so this provision is repetitive).

Temporary Structures and Land Uses Useful for Recovery and Rebuilding

- Allows a landowner to place a recreational vehicle on the parcel where a dwelling was destroyed or damaged and is uninhabitable as temporary housing before they build a permanent replacement home.
- Allows a landowner to place a temporary structure for storage of salvaged items, construction materials, and land management equipment on the parcel where a non-residential structure was destroyed before they build a permanent replacement structure.
- Allows campgrounds to permit a landowner displaced by a disaster to occupy a recreational vehicle in the campground before they build a permanent replacement home.

Other Changes

- Removes the term “Damaged” from the phrase “Damaged or Destroyed by Disaster.” The term “Damaged” suggests that the replacement provisions apply to a damaged structure, but the Management Plan independently allows repair of a damaged structure without review.

- Removes the one-year requirement for replacing an existing structure not destroyed by disaster. This part of this provision is redundant with another existing uses and discontinued uses standard.
- Changes the term “Firewise standards” to “defensible space” to match the title of the Gorge Commission’s informational brochure on defensible space and in the Scenic Resources Implementation Handbook.

The current replacement provisions in the Management Plan apply to parcels in the GMA and SMA, except that there is one landscaping provision specific to replacements in the GMA and one landscaping provision specific to replacements in the SMA. The clarifications and changes in the proposed plan amendment apply to parcels in the GMA and SMA in the same way as the original guidelines. For example, the longer time to construct a replacement structure would apply to parcels in the GMA and SMA.

Currently both the GMA and SMA guidelines are combined into a single section for Existing Uses and Discontinued Uses. The proposed plan amendment was developed in coordination with the Forest Service. Changes to the GMA section would either require the Forest Service to concur with the proposed changes, or there would need to be two sections, one for GMA Existing Uses and Discontinued Uses and one for SMA Existing Uses and Discontinued Uses.

CRITERIA FOR PLAN AMENDMENT

The National Scenic Area Act, at 16 U.S.C. § 544d(h), contains the authority and standards for amending the Management Plan. This provision for amending the Management Plan is separate and different from the provision in the National Scenic Area Act for reviewing and revising the Management Plan. The plan amendment provision states:

“If the Commission determines at any time that conditions within the scenic area have significantly changed, it may amend the management plan. The Commission shall submit amendments to the management plan to the Secretary for review, in accordance with the provisions of this section for adoption of the management plan.”

Commission Rule 350-50-030 interprets and refines the plan amendment provision in the National Scenic Area Act and contains three criteria for the Gorge Commission to approve a plan amendment. Commission Rule 350-50-030 states:

- “(1) Conditions in the Scenic Area have significantly changed. This means:
- “(a) physical changes that have widespread or major impacts to the landforms, resources, or land use patterns in the Scenic Area;
 - “(b) new information or inventory data regarding land uses or resources that could result in a change of a plan designation, classification, or other plan provision;
 - “(c) changes in legal, social, or economic conditions, including those that affect public health, safety, or welfare, not anticipated in the Management Plan; or

“(d) a demonstrable mistake in the Management Plan that has resulted in significant impacts or that involves significant issues, such as, but not limited to, a land use guideline that is less protective of Gorge resources than the policies the guideline was intended to implement; a land use designation that does not conform to the corresponding designation policies; or two or more guidelines that cannot be reasonably reconciled.

“(2) The proposed amendment is consistent with the purposes and standards of the Scenic Area Act; and,

“(3) No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists.”

In judicial challenges to prior plan amendments, the Oregon Court of Appeals and Oregon Supreme Court interpreted the Gorge Commission’s criteria for approving a plan amendment. These interpretations are discussed below with each criterion in the section analyzing the proposed plan amendment.

COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS FOR A PLAN AMENDMENT

The proposed plan amendment is a legislative plan amendment. The procedures in Commission Rules 350-50-080 through 350-50-100 apply to legislative plan amendments.

Compliance with Commission Rule 350-50-080

Commission Rule 350-50-080 requires the Gorge Commission to give notice that it is proposing a legislative plan amendment. This rule specifies that the Gorge Commission must publish the notice in one or more local newspapers and that the Gorge Commission will accept public comments within the comment period. This rule does not specify when the Gorge Commission must publish the newspaper notice, does not require publishing proposed text, and does not specify a minimum comment period. This rule requires the proposed text to be available at the Gorge Commission office. This rule specifies general requirements that must occur at some point before the Gorge Commission’s hearing on a proposed plan amendment.

Compliance with Commission Rule 350-50-090

Commission Rule 350-50-090 requires the Executive Director to prepare a staff report that analyzes the proposed amendment based on the criteria in 350-050-030, including how conditions in the National Scenic Area have significantly changed, consistency with the purposes and standards of the National Scenic Area Act, and practicable alternatives. This staff report (and the included proposed plan amendment text) is the staff report required by Commission Rule 350-50-090.

Compliance with Commission Rule 350-50-100(1)

Commission Rule 350-50-100(1) requires the Gorge Commission to give a minimum 30-day comment period on the staff report prior to holding a hearing. Staff sent a draft staff report with draft plan amendment text to the public for comment on September 22, 2025, and informed the public that comments received by October 22, 2025 (30 days), would be addressed in a final staff

report to the Gorge Commission, including possible revisions to the draft plan amendment text. The Gorge Commission continued to accept written comments after October 22, 2025, and is providing those comments to the Gorge Commission, but they were not addressed in this staff report. The Gorge Commission will accept written and oral comments at its hearing on November 12, 2025, before voting on the plan amendment. The Gorge Commission published notice of the draft plan amendment in the Columbia Gorge News on September 19, 2025.

Compliance with Commission Rule 350-50-100(3)

Commission Rule 350-50-100(3) requires the Gorge Commission to hold a public hearing on the proposed plan amendment. The Gorge Commission will hold a public hearing on November 12, 2025.

ANALYSIS OF THE PLAN AMENDMENT WITH THE CRITERIA IN COMMISSION RULE 350-50-030

350-50-030(1) - Conditions in the National Scenic Area have significantly changed.

In *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 236 Or. App. 479, 238 P.3d 378 (2010), the Oregon Court of Appeals concluded that “information need not be newly created or newly available to constitute ‘new information’ under [Commission Rule 350-050-030(1)(b)]. Instead, as [a prior case] establishes, ‘new information’ includes information that the commission simply has not considered before.” *Id.* at 498 (internal citations omitted).

In the same case, the court concluded that “the commission could use information about areas outside the scenic area as circumstantial evidence of changes within the scenic area” under Commission Rule 350-050-030(1)(c). *Id.* at 496. For this second point, the court noted in one of the prior plan amendment challenges that the Gorge Commission had considered statistics about the gorge counties in their entirety, as opposed to just the portions of the counties within the National Scenic Area, *id.*, and some evidence of a “national average,” *id.* at 501.

In addition, in a different case, *Friends of Columbia Gorge v. Columbia River Gorge Comm'n*, 218 Or. App. 232, 244, 179 P.3d 706 (2008), *aff'd*, 346 Or. 433, 213 P.3d 1191 (2009), the Oregon Court of Appeals explained that whether the new information is sufficiently significant to justify a plan amendment is a question of fact. The evidence must be “substantial,” meaning that a reasonable person would find the information adequate after considering all the evidence.

The Gorge Commission’s research shows new information about the length of time necessary to replace a structure that was destroyed by a disaster that the Gorge Commission had not previously known. In addition, Gorge Commission staff and Wasco County’s early experience applying the standards for replacement structures in response to the summer 2025 Rowena and Burdoin fires (and staff’s discussions with Skamania County staff responding to the summer 2023 Tunnel 5 fire) exposed redundancies, potential conflicts, and a need for clarifying several standards that were not known because previous wildfires in the National Scenic Area did not cause similar damage and destruction to homes, structures, and property, so staff and county planners had little experience applying the standards. There is substantial new information to justify the proposed plan amendment. The proposed plan amendment satisfies criterion (1)(b) (new information or inventory data regarding land uses or resources that could result in a change of a plan designation,

classification, or other plan provision). Below is an analysis of each provision in the proposed plan amendment. The guideline numbers in this analysis are the guideline numbers of the proposed provisions, which are in **Appendix A** to this staff report.

Existing Uses and Discontinued Uses GMA/SMA Guidelines 2 and 3

Guideline 2 contains the standards and procedures for replacing a structure that was not damaged or destroyed by a disaster and Guideline 3 contains the standards and procedures for replacing a structure that was damaged or destroyed by a disaster. The proposed plan amendment changes the title of these two guidelines to remove the term “damaged.” The term “damaged” suggests that the standards in these guidelines could apply to a damaged structure, but the Management Plan independently allows repair of a damaged structure without review in all land use designations in the Uses Allowed Without Review guidelines (Mgmt. Plan pp. 259 & 264). Staff and the Forest Service believe the best way to remove this potential conflict is to remove the term “damaged” from the titles in Guidelines 2 and 3 and conforming changes in the text of the guidelines.

The result of this change is if a building is “serviceable” (defined as “presently useable”) (see definitions of “repair” and “serviceable” at Mgmt. Plan pp. 395 & 396), it can be repaired with no National Scenic Area application or review required, although counties may have to apply other land use, building permit, health code, and other local or state code requirements. The repairs must be consistent with the definition of “Repair” in the Glossary of the Management Plan. Removing the term “damaged” provides clearer direction for counties and landowners.

Existing Uses and Discontinued Uses GMA/SMA Guideline 2

The proposed plan amendment removes the one-year standard for submitting an application to replace a structure that was not destroyed by disaster. This part of Guideline 2 is redundant with current Existing Uses and Discontinued Uses Guideline 5 (renumbered to proposed Guideline 8), which already specifies that an existing use is a use that has not been discontinued for more than one year. The proposed plan amendment changes the term “original structure” to “existing structure” to reflect that this provision allows replacement of a structure that meets the definition of “Existing Use or Structure” in the Glossary of the Management Plan, and to distinguish this guideline from Guideline 3, which allows replacement of an existing structure destroyed by disaster for which the term “original structure” makes more sense.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.A

Proposed Guideline 3.A is current Guideline 3.E. This guideline describes the scope of Guideline 3 generally. The proposed text updates the cross references in this guideline. There is no substantive change to this guideline.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.B

Proposed Guideline 3.B makes clear that an original structure to be replaced under this guideline must meet the definition of “Existing Use or Structure” in the Glossary of the Management Plan. If it does not meet the definition, then replacement of that structure would require a full review. This is not a new requirement because guideline 3 generally already applies to only an “existing” structure.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.C

Guideline 3.C is renumbered from current Guideline 3.A and requires the replacement structure to have the same use as the original structure. The proposed plan amendment does not change this guideline.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.D

Proposed Guideline 3.D requires the footprint of the replacement structure and utilities to be centered on the footprint of the original structure and utilities but also allows the location to vary from the original footprint by up to 10% beyond one or more sides of the original footprint and up to 10 degrees of the orientation of the structure. These variations allow some flexibility for landowners while minimizing the risk of adversely affecting other resources. Gorge Commission staff and Wasco County believe that allowing for a slight variation in the orientation of the replacement structure could take advantage of remaining existing vegetation for screening a replacement structure, while giving a landowner some flexibility to change their view.

The proposed plan amendment makes other changes to the current guideline. First, the proposed text makes clear that utilities for a replacement structure are subject to the same location requirement and defines the same location as centered on the footprint of the original structure. Relocating trenching or an underground septic system is allowed but would need to use the standard review process to ensure that the new location does not adversely affect cultural or natural resources. Second, the proposed text deletes the allowance for a landowner to change the location of a structure if the landowner's engineer demonstrates that the original footprint is no longer suitable for reconstruction. This allowance is deleted because subsection (3) of the allowance requires a full review for the new location,² so the allowance does not provide any benefit to a landowner and is confusing to administer. Below, in the section of this staff report analyzing alternatives, the staff report discusses alternatives to deleting this allowance that staff, the Forest Service, and Wasco County considered. Finally, the statement of what elements of the structure are part of the footprint of the structure is moved to this guideline from existing guideline C and is unchanged.

The changes to Guideline 3.D respond to Gorge Commission staff and Wasco County's early experience with responding to the Rowena and Burdoin fires. Staff and Wasco County learned that the existing provision requiring only the "same location" conflicted with the existing provision allowing the footprint of a replacement structure to be 10% larger than the footprint of the original structure because the larger replacement structure would necessarily be partially outside the original footprint. Additionally, the term "same location" by itself is not clear; for example, may a replacement structure use just a portion of the original footprint, or must it be centered on the original footprint. These experiences with implementing the existing "same location" guideline constitute new information.

² Although subsection (3) only mentions "cultural resources, natural resources, and treaty rights guidelines," subsection (2) requires that the new building location must not be more visible than the original building location as seen from key viewing areas, which requires analysis of most of the standards to protect scenic resources.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.E

The current Management Plan requires a replacement structure to be the same size and height as the original structure, or smaller, but also allows a landowner to increase the footprint of the replacement structure by 10%. The proposed plan amendment makes significant changes to this provision that clarify the scope of allowable differences between the size, footprint, and height of a replacement structure and the original structure.

Subsection 3.E(1)

The current Management Plan allows landowners to increase the footprint of the replacement structure by 10%. While advising landowners, Wasco County and Gorge Commission staff identified several issues with this standard. First, although the first sentence of the standard uses the term “size,” the 10% exception language uses the term “footprint,” which is confusing whether the square foot size may also be 10% larger. Second, most of the scenic resources standards that address size use square feet or square area as units of measurement. Footprint only measures the ground perimeter of the structure. Finally, the flat 10% standard may be too limiting for a small structure and too much of an increase for a large structure. An owner of a small structure who wants to make a modest increase in the size of the structure, such as adding a new porch or additional bedroom or bathroom may find that 10% is not enough space and a 10% increase for large buildings could exceed a size considered compatible for the vicinity, a standard that applies to new buildings. The 10% flexibility also does not consider manufactured structures, such as pole barns and manufactured homes, which may no longer be available in the original dimensions and which the closest size is either smaller or greater than 10% larger. These implementation issues are new information.

Proposed Guideline 3.E(1) separates the measurement of square-foot size from the measurement of footprint. For size, the proposed text uses a sliding scale for giving landowners some flexibility in the size of a replacement structure. The largest increase is 20% for a structure up to 1250 square feet in size. Staff chose this size because adding 20% to 1250 square feet creates a 1500 square-foot structure, which is the size in which the compatibility standard in the scenic resources provisions of the Management Plan applies to new buildings. The compatibility standard limits the size of new buildings to the size of other buildings in the vicinity. A replacement structure larger than 3000 square feet would need to be the same size to minimize instances where a replacement structure would exceed the size that could be permitted as new development under the current compatibility standard in the scenic resources guidelines in the Management Plan.

Subsection 3.E(2)

Proposed guideline 3.E(2) aligns the size variations in this guideline and guideline 3.E(1) with the land use designation provisions in the current Management Plan that use footprint as the measurement for an accessory building and allow up to 1500 square feet of footprint for accessory buildings on parcels that are smaller than 10 acres in size and up to 2500 square feet of footprint for accessory buildings on parcels that are larger than 10 acres in size. Proposed Guideline 3.E(2) caps the increase in the size of a replacement accessory building at these standards (unless the original accessory building or buildings exceeded these standards), making replacement accessory buildings consistent with the size caps for new accessory buildings. Staff believes the current replacement provisions were not updated to include this cap when the cap was added to the

Management Plan in the 2004 revisions to the Management Plan. These experiences with implementing the existing “same location” guideline constitute new information.

Subsection 3.E(3)

The Management Plan requires that the walls of a replacement structure not exceed the wall height of the original structure. While advising landowners, Wasco County and Gorge Commission staff identified several issues with this standard. First, current building codes may require a different wall height than the building code applied to the original structure. Second, manufactured homes built today have a standard interior wall height of 9 feet, which is taller than former standards for older manufactured homes, some of which had less than 8-foot wall heights. Third, the requirement for a replacement structure to have the same height as the original structure did not consider the potential impact of a different roof shape. For example, a gable roof could have more visual impact than a hip roof even when they have the overall same height. Finally, the guideline did not clearly specify how to measure height. These implementation issues constitute new information.

Proposed Guideline 3.E(3) addresses each of these issues. The proposed text specifies the manner of measuring height,³ allows wall height increases necessary to comply with current code, and allows up to 9-foot wall heights for manufactured homes.

Subsection 3.E(4)

Proposed Guideline 3.E(4) complements the wall height provision in Guideline 3.E(3), requiring the overall height of the replacement structure to not exceed the original and the roof to be same style and slope. However, the guideline states that an increase in the wall height might require a landowner to use a lower sloped roofline or different roof type to achieve the same height. Proposed Guideline 3.E(4) allows the height of a replacement structure to be higher than the original structure if necessary to comply with current building codes.

Subsection 3.E(5)

Proposed Guideline 3.E(5) is a backstop for an owner of a manufactured home who cannot reasonably locate a new manufactured home that meets the standards in guidelines 3.E(1) through 3.E(4) (including the allowances for increased size, footprint, and height). This proposed guideline allows those owners to purchase a replacement manufactured home with the size, footprint, and height that most closely matches the size, footprint, and height of the original manufactured home. Without this provision, a landowner would probably need to purchase a replacement manufactured home that is smaller than the original home. This proposed guideline ensures that a landowner can purchase a manufactured home that is at least as large as the original home.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.F

The current Management Plan states, “The replacement structure shall only be subject to the following scenic resources standards: [and lists color, reflectivity, and landscaping standards].” This

³ Gorge Commission staff are aware that measuring wall height for certain building types, such as A-frame and geodesic dome buildings may not follow the conventional standard in this guideline. Staff believes that county planners can resolve these on an individual basis.

guideline can be interpreted to mean that the color, reflectivity, and landscaping standards are the only standards that apply to a replacement structure or that they are the only scenic standards that apply and the other standards in the Management Plan (such as cultural and natural resource standards) also apply to a replacement structure. The Gorge Commission was unaware of this issue until Wasco County raised it to Gorge Commission staff and concurrently when Gorge Commission staff began advising Klickitat County landowners of the standards that apply to replacement structures.

Proposed Guideline 3.F makes clear that the color, reflectivity, and landscaping standards are the only standards that apply to a replacement structure and that other provisions in Parts I and II of the Management Plan do not apply.

For the landscaping standard that applies to a replacement structure, proposed Guideline 3.F(3) specifically allows county planners to consider defensible space recommendations in the Gorge Commission's informational brochure on defensible space and in the new Scenic Resources Implementation Handbook. The defensible space brochure is available now. The revised handbook should be available soon and will incorporate the defensible space brochure. Both will be posted on the Gorge Commission's new website when it goes live soon. This consideration of defensible space does not eliminate or minimize the use of landscaping to achieve the scenic standard ("visually subordinate" in the GMA and "not visually evident" in the SMA). This consideration of defensible space is not new, rather it complements and implements the instances in the Management Plan directing counties to provide information on defensible space to landowners. The new defensible space brochure and defensible space addition to the Scenic Resources Implementation Handbook are new information and the proposed text refers to this new information.

Proposed Guideline 3.F(5) exempts replacement of a significant historic structure from the three scenic standards (color, reflectivity, and landscaping) and the prohibition against enclosing decks, verandas and balconies if the replacement structure is reconstructed in accordance with standards for buildings that are on or eligible for the National Register of Historic Places. This guideline mirrors two existing standards, GMA Scenic Resources Key Viewing Areas Guideline 13 and SMA Scenic Resources Policy 7, which exempt significant historic buildings from these and other scenic resources standards.

Proposed Guideline 3.F(6) makes clear that the scenic resources standards in Guideline 3.F apply to structures that predated the National Scenic Area Act. The Gorge Commission was unaware that this was not clear in the guidelines until Wasco County raised it to Gorge Commission staff and concurrently when Gorge Commission staff began advising Klickitat County landowners of the standards that apply to replacement structures. While existing structures that predated the National Scenic Area Act may continue to exist in their current form, staff believes the original intent of the Management Plan was to bring replacements of pre-National Scenic Area Act structures closer to compliance with current National Scenic Area standards.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.G

Proposed Guideline 3.G allows a landowner to commence construction on a replacement structure within 10 years after the date the original structure was destroyed. The guideline does not use separate periods to apply and to commence construction. This proposed guideline collapses those periods into a single 10-year period to commence construction. Below is a summary of the new

information about the length of time to replace a destroyed building and the rationale for the 10-year period. One public comment asked whether the 10-year period to replace a destroyed structure may be transferred to a future owner. In response to this question, the Management Plan does not restrict transferring existing uses to future owners. The 10-year allowance in the plan amendment would follow the same approach.

Currently, the Management Plan requires a landowner to submit a complete land use application within two years after a disaster. A temporary law in Oregon responding to the 2020 Santiam fire (codified at ORS 197.022 note) requires a landowner to submit an application within 5 years after the disaster. Staff met with Oregon DLCDC staff. Five years have passed since the 2020 Santiam fire and DLCDC staff recommended that 5 years is not enough time for all persons affected by a disaster to submit an application. DLCDC staff mentioned that 7 years might be a better period. This Oregon law also allows a landowner to commence construction within 10 years after the disaster. DLCDC did not recommend that 10 years to commence construction might not be long enough, perhaps because 10 years since the 2020 fires have not passed.

Staff researched other recent wildfires that have devastated small towns or rural communities. Rebuilding after these fires is still on-going. For example:

- Lahaina, Hawaii fire in 2023. The public dashboard for this fire shows that of the 2207 structures that were destroyed, only 866 building permits have been completed, issued, or are in processing.
- Santa Cruz, California CZU fire in 2020. The public dashboard for this fire shows that of the 697 dwellings destroyed, only 301 single-family dwelling units have been completed or have active permits.
- Sonoma County, California fires in 2017. The public dashboard for this complex of fires shows that of the 1963 parcels with destroyed structures, 1548 parcels have some rebuild activity.⁴

Staff reviewed these dashboards in September 2025, and they follow other scholarly work. One post-fire survey showed that nationally, only 25% of burned homes were rebuilt within 5 years. Another study of 28 fires in California showed that only 58% of destroyed buildings were rebuilt within 3 to 6 years and 94% were rebuilt within 13 to 25 years.⁵

Oregon's experience with the 2020 Santiam fire is like the experiences with other fires around the country and scholarly work analyzing rebuilding. Staff is not aware that there are significant differences between these fires and the Rowena and Burdoin fires (except the number of residences and other structures that were damaged or destroyed) and thus believes the experience of recovery from wildfires in the National Scenic Area will be similar.

Additionally, through discussions with DLCDC staff, landowners who have visited the Gorge Commission office for permitting assistance after the Burdoin fire, and Wasco County staff, Gorge Commission staff heard several reasons that landowners are unable to rebuild quickly, which were

⁴ Staff took screenshots of these dashboards in September 2025.

⁵ H. Anu Kramer, et al., Post-wildfire rebuilding and new development in California indicates minimal adaptation to fire risk, 107 LAND USE POLICY 105502 (2021) (open manuscript version at 1), <https://www.sciencedirect.com/science/article/abs/pii/S0264837721002258>.

many of the same that other scholarly work has found: many landowners need time to reach a settlement with their insurance company; landowners are uninsured or underinsured and need time to obtain financing to rebuild, either through savings or loans; rebuilding cannot begin until state and local governments have cleared hazards and rebuilt community infrastructure; and current tradespersons cannot keep up the demand after a disaster.⁶

All the above information is new to the Gorge Commission. Some of the information existed prior to the last comprehensive review and revision of the Management Plan in 2020, and some of the issues addressed in this plan amendment were raised during the Gorge Commission's scoping work for the 2020 review and revision. However, the Gorge Commission did not identify replacement of an existing structure damaged or destroyed by disaster as a topic for the Gorge Commission to study and consider revising, so staff did not research the issues that were raised. Thus, the Gorge Commission did not have information about the length of time that many individuals need to build their replacement home at the time of the 2020 review and revision.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.H

Currently, the Management Plan does not specify whether a county must review an application for a replacement structure that is in the same location and is the same size, footprint, and height as the original structure as an expedited use or as a standard review. The Gorge Commission was unaware of this issue until Wasco County raised it to Gorge Commission staff and concurrently when Gorge Commission staff began advising Klickitat County landowners of the review process for their replacement structures. The need to clarify this standard is new information to the Gorge Commission.

Proposed Guideline 3.H clarifies that a replacement structure that meets the standards in Guideline 3 are reviewed using expedited review procedures. This clarification complements the clarification in Guideline 3.F that a replacement structure that meets the standards in Guideline 3.E is only subject to color, reflectivity, and landscaping standards and not any other land use or resource protection standards in the Management Plan. If the Gorge Commission specifies that all replacement structures require review for consistency with cultural, natural, and treaty rights guidelines, then the expedited review process would not be available for a replacement structure that meets the standards in Guideline 3.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.I

Proposed Guideline 3.I directs staff to develop an advisory handout to assist landowners. Staff will create this in conjunction with the Forest Service. Staff envisions this handout to include several diagrams illustrating the implementation of the same location, same size, same footprint, and same height standards. Staff will show some diagrams at the November 12, 2025, public hearing.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.J

Proposed Guideline 3.J makes clear that once a replacement structure is completed, any future change to it would require review in the same manner as changes to any existing structure. This

⁶ See Joint Center for Housing Studies of Harvard University, *Improving America's Housing* at 17 (2023).

clarifies any question whether the replacement structure would be subject to the replacement provisions under which it was approved for future alterations to or use of the structure.

Existing Uses and Discontinued Uses GMA/SMA Guideline 4

Proposed Guideline 4 allows a landowner to place one recreational vehicle for temporary housing where an original dwelling was destroyed or was damaged and is uninhabitable, and one temporary structure for storage on a parcel where a non-residential structure was destroyed by disaster. Staff and Wasco County learned through their experience with responding to the Rowena and Burdoin fires that landowners need a menu of options for temporary housing and storage to begin and manage their recovery, and as best as possible resume their normal activities. A recreational vehicle and temporary structure are additions to that menu of options.

Existing Uses and Discontinued Uses GMA/SMA Guideline 4.A

The Management Plan defines “Camping or recreational vehicle” to allow for only 60 days of occupancy in a calendar year. The Management Plan does not specifically allow temporary residences; however, some decisions have approved a temporary residence while a landowner constructs a permanent dwelling. Many landowners affected by the Rowena and Burdoin fires have asked whether they can live on their property while rebuilding. Oregon expressly allows a landowner to place and occupy a recreational vehicle for this purpose in ORS 197.493⁷ and other jurisdictions allow this.⁸ The common allowance for placing and occupying recreational vehicles on disaster-affected parcels is new information. The Gorge Commission had not researched temporary residences on disaster-affected parcels before the Rowena and Burdoin fires; Gorge Commission staff researched it for the first time for this plan amendment. Oregon’s statutory authority for recreational vehicles as temporary housing following a disaster is also new information because it was enacted in 2021,⁹ after the last comprehensive review and revision of the Management Plan.

Proposed Guideline 4.A would allow a landowner to place one recreational vehicle on the subject parcel as temporary housing before a permanent replacement is built. This is only allowed on a parcel where a dwelling was destroyed by a disaster or where the dwelling was damaged and is uninhabitable. Guideline 4.C requires approval of the recreational vehicle to ensure that it is placed outside of resource areas and their buffer zones and without a foundation or grading.

Proposed Guideline 4.A expands the housing stock during a temporary period of need. This expansion is important because disaster-affected persons compete with disaster responders and

⁷ In 2023, Oregon amended ORS 197.493 to specify that a state agency or local government may not prohibit the placement of occupancy of recreational vehicle on a lot or parcel with a dwelling that is uninhabitable due to a natural disaster for 5 years. Or. Laws 2023, ch. 235 § 1. Later that year, the legislature lengthened the time to 10 years for persons impacted by the 2020 Santiam fire. Or. Laws 2023, ch. 327, § 9.

⁸ *E.g.*, County of San Diego, Firestorm Policy and Guidance Document, <https://www.sandiego.gov/content/dam/sdc/pds/docs/pds666.pdf>; Casita Coalition, et al., Rebuilding After Fire: Lessons from Sonoma County, <https://www.casitacoalition.org/guidebooks-and-resources>.

⁹ Or. Laws 2021, ch. 235.

permanent residents, including homeless persons, for housing.¹⁰ Additionally, people who cannot stay in their community after a disaster lose access to social networks and jobs and have a limited ability to participate in the recovery process for both their home and community.¹¹ The Gorge Commission had not previously considered the importance of expanding the housing stock during a temporary time of need and the importance of allowing people to remain in their community. Thus, this information is new information to the Gorge Commission.

Existing Uses and Discontinued Uses GMA/SMA Guideline 4.B

The Management Plan does not allow temporary structures. Proposed Guideline 4.B would allow a landowner to place one temporary structure for storage where a landowner has a need for storing salvaged belongings, construction materials for rebuilding, and farm or other land management equipment until they can construct a new permanent agricultural or accessory building. The proposed text does not require the landowner to place and occupy a recreational vehicle to qualify for a temporary structure for storage (this is a requirement for a permanent accessory structure in the Management Plan). Staff learned of this need in the same manner as the need for temporary housing on a disaster-affected parcel. Neither Oregon law nor other jurisdictions that staff researched allow such a temporary structure; however, several landowners affected by the Rowena and Burdoin fires have asked whether they can place a temporary storage building. The temporary structure must be limited in size to 320 square feet in size, which is the equivalent to the size of a 40-foot shipping container. Staff believes this size is appropriate for a building that cannot have a foundation and cannot require grading. The temporary structure must also be a dark earth tone color; the guideline requires AMS-STD-595 Color No. 14087 (Olive Drab), available at <https://www.federalstandardcolor.com>, or a similar color. This specified color is the standard color that the Forest Service uses for most small structures in the National Scenic Area and can be made at any paint store. The allowance for a similar color gives landowners a little bit of flexibility in color and, if in the future, the federal standard changes, landowners may continue using this guideline until the Gorge Commission updates the guideline.

Existing Uses and Discontinued Uses GMA/SMA Guideline 4.C

Proposed Guideline 4.C specifies that a temporary recreational vehicle and temporary structure must be placed outside of resource and areas and buffer zones on the parcel, must not require a permanent foundation or grading, and must comply with state and county health and building code requirements for utilities. This guideline also requires approval of a recreational vehicle and temporary structure to ensure that they are placed in accordance with the standards in this guideline. The proposed plan amendment does not specify the approval procedure, which allows counties to use an existing ministerial approval process or develop a process for speedy approval.

Existing Uses and Discontinued Uses GMA/SMA Guideline 4.D

Proposed Guideline 4.D requires a landowner who is using a recreational vehicle or temporary structure to submit to the county documentation of their continuing need every two years and

¹⁰ Walter Gillis Peacock, et al., *Post-Disaster Sheltering, Temporary Housing, and Permanent Housing Recovery* at 3 (2018) (prepublication version), https://www.researchgate.net/publication/323940057_Post-Disaster_Sheltering_Temporary_Housing_and_Permanent_Housing_Recovery.

¹¹ *Id.* at 6.

requires the county to verify and confirm the need in writing. These are important steps to ensure that landowners recognize the temporary nature of their recreational vehicle and temporary structure and for counties to track their removal. This provision implements Guidelines 4.A, 4.B., and 4.C.

Existing Uses and Discontinued Uses GMA/SMA Guideline 4.E

Proposed Guideline 4.E allows a recreational vehicle and temporary structure to be on a parcel until the landowner completes the replacement dwelling or other replacement structure or for a maximum of 10 years if the landowner did not commence construction of the replacement structure within the 10-year period for doing so. This length of time mirrors the allowance in ORS 197.493 for recreational vehicles. This provision implements Guidelines 4.A, 4.B. and 4.C.

Existing Uses and Discontinued Uses GMA/SMA Guideline 5

The Management Plan does not specify whether an existing, non-residential use, such as a home occupation, could continue after the structure where it occurred was destroyed. Oregon's temporary law for replacement of dwellings and other structures following the 2020 Santiam fire (Or. Laws 2021, ch. 217, § 2, codified at ORS 197.022 note) specifies that a landowner may alter, restore, or replace an existing non-residential land use. Oregon's temporary law applies to any non-residential use that occurred in a building that was damaged or destroyed. Although ORS 197.022 note does not apply in the National Scenic Area, the need for this clarification in the Management Plan is new information to the Gorge Commission.

Proposed Guideline 5 adapts Oregon's approach for non-residential land uses in the National Scenic Area with four exceptions. Proposed Guideline 5 specifies that an existing non-residential use is not discontinued solely because the use is inactive while the landowner is repairing the original structure or building the replacement dwelling or structure. In effect, a landowner may pause an existing use that occurred within an original structure while the landowner is building the replacement structure. There are four exceptions to this general pause for non-residential uses.

The first exception is that special uses in historic buildings would be discontinued upon the destruction of the historic building in which it occurred. The purpose of allowing special uses in historic buildings is to provide a revenue stream for a landowner to invest in the preservation and upkeep of the historic building. The Management Plan requires a preservation and enhancement plan showing how the revenue from the special uses would contribute to preservation and enhancement of the historic building. After the historic building is lost, the purpose of the special uses in historic buildings no longer exists and the standard requiring the preservation and enhancement plan can no longer be satisfied.

Second, bed and breakfast inns in the SMA would be discontinued upon destruction of the original building. The Management Plan only allows bed and breakfast inns in SMA in a structure that is included in, or eligible for inclusion in, the National Register of Historic Places.

Third and fourth, overnight accommodations and commercial events would not be discontinued immediately, but the validity of a permit allowing the use would not be paused. The Management Plan allows these uses only in conjunction with specific underlying uses and limits the validity of a permit for these uses to two years. If a landowner can replace the original structure and underlying

use for the structure while the permit for the overnight accommodations or commercial events is valid, then the landowner can continue the overnight accommodations or commercial events under the valid permit until the permit expires, at which time the landowner would be able to reapply for the overnight accommodations or commercial events, just as they would need to do if a structure in which one of these uses occurred had not been destroyed.

Existing Uses and Discontinued Uses GMA/SMA Guideline 6

Proposed Guideline 6 specifies that an existing campground may allow a landowner displaced by a disaster to occupy a camping space for longer than the 60 days permitted in the definition of camping in the Glossary of the Management Plan. Proposed Guideline 6 gives a landowner a place to reside in a recreational vehicle if they cannot or do not want to place the recreational vehicle on their own property. Proposed Guideline 6 is an outgrowth of the provision allowing a temporary recreational vehicle on a disaster-affected parcel and the same new information for the temporary residential use on the disaster-affected parcel applies to this proposed guideline. Staff believes this is an important alternative because a campground that has utilities and other amenities might make living in a recreational vehicle in a campground easier than on the disaster-affected parcel.

Expedited Development Review Process GMA/SMA Development Eligible for Expedited Review Guideline 1.W

Proposed Guideline 1.W adds a new subsection to allow replacement of a structure destroyed by disaster that meets the standards in Existing Uses and Discontinued Uses GMA/SMA Guideline 3 to be reviewed using the expedited review process. This guideline complements Guideline 3.H above.

Agricultural Land GMA Land Use Policy 14 and Residential GMA Land Use Policy 6

The proposed plan amendment changes the four instances in the Management Plan that use the term “Firewise standards” to “defensible space” to match the title of the Gorge Commission’s informational brochure on defensible space. These are not substantive changes.

350-50-030(2) - The proposed amendment is consistent with the purposes and standards of the Scenic Area Act.

In *Friends of the Columbia Gorge v. Columbia River Gorge Comm’n*, 236 Or. App. 479, 503, 238 P.3d 378 (2010), the Oregon Court of Appeals rejected an argument that a plan amendment was inconsistent with the purposes and standards of the National Scenic Area Act because it allowed development that was inconsistent with the level of development permitted on a site under the Management Plan. The court observed and concluded that Congress

“envisioned that the management plan would evolve as circumstances and conditions changed. It follows that the commission’s understanding as to the type and level of development that would or would not subvert the Act’s purpose[s] may also change. Thus, the ultimate inquiry under OAR 350-050-0030(2) is whether the amendment is consistent with the purposes and standards of the Act given the conditions existing at the time of the amendment.”

The purposes of the National Scenic Area Act are:

“(1) to establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

“(2) to protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1).”

The National Scenic Area Act standards for the Management Plan are:

“(1) protect and enhance agricultural lands for agricultural uses and to allow, but not require, conversion of agricultural lands to open space, recreation development or forest lands;

“(2) protect and enhance forest lands for forest uses and to allow, but not require, conversion of forest lands to agricultural lands, recreation development or open spaces;

“(3) protect and enhance open spaces;

“(4) protect and enhance public and private recreation resources and educational and interpretive facilities and opportunities, in accordance with the recreation assessment adopted pursuant to subsection (a) of this section;

“(5) prohibit major development actions in special management areas, except for partitions or short plats which the Secretary determines are desirable to facilitate land acquisitions pursuant to sections 544 to 544p of this title;

“(6) prohibit industrial development in the scenic area outside urban areas;

“(7) require that commercial development outside urban areas take place without adversely affecting the scenic, cultural, recreation, or natural resources of the scenic area;

“(8) require that residential development outside urban areas take place without adversely affecting the scenic, cultural, recreation, and natural resources of the scenic area; and

“(9) 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 proposed plan amendment has two principal parts. First, the proposed text provides a path for landowners whose homes and other structures were destroyed by disaster to use the expedited review process for permitting replacement homes and structures. This first part is in proposed Existing Uses and Discontinued Uses Guideline 3. Second, the proposed text expressly allows a landowner to place a recreational vehicle and a temporary structure. This second part is in proposed Existing Uses and Discontinued Uses Guideline 4. Other guidelines related to these principal parts are included in the plan amendment.

Expedited review process for permitting replacement homes and structures (Existing Uses and Discontinued Uses Guideline 3)

The current Management Plan allows replacement of a structure damaged or destroyed by disaster. The proposed amendments in Guideline 3 clarify the standards for such a replacement structure and specify that a replacement structure that meets the standards may be reviewed using the expedited review procedures (not the standards for expedited review). Guidelines 3.A, 3.C, and 3.F are renumbered and unchanged from current Management Plan or contain clarifications. Guideline 3.D, 3.E and 3.G through 3.J are new or significantly revised guidelines.

Proposed Guideline 3.D requires that the footprint of a replacement building must be centered in the footprint of the original building. A replacement structure may extend 10% beyond one or more sides of the original footprint and rotate the original orientation by 10 degrees. The flexibility in this standard may give county planners an opportunity to use existing screening while ensuring that the replacement building would be on land that had already been disturbed by the original development, prior land contouring and landscaping, prior access, etc. or on land immediately adjacent to land has been disturbed. This location standard is consistent with the first purpose and standards of the National Scenic Area Act requiring protection of scenic cultural, natural, and recreation resources because it minimizes grading and disturbing cultural and natural resources. In deciding on the proposed text of this guideline, staff consulted with the Forest Service archaeologists, who opined that the proposed adjustments to the original footprint would be unlikely to adversely affect cultural resources immediately adjacent to an original building.

Proposed Guidelines 3.E(1) and (2) clarify what constitutes a replacement building that is treated as the same size and footprint as the original structure. The proposed text uses a sliding scale for giving landowners some flexibility in the size of their replacement structure. The largest increase is 20% for a structure up to 1250 square feet in size. Staff chose this size because adding 20% to 1250 square feet creates a 1500 square-foot structure, which is the size at which the compatibility standard applies to new buildings in the current Management Plan. A replacement structure larger than 3000 square feet would need to be no larger than the original size to minimize conflicts with the compatibility standard. Thus, the proposed amendments treat the size of a replacement structure similar to the size standards for new development, and are consistent with the purposes and standards of the National Scenic Area Act in the same way that the existing compatibility provisions are consistent with the purposes and standards of the National Scenic Area Act.

Proposed Guidelines 3.E(3) and (4) clarify how to measure height of a replacement structure and require that a replacement building must have the same roof style and the same or lower slope. The only exception for increasing the height of a building is to meet current building code requirements. Proposed Guidelines 3.E(3) and (4) ensure that the replacement building would be similar to the height of the original building and thus not have more impact on scenic resources than the original building. Proposed Guidelines 3.E(3) and (4) also allow manufactured homes to have nine-foot walls, which are standard in a modern manufactured home. New manufactured homes with shorter walls that might match the original building may not be reasonably available.

Proposed Guideline 3.E(5) is a backstop for an owner of a manufactured home who cannot reasonably purchase a new manufactured home that meets the standards in subsections 3.E(1) through 3.E(4) (including the allowances for increased size, footprint, and height). In this situation, a landowner may place a manufactured home that most closely matches the original manufactured

home. The location, size, footprint, and height of such a manufactured home is unlikely to significantly exceed the location, size, footprint, and height of a manufactured home that meets the standards in subsections 3.E(1) through 3.E(4).

Proposed Guideline 3.F. clarifies that a replacement structure that meets the standards in proposed Guideline 3 would only be reviewed for the scenic resources standards for color, reflectivity, and landscaping and no other standards in Parts I and II of the Management Plan. Staff believes this was the original intent of this provision. This limited scope of review is consistent with the first purpose and the standards of the National Scenic Area Act because, as discussed above, a replacement structure that meets the standards in Proposed Guideline 3 will not adversely affect protected resources. This limited scope of review also allows a replacement structure that meets the standards in proposed Guideline 3 to be reviewed using the current expedited review process procedural guidelines, which is a faster process. As explained below in the analysis of criterion 350-50-030(3), the expedited review process for a replacement structure is consistent with the second purpose of the National Scenic Area Act.

Proposed Guideline 3.G allows a landowner to replace a structure destroyed by a disaster within 10 years of the date the original structure was destroyed. Staff believes that landowners will thus file applications over a longer period, enabling it and county staff to accomplish non-disaster response work while responding to replacement applications, which will reduce the impact of a disaster on county implementation of the National Scenic Area Act. This longer period also gives landowners needed time to recover. Prior to the September 9, 2025, Gorge Commission meeting, one person commented that within days after the Rowena fire, they had been contacted by a real estate office. Having a longer time to replace a destroyed home removes pressure to sell a destroyed home to avoid losing the value of an existing use, in which case the landowner would leave their job and their contributions to the Gorge community and economy. The longer time for landowners to recover from a disaster is consistent with the second purpose of the National Scenic Area Act.

The 10-year period might make proving that the original structure was an existing structure more difficult than the current two-year period because records and witnesses may no longer be available after a longer time. The alternatives analysis for this proposed guideline describes how counties can mitigate this on an as-needed basis.

The 10-year period in proposed Guideline 3.G is also consistent with the first purpose of the National Scenic Area Act. The construction of a replacement dwelling or other structure would be in the same location and the same size, footprint, and height as the original structure and thus would not cause resource impacts different from impacts (if any) of the original structure regardless of whether it would be built within two years or 10 years after the disaster. The 10-year period coupled with Guideline 4, which allows a recreational vehicle or a temporary structure, could result in a temporary impact on scenic resources for a longer period time. Below, this staff report discusses how the guidelines for temporary structures mitigate this impact.

Temporary residence and temporary accessory structure (Existing Uses and Discontinued Uses Guideline 4)

Proposed Guideline 4.A allows a landowner to place a recreational vehicle on the subject parcel as temporary housing before a permanent replacement is built. This is only allowed where a residence was destroyed by a disaster. Proposed Guideline 4.B also allows a landowner to place a temporary

structure where a landowner has a need for storing salvaged material, construction materials for rebuilding, and farm or other land management equipment until they can construct a new permanent agricultural or accessory building.

The draft plan amendment provided for public comment also included a yurt, tiny house on wheels, or manufactured home as permissible temporary dwellings, but staff removed these shelter types from the final proposed plan amendment after consulting with Wasco County and learning that each has specific building and health code requirements, such as requirements for water and wastewater, that would effectively make them difficult, and likely not possible to use in this situation.

Guideline 4.C requires approval of a recreational vehicle and temporary structure to ensure that they are placed outside of resource areas and their buffer zones and without a foundation or grading. The proposed plan amendment does not specify the approval procedure, which allows counties to use an existing ministerial approval process or develop a process for speedy review. The draft plan amendment provided for public comment would have allowed a landowner to place temporary structures without a National Scenic Area permit. Staff changed this in response to several comments that some type of review is necessary. Staff consulted with Wasco County and reviewed its ministerial process (like a checklist) for allowing recreational vehicles as temporary housing outside of the NSA in accordance with Oregon law.

The proposed plan amendment also contains other provisions to avoid adverse effects on cultural and natural resources. First, the number of temporary structures is limited. Proposed Guidelines 4.A and 4.B allows one recreational vehicle and one temporary structure on a parcel. Second, temporary structures (not recreational vehicles) must be a dark earth tone color and the guidelines specify a specific color to allow counties to ease the use of a ministerial approval process. Third, proposed Guideline 4.C requires landowners to place their recreational vehicle and temporary structure outside of resource buffers. Finally, proposed Guideline 4.C also requires landowners to place their recreational vehicle and temporary structure in a location and manner that does not require grading or other ground disturbance.

A temporary structure could adversely affect scenic resources temporarily, depending on the visibility of the temporary structure as seen from key viewing areas. To minimize this, the proposed plan amendment adds a color requirement that was not in the draft plan amendment provided for public comment. Counties can also recommend locations of a parcel that reduce scenic impacts when they review the placement of a recreational vehicle and temporary structure. Additionally, to help ensure that a recreational vehicle and temporary structure are removed when no longer needed, proposed Guideline 4.D requires the landowner to document their continuing need every two years and for the county to verify and respond in writing, creating a record of the continuing need and the end of the need for the recreational vehicle and temporary structure. This two-year documentation mirrors the two-year period that a permit for a temporary use hardship dwelling is valid (Mgmt. Plan p. 293). Additionally, such temporary impacts may similarly occur when a landowner receives an approval for a temporary residence while building a new permanent building—an approval that counties and Gorge Commission staff have occasionally granted on a case-by-case basis. Proposed Guideline 4 is consistent with the first purpose and standards of the National Scenic Area Act in the same manner as the existing provisions of the Management Plan is consistent with first purpose and standards for temporary use hardship dwellings and allowing temporary residences on a case-by-case basis.

Allowing individuals affected by disaster to continue living and using their land also provides many economic benefits consistent with the second purpose of the National Scenic Area Act. One economic benefit is for individuals who would be able to live rent-free while recovering from the disaster. Another economic benefit is that having a temporary structure increases the likelihood of additional spending. Landowners may replace their home goods, land management tools, and other purchases that they might not replace right away without a place to store them. Another economic benefit is that the provision allowing temporary housing expands the housing stock such that fewer disaster-affected people would be competing for housing with disaster responders and permanent residents, including the homeless. Finally, people who cannot stay in their community after a disaster lose access to social networks and jobs and have a limited ability to participate in the recovery process for both their own home and community, slowing their individual recovery and the overall recovery for the community and Gorge region.

While proposed Guideline 4 allows uses in addition to what the current Management Plan allows and for a longer time, the circumstances and conditions in the National Scenic Area, and outside the National Scenic Area have changed as explained in the discussion of proposed Guideline 4 above in response to Commission Rule 350-50-030(1).

Other provisions

Proposed Existing Uses and Discontinued Uses Guideline 5 allows non-residential uses to be considered existing even though they may be inactive for more than one year while a landowner replaces a home or other structure. As discussed above in the analysis of criterion 350-50-030(1), there are four exceptions to this. Overall, this new guideline is consistent with the purposes and standards for the National Scenic Area Act because the non-residential use existed prior to the National Scenic Area Act or received a National Scenic Area approval in which a county previously determined the use to be consistent with the purposes and standards of the National Scenic Area Act.

Proposed Existing Uses and Discontinued Uses Guideline 6 specifies that an existing campground may allow a landowner who lost their home in a disaster to occupy a camping space with a recreational vehicle for longer than 60 days (the Management Plan's distinction between camping and residential use). This option for temporary housing is consistent with the second purpose of the National Scenic Area Act as discussed above in the analysis of Proposed Existing Uses and Discontinued Uses Guideline 4 allowing temporary residential use on the disaster affected parcel. This option is also consistent with the first purpose and standards of the National Scenic Area Act because the campground must be existing; new campgrounds would need to be reviewed and approved and cannot just start. Additionally, no new resource impacts would occur with long-term occupancy of a recreational vehicle as compared to multiple recreational vehicles occupying the campground space over the same period of time.

350-50-030(3) - No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists.

In *Friends of Columbia Gorge v. Columbia River Gorge Comm'n*, 218 Or. App. 232, 179 P.3d 706 (2008), *aff'd*, 346 Or. 433, 213 P.3d 1191 (2009), the Oregon Court of Appeals interpreted the plan

amendment rule requirement regarding what “practicable alternatives” the Gorge Commission must consider:

“[T]he term ‘practicable alternatives’ and the requirement that an agency consider them in its decisionmaking processes is common in federal environmental regulation [] has acquired a consistent and well-understood meaning. Courts construing the requirement to consider ‘practicable alternatives’ in those other contexts consistently conclude that it does not obligate an agency to consider each and every imaginable alternative. Rather, the requirement is regarded as obligating the agency to exercise some measure of discretion, which exercise will be upheld so long as it appears reasonable in the light of the record of each case.”

Id. at 248. In another paragraph, the court noted that the Gorge Commission’s consideration of alternatives must be reasonable:

“Petitioners further contend that they have identified a number of alternatives that the commission could have evaluated, but did not. That may be so, but it does not follow that, merely because petitioners can imagine other alternatives that the commission could have evaluated, the commission’s order consequently is invalid. Once again, under the applicable standard of review, the determinative question is not whether it would have been reasonable for the commission to have done more. The question is whether it was reasonable for the commission to have done what it did.”

Id. at 250. Finally, in *Friends of Columbia Gorge v. Columbia River Gorge Comm’n*, 346 Or. 433, 447, 213 P.3d 1191 (2009), the Oregon Supreme Court further noted that the Gorge Commission’s final order adopting the plan amendment in that case met the obligation to consider alternatives because, “The order listed what the commission believed to be the most relevant components of [a commentor’s] alternative, summarized the key points, and explained why [the commentor’s] alternative was not practicable and why it would provide less protection [than the adopted text].”

Staff considered alternatives to many provisions of the proposed plan amendment text. Below is a summary of the alternatives that staff considered. For the guidelines that are not discussed below, the proposed changes are not substantive, resolve a redundancy, or clarify a standard, or staff only considered the no change alternative that would retain the current Management Plan. After the comment period, staff considered alternatives presented in the comments and updated several of the proposed guidelines. Responses to some of the comments are part of this staff report, and Appendix B contains responses to all the comments received during the comment period.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.D

Proposed Guideline 3.D requires the replacement structure and utilities must be centered in the same footprint as the original structure, allowing for 10 percent beyond the original footprint. This clarifies the original text, which does not specify where within the original footprint the replacement structure must be located. The proposed guideline also allows for a 10-degree rotation in the orientation of the building. This allowance to slightly adjust the orientation of a structure may give opportunities to take advantage of existing vegetation in siting the replacement structure. In deciding on the proposed text, staff consulted with the Forest Service archaeologists, who opined

that these adjustments to the original footprint would be unlikely to adversely affect cultural resources immediately adjacent to an original building.

Staff considered whether to allow a replacement structure and a septic system to be relocated to another portion of a parcel where there has already been ground disturbance. On small parcels, much of the ground may have been previously disturbed and replacing the septic system might require swapping the locations of the original dwelling and original septic systems. However, the disturbed ground may not have been previously surveyed for the presence of cultural or natural resources, so this alternative is less consistent with resource protection than the proposed plan amendment.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.E(1)

Proposed Guideline 3.E(1) uses a sliding scale for giving a landowner some flexibility in the size of their replacement structure. The largest increase is 20% for a structure up to 1250 square feet in size. Staff chose this size because adding 20% to 1250 square feet creates a 1500 square-foot structure, which is the size for which the compatibility standard applies to new buildings in the current Management Plan. A replacement structure larger than 3000 square feet would need to be the same size to minimize conflicts with the compatibility standard. Thus, the proposed revisions treat the size of a replacement structure like the size standards for new development.

Staff believes this approach provides better protection of scenic resources than the flat 10% increase allowed for all replacement structures in the current Management Plan because the flat 10% increase could allow building sizes that could not be allowed using the compatibility standard applicable to new development. Other suggestions that staff heard were to allow a 25% increase and a 40% increase in size, but staff believes these would cause some replacement structures to be vastly different from a structure that could be allowed as new development and could have greater impacts on scenic resources than the sliding scale in proposed Guideline 3.E(1).

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.E(2)

The Klickitat County Board of Commissioners suggested that a replacement structure with the same volume as an original building should be permitted using the expedited review process. Staff experimented with using volume but found that it did not result in significantly different shaped structures when also considering the requirements for the same height and footprint (or it resulted in smaller square foot structures where, for example, a higher interior ceiling height was used, resulting in fewer square feet of floor area). The proposed plan amendment retains the existing square-foot size, footprint, and height approach because those are the same measurements used for new structures and because there is not an expedited manner of ensuring that a taller replacement structure or a different location of the structure that a volume approach would allow would not affect the National Scenic Area resources.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.F

The Management Plan currently states, "The replacement structure shall only be subject to the following scenic resources standards: [and lists color, reflectivity, and landscaping standards]." This current guideline can be interpreted to mean that the color reflectivity and landscaping standards are the only standards that apply to a replacement structure or that they are the only scenic

standards that apply and the other standards in the Management Plan (such as cultural and natural resource standards) also apply to a replacement structure. Staff considered both interpretations but believes the first is more consistent with the intent of the Management Plan. The application of color, reflectivity, and landscaping standards is a limited scope of review. In this situation, where the location of the replacement structure would be in the same location, there is little reason to review the replacement for adverse effects on cultural and natural resources, so the more limited review offers similar protection as a full review of a replacement structure.

Proposed Guideline 3.F(5) exempts replacement of a significant historic structure from the three scenic standards (color, reflectivity, and landscaping) and the prohibition against enclosing decks, verandas and balconies if the replacement structure is reconstructed in accordance with standards for buildings that are on or eligible for the National Register of Historic Places. Friends of the Columbia Gorge suggested that the prohibitions against enclosing decks, verandas and balconies should apply to reconstruction of historic structures. Staff considered this, but the proposed plan amendment does not apply that prohibition because it would be redundant. The standards for historic properties already would not allow enclosing unenclosed decks, verandas, and balconies. One of the standards requires: “Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.” 36 C.F.R. 68.3(d)(4) (underlining added).

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.G

Staff considered many alternatives to the proposed 10-year requirement for replacing a structure destroyed by disaster. Staff considered adapting current Oregon law in ORS 197.022 note, which allows 5 years for a person to apply for a replacement structure and that construction must commence by 10 years after the disaster. DLCD’s experience with the 2020 Santiam fire in which many, perhaps most structures have not been replaced after 5 years convinced staff that a 5-year standard was not sufficient. Staff considered 7 years for a person to apply, as DLCD staff thought would be better, but considered the experience of other jurisdictions, including the Sonoma fires of 2017, in which approximately 78% of fire-affected parcels have had rebuilding activity after eight years. Staff believes that 10 years is a good estimate for rebuilding most replacement structures, even though one study cited above showed only 94% of structures were replaced within 13 to 25 years. If the experience in the Gorge shows that a 10-year period is too long or not long enough, the Gorge Commission can change that period using new information at that time. This 10-year period to replace destroyed homes and other structures also means that landowners will file applications over a longer period enabling county staff to accomplish their non-disaster response work while responding to disaster replacement applications.

Staff considered that this longer period might make proving that the original structure was an existing structure more difficult because records and witnesses may no longer be available. Friends of the Columbia Gorge suggested that landowners should seek an existing use determination within a shorter period of time to address this records issue. The proposed plan amendment does not include this suggestion for two reasons. First, in staff’s experience, the records issue is not a significant problem. There are two principal records used to document a destroyed structure—a landowner’s photos, other records, and witnesses, and a local government records. In staff’s experience, landowners typically save whatever records they can after a disaster or work hard to

find replacement records from government records and family members or friends with photos and records documenting a destroyed structure, and landowners tend to start that documentation right away for personal reasons. Staff's experience with local government records is that old records do not exist or are incomplete. That problem exists whether an applicant applies within two years or ten years of the disaster. Staff's experience is also that old records are more available today than in the past as local governments convert their records to electronic. Second, this bifurcated review could require a landowner to seek two decisions from a county, with two applications, two fees, and two decisions that county planners would need to write. A bifurcated review would add significant work to county planning staff who are already working to help landowners rebuild while still keeping up with non-disaster response duties. The Management Plan does not preclude such a bifurcated review; thus, a county could, on its own, require an existing use determination process for landowners, a county could recommend on a case-by-case basis that a landowner obtains an existing use determination, or a landowner could choose on their own to bifurcate their review.

Existing Uses and Discontinued Uses GMA/SMA Guideline 3.H

The proposed plan amendment clarifies that a replacement structure that satisfies the same location, size, footprint, and height standards in Guideline 3 would be reviewed using expedited review procedures. Staff believes that using the expedited review process for these replacement structures is equally protective of Gorge resources as if the proposed text had specified using the standard review process, and thus consistent with the first purpose of the National Scenic Area Act. This faster process also enables landowners to return to their normal activities (such as their jobs, shopping, recreation) more quickly, thus speeding up a community's recovery to its economic condition that predated the disaster. The expedited review process in the proposed plan amendment is thus more consistent with the second purpose of the National Scenic Area Act than requiring the standard review process.

Existing Uses and Discontinued Uses GMA/SMA Guidelines 4.A to 4.E

Proposed Guideline 4.A allows a landowner to place a recreational vehicle on the subject parcel as temporary housing before a permanent replacement is built or repaired. This is only allowed where a residence was destroyed by disaster or damaged by a disaster and is uninhabitable. Proposed Guideline 4.B also allows a landowner to place a temporary structure where a landowner has a need for storing salvaged material, construction materials for rebuilding, and farm or other land management equipment until they can construct a new permanent agricultural or accessory building. Proposed Guidelines 4.A. and 4.B allow only one recreational vehicle and one temporary structure on a parcel.

The temporary structure would be limited in size to 320 square feet in size, which is the equivalent size of a large shipping container (commonly used for storage). Staff believes this size is appropriate for a building that cannot have a foundation and cannot require grading. Staff considered a larger size, such as 1500 square feet, which the Management Plan uses for the scenic resources compatibility standard, but believes that size would require a foundation and would likely require grading. The temporary structure must also be a specific dark earth tone color or similar color. Staff considered not listing a color. Staff also considered recommending that county planners and landowners use the Building in the National Scenic Area handbook to determine colors, but listing a color makes using a ministerial permitting process easier for counties.

Guideline 4.C requires approval of a recreational vehicle and temporary structure to ensure that they are placed outside of resource areas and their buffer zones and without a foundation or grading. The proposed plan amendment does not specify the approval procedure, which allows counties to use an existing ministerial approval process or develop a process for speedy approval. The draft plan amendment provided for public comment would have allowed a landowner to place temporary structures without a National Scenic Area permit. Staff changed this in response to several comments that some type of review is necessary. Staff consulted with Wasco County and reviewed its ministerial process (like a checklist) for allowing recreational vehicles outside of the NSA in accordance with Oregon law.

Staff also considered whether to use a process similar to the Oregon Land Use Compatibility Statement process¹² in which a landowner would seek a statement from the USDA Forest Service, CRGNSA, that the temporary use is outside of resource areas and their buffer zones. A few of the issues with introducing this compatibility statement process in this proposed plan amendment are: (1) it would not include review for whether there would be a foundation or grading required to place the recreational vehicle or temporary structure; (2) it would introduce another type of review process in the National Scenic Area that would require forms and standards, which is outside the scope of this proposed plan amendment; (3) if the Forest Service would agree to play this role, the Forest Service does not implement the GMA provisions, so the process could only apply to parcels in the SMA; and (4) it could be confusing to landowners to involve another agency in their recovery.

Proposed Guideline 4.C requires landowners to place their recreational vehicle and temporary structure outside of resource areas and their buffers and without grading or a foundation, which would protect natural and cultural resources consistent with the first purpose of the National Scenic Area Act, but the recreational vehicle and temporary structure could cause temporary adverse effects to scenic resources, depending on the visibility as seen from key viewing areas. The proposed plan amendment includes provisions that would mitigate a temporary adverse effect. Proposed Guideline 4.D requires the landowner to document their continuing need and for the county to verify and respond in writing, creating a record of the continuing need. This helps ensure that a recreational vehicle and temporary structure are removed when the need no longer exists, reducing the length of time for any temporary effects. Additionally, the limit of one temporary residential use and one temporary accessory structure confines the number of structures that could have a temporary adverse effect on scenic resources.

Staff considered that the economic benefits of allowing temporary structures on a disaster-affected parcel are more consistent with the second purpose of the National Scenic Area Act than not allowing temporary structures. Allowing a recreational vehicle gives an individual an option to live rent-free while recovering from the disaster. Allowing a temporary structure increases the likelihood of additional spending. Landowners may replace their home goods, land management tools, and other purchases that they might not replace right away without a place to store them. Another economic benefit is that the provision allowing temporary housing expands the housing stock such that fewer disaster-affected people would be competing with disaster responders and permanent residents, including the homeless, for housing. Finally, people who cannot stay in their community after a disaster lose access to social networks and jobs and have a limited ability to participate in the recovery process for both their own home and community, slowing their individual recovery and the overall recovery for the community and Gorge region.

¹² ORS 197.180 and OAR Chapter 660, division 31.

Staff considered whether to limit the length of time in which a person can place and occupy a recreational vehicle and temporary structure but chose not to include a limit. Staff did not have a factual basis for choosing 2 years or 5 years or another period. Allow a recreational vehicle or temporary structure until the need no longer exists, a replacement structure is completed, or the time for commencing the replacement structure has passed with no activity mirrors ORS 197.493. A shorter time limit for a temporary structure could be less consistent with the second purpose of the National Scenic Area Act.

Staff also considered whether to limit proposed Guideline 4.A (allowing a recreational vehicle) to only parcels where the original residence was a “primary residence.” Staff did not include this factor in proposed Guideline 4.A. because determining whether a home is a “primary residence” is a complicated, fact-specific determination under federal tax law that is used to determine many income, deduction, and exemption factors. Additionally, staff did not want to preclude part-time Gorge residents from using a recreational vehicle. For example, one factor in determining whether a residence is a “primary residence” is the location of the residence relative to work. Staff did not want to preclude a recreational vehicle for a person who lives and works in the Gorge part-time, such as a medical professional.

Overall, staff recommends that the long-term economic benefits of getting people back into their community, even in temporary housing offsets temporary impacts to scenic resources.

Existing Uses and Discontinued Uses GMA/SMA Guideline 5

Proposed Guideline 5 contains a new provision to ensure that an existing non-residential use is not discontinued solely because the use is inactive while the landowner is building a replacement dwelling or structure. There are four exceptions to this general standard for land uses that have specific permit requirements for the original structure or are valid for a limited time before the landowner would need to submit an application for a new permit (not just an extension).

Staff considered whether to limit proposed Guideline 5 to a closed list of non-residential uses, such as home occupations and bed and breakfast inns, but staff considered that there are many non-residential uses permitted in the Management Plan and thus a closed list of uses would leave out some uses. Staff believes proposed Guideline 5 is a balanced approach to allowing non-residential uses in the National Scenic Area.

The ability to continue most non-residential land uses without a new permit means that people can more quickly reengage with their business or other activities and the local economy and is thus more consistent with the second purpose of the National Scenic Area Act than a narrow and closed list of non-residential uses.

JUSTIFICATION FOR IMMEDIATE AND DIRECT IMPLEMENTATION OF THE PLAN AMENDMENT

Staff recommends that the Gorge Commission direct counties (and the Executive Director for Klickitat County) to immediately and directly implement the plan amendment upon the Secretary of Agriculture’s concurrence with the plan amendment until they have adopted the plan amendment into their National Scenic Area ordinance.

The National Scenic Area Act requires each county to enact a land use ordinance that implements the Management Plan development standards on National Scenic Area land in the county. 16 U.S.C. §§ 544e(b) and 544f(h). To date, the counties have only applied the standards in the Management Plan through their adopted ordinances; they have not directly implemented the Management Plan standards before adopting their own ordinances. In contrast, Oregon law, at ORS 197.646 requires local governments to directly implement state statutes and Land Conservation and Development Commission (LCDC) administrative rules related to land use if they conflict with or are absent from local land use ordinances. There is no similar requirement in Washington land use statutes or the National Scenic Area Act.

Requiring counties to apply the limited provisions of this plan amendment is not a significant departure from the regulatory structure that the Gorge Commission, Forest Service, and counties have observed since the start of the National Scenic Area for two principal reasons:

1. The purpose of this plan amendment is to expedite recovery from the fire disasters in June and July of this year, which were severe enough to result in multiple emergency declarations;¹³ cause an immediate need to provide an expedited path for landowners to recover; and relieve some of the burden of recovery on county staff. The timelines in the National Scenic Area for the process of a county amending its land use ordinance, the Gorge Commission reviewing the amendment, and the Secretary of Agriculture concurring on the amended ordinance add up to a total of 15 months. If implementation of this plan amendment follows that timeline, then during that 15-month period, landowners will wait longer for their approvals to replace their lost homes and structures and will be unable to live in temporary housing on their property, and communities will lose the benefits of keeping landowners in their communities. No other plan amendment, nor any revisions made during the 2004 or 2020 Plan Review processes had a similar need for such immediate implementation.

2. Counties are still largely implementing their own National Scenic Area land use ordinances and thus still observing the same regulatory structure that has existed since the start of the National Scenic Area Act. In contrast, revisions to the Management Plan made during the past Plan Review processes were comprehensive enough that the counties could not have reasonably applied their own land use ordinance while also directly applying the revised Management Plan provisions; thus, the counties would not have observed the long-standing regulatory structure.

The Gorge Commission still expects counties to amend their National Scenic Area land use ordinances in accordance with the National Scenic Area Act; the direct implementation of the plan

¹³ Burdoin Fire FEMA declaration no. FM-5601-WA, <https://www.fema.gov/disaster/5601>; Klickitat County Resolution No. 06925, https://www.klickitatcounty.gov/DocumentCenter/View/21793/Resolution-06925_Emergency-Declaration_Burdoin-Fire_07222025?bidId=; White Salmon Emergency Proclamation 2025-02, https://www.whitesalmonwa.gov/sites/default/files/fileattachments/fire/page/11672/emergency_proclamation_2025-02_burdoin_fire.pdf; Oregon Governor Executive Order No. 25-08, <https://www.oregon.gov/gov/eo/eo-25-08.pdf>, extended by Executive Order 25-17, <https://www.oregon.gov/gov/eo/eo-25-17.pdf>; Wasco County State of Emergency Declaration No. Order 25-048, <https://cms5.revize.com/revize/wascocounty25/BOCC%20Archives/2025/6-18-2025%20BOCC%20Minutes.pdf?t=202508191641250&t=202508191641250> (scroll down to page 43).

amendment is temporary. The Gorge Commission's direction to counties to directly implement the plan amendment thus only goes into effect in a county after the county has submitted its notice of its intent to amend its land use ordinance in accordance with 16 U.S.C. §§ 544e(b)(1) and 544f(h)(1), which require counties to "submit to the Commission a letter stating that it proposes to adopt a land use ordinance consistent with the management plan." The submission of that letter starts each county's process for amending its land use ordinance.

APPENDIX A
PROPOSED PLAN AMENDMENT TEXT

EXISTING USES AND DISCONTINUED USES

GMA/SMA Guidelines

1. Right to Continue Existing Uses and Structures: Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.
2. Replacement of Existing Structures Not ~~Damaged or~~ Destroyed by Disaster: Except as provided in Guideline 3 below, an existing structure may be replaced ~~if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply in accordance~~ with the following standards:
 - A. The replacement structure shall have the same use as the original existing structure.
 - B. The replacement structure may have a different size or location than the original existing structure. An existing manufactured home may be replaced with a framed residence, and an existing framed residence may be replaced with a manufactured home.
 - C. The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.
 - ~~D. The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one-year time frame.~~
3. Replacement of Existing Structures ~~Damaged or~~ Destroyed by Disaster: An existing structure ~~damaged or~~ destroyed by fire, flood, landslide or other similar disaster may be replaced in accordance if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:
 - A. If the replacement structure does not comply with guidelines 3.B through 3.E below, then it shall be subject to guideline 2 above and the time period in guideline 3.G.
 - B. As used in guidelines 3 and 4, the term "original structure" or "original dwelling" means the structure or dwelling that was destroyed and was an existing structure or dwelling as defined in the Management Plan.

CA. ~~–~~ The replacement structure shall have the same use as the original structure. An existing manufactured home may be replaced with a framed residence.

DB. ~~–~~ The replacement structure and utilities shall be in the same location as the original structure and utilities. The same location means that the footprint of the replacement structure is centered on the footprint of the original structure using the same orientation as the original structure or rotating the orientation by up to 10 degrees. The footprint of the replacement structure may extend no more than 10 percent beyond any one or more sides of the original footprint. The footprint of a structure includes any covered decks and porches, attached garages, and breezeways that share a wall with the structure. An exception may be granted and the replacement structure may be sited in a different location if all the following conditions exist:

- ~~(1) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.~~
- ~~(2) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.~~
- ~~(3) The new building site complies with the cultural resources, natural resources, and treaty rights guidelines.~~

EC. ~~The~~ A replacement structure shall ~~be not exceed~~ the same square foot size, footprint, and height as the original structure. The size, footprint, and height of a building include any covered decks and porches, attached garages, and breezeways that share a wall with the structure, provided: The following adjustments to size, footprint and height are permitted for replacement structures:

- ~~(1) The footprint-square foot size of the~~ a replacement structure may be up to 10 percent larger than the footprint-square foot size of the original structure only as follows:
 - (a) If the original structure was 1250 square feet or smaller in size, the replacement structure may be built up to 20 percent larger than the original structure.
 - (b) If the original structure was larger than 1250 square feet in size and no larger than 2000 square feet in size, the replacement structure may be built up to 1500 square feet in size or 10 percent larger than the original structure, whichever is larger.

- (c) If the original structure was larger than 2000 square feet in size and no larger than 2850 square feet, the replacement structure may be built up to 2200 square feet in size or 5 percent larger than the original structure, whichever is larger.
- (d) If the original structure was larger than 2850 square feet, the replacement structure may be built up to 3000 square feet in size or the same size as the original structure, whichever is larger.
- (2) Notwithstanding the allowance for larger replacement structures in paragraph (1) above, the footprint of a replacement accessory building or buildings shall not exceed the footprint permitted for accessory buildings in the applicable land use designation, except, if the footprint of an original accessory building or buildings exceeded the footprint permitted for accessory buildings in the applicable land use designation, the replacement accessory building or buildings shall not exceed the original footprint of the accessory building or buildings. The footprint of a structure includes any covered decks and porches, attached garages, and breezeways that share a wall with the structure.
- (3) The walls of the replacement structure shall ~~be the same~~ not exceed the height as of the walls of the original structure unless an ~~minor~~ increase is required to comply with standards in the current jurisdictional building code. Wall H height is ~~generally defined as the greatest~~ vertical distance between the lowest finished grade ~~adjoining any exterior wall and the highest point of the roof.~~ and the lowest wall-to-roof connection of each wall. For a manufactured dwelling, the interior wall height may be up to 9 feet as measured from the finished floor to the finished ceiling.
- (4) The overall height of the replacement structure as measured from the lowest finished grade to the highest point of the roof shall not exceed the height as of the original structure. The roof of the replacement structure shall be the same style (e.g., hip, gable, flat) and the same or lower slope as the roof of the original structure to keep the same height. The slope and height of the roof of a replacement structure may exceed the slope and height of the original structure only as required to comply with applicable building codes. Where an original structure protruded above the skyline, the replacement structure shall not protrude farther above the skyline. Where the height of a replacement structure protrudes farther above the skyline than the original structure, a different roof shape shall be used to reduce the protrusion to the original amount of protrusion.
- (5) If, after applying guidelines 3.E(1) through 3.E(4), an applicant demonstrates that the size, footprint, or height of a replacement manufactured dwelling that is closest in size, footprint, or height of the

original manufactured dwelling is not reasonably available (e.g., considering time to manufacture, distance to manufacturer, cost to customize, and similar factors), then the applicant may place a manufactured dwelling that is closest in size, footprint, and height to the original manufactured dwelling, even if it exceeds the standards in guidelines 3.E(1) through 3.E(4).

FD. In addition to the standards in guidelines 3.B through 3.E above, the replacement structure shall only be subject to the following scenic resources standards (and not other standards in Part I and Part II of the Management Plan):

- (1) The replacement structure shall comply with the scenic resources guidelines regarding color and reflectivity ~~(Part I, Chapter 1: Scenic Resources)~~. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.
- (2) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.
- (3) In the General Management Area, the replacement structure shall comply with the GMA scenic resources guidelines regarding landscaping ~~(Part I, Chapter 1: Scenic Resources)~~. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, and may take into account recommendations for defensible space in the Scenic Resources Implementation Handbook.
- (4) In the Special Management Areas, the replacement structure shall comply with the SMA guidelines regarding landscaping (Part I, Chapter 1: Scenic Resources). These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:
 - (a) Use of plant species appropriate for the area and minimum sizes of new trees needed to achieve the standard (based on average growth rates expected for the recommended species) are required. Examples of native specific are identified in the Scenic Resources Implementation Handbook as appropriate to the area.
 - (b) The height of any new trees shall not be required to exceed 5 feet.
 - (c) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.

(5) A significant historic structure that was destroyed by disaster and that is preserved, rehabilitated, restored, or reconstructed in accordance with the National Register of Historic Places guidelines (for structures in the SMA) or the National Park Service regulations for structures included in, or eligible for inclusion in, the National Register of Historic Places (for structures in the GMA) shall not be subject to guidelines 3.F(1) through (4) above.

(6) Guidelines 3.F(1) through 3.F(5) above apply to all structures, including structures that existed prior to the National Scenic Area Act.

~~E. The replacement structure shall be subject to Guidelines 2.A, 2.B, and 2.C above if it would not comply with Guidelines 3.B and 3.C above.~~

~~G.F. The An original structure shall be considered discontinued if a complete land use application for a development of a replacement structure approved under these guidelines for replacement of an existing structure destroyed by disaster is not submitted within the two-year time frame has not commenced within ten years of the date the structure was destroyed. Each replacement structure on a parcel is separately subject to this ten-year period. Commencement of development in this provision is determined in accordance with the guidelines for expiration of approvals.~~

H. An application for a replacement structure that complies with guidelines 3.B through 3.F above shall be reviewed using the Procedural Guidelines for the expedited development review process.

I. The Gorge Commission shall develop and update as necessary an advisory handout to assist landowners and counties with the requirements for replacement structures destroyed by disaster.

J. Alterations to a replacement structure after the replacement structure is completed shall require review and approval in the same manner and in accordance with all applicable provisions as a structure that was not previously destroyed by disaster.

4. Temporary structures and uses on parcels where a structure was destroyed by disaster may be permitted in accordance with the following standards:

A. A landowner of a parcel where a dwelling was destroyed by disaster or where a dwelling was damaged by disaster and is uninhabitable may place and occupy one recreational vehicle on the parcel on which the original dwelling was located. The recreational vehicle may not be rented, leased, or loaned to any person other than to a renter or lessee of the dwelling at the time of the disaster.

B. A landowner of a parcel where one or more non-residential structures were destroyed by disaster may construct or place on the parcel one temporary structure up to 320 square feet and one story in height for storage of material salvaged from the disaster or construction materials and equipment, or for

the purpose of an original structure that was destroyed structure. The color of the temporary structure shall be AMS-STD-595 Color No. 14087 or a similar dark earth tone color.

C. The recreational vehicle and temporary structure shall be placed outside of resource sites and buffer zones on the subject parcel; must not require a permanent foundation or grading, including ground disturbing actions for placement of water, sewage disposal, or other infrastructure; and shall comply with all applicable state and county requirements. The local government shall approve the placement of a recreational vehicle and temporary structure.

D. Every two years, the landowner shall submit documentation of their continuing need for the recreational vehicle and temporary structure. The local government shall verify the need and respond in writing.

E. The recreational vehicle or temporary structure, including associated infrastructure, shall be removed within 90 days after the need for the recreational vehicle or temporary structure no longer exists or the resident of the recreational vehicle or temporary structure occupies their replacement dwelling or structure. If construction of the replacement dwelling or replacement structure has not commenced within the time allowed in the guidelines for Replacement of Existing Uses and Structures Destroyed by Disaster, the recreational vehicle or temporary structure shall be removed immediately.

5. Non-residential uses, except special uses in historic buildings, bed and breakfast inns on a parcel in the SMA, overnight accommodations, and commercial events, shall not be considered discontinued solely because the use is inactive for the time period to repair the original structure or rebuild the replacement residence or structure where the land use occurred prior to the disaster. Special uses in historic buildings and bed and breakfast inns on parcels in the SMA are discontinued after the historic building in which the use occurred is destroyed. An existing overnight accommodations or commercial events use may resume only in a completed replacement structure and be used as required in the existing permit and only while the existing permit remains valid.

6. An existing campground may allow a landowner whose primary residence was destroyed by disaster to occupy a camping space in the campground until 90 days after the landowner can occupy their replacement dwelling. If the replacement dwelling has not commenced within the time allowed in the guidelines for Replacement of Existing Uses and Structures Destroyed by Disaster, the camping space occupancy shall be ceased immediately.

4.7. Changes to Existing Uses and Structures: Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to this Management Plan.

- A. Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.
- B. Existing Development or Production of Mineral Resources in the SMAs: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMAs may continue if both of the following conditions exist:
 - (1) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMAs.
 - (2) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.
- C. Solid Waste Disposal Sites and Sanitary Landfills in the SMAs: Solid waste disposal sites or sanitary landfills are not allowed in the SMAs.

5.8. Discontinuance of Existing Uses and Structures: Except as provided in Guideline 3 above, any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

- D. Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.
- E. Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

6.9. Discontinued Uses and Structures: Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

EXPEDITED DEVELOPMENT REVIEW PROCESS

GMA/SMA Guidelines

Development Eligible for Expedited Review

1. The following development may be reviewed using the expedited development review process, provided they comply with the resource protection and procedural guidelines listed below.

* * * * *

W. Replacement of Existing Structures Destroyed by Disaster as provided Existing Uses and Discontinued Uses GMA/SMA Guideline 3. Only the Procedural Guidelines apply to this use.

AGRICULTURAL LAND

GMA Policies

Land Use Policies

14. The reviewing agency shall provide information on ~~Firewise standards~~defensible space to landowners at the time of application. Landowners shall be encouraged to incorporate ~~Firewise standards~~defensible space in their proposal as appropriate and as consistent with the resource protection provisions in the Management Plan.

RESIDENTIAL LAND

GMA Policies

Land Use Policies

6. The reviewing agency shall provide information on ~~Firewise standards~~defensible space to landowners at the time of application. Landowners shall be encouraged to incorporate ~~Firewise standards~~defensible space in their proposal as appropriate and as consistent with the resource protection provisions in the Management Plan.

APPENDIX B

**TABLE OF COMMENTS RECEIVED DURING THE
COMMENT PERIOD AND RESPONSES**

Author	Comment	Gorge Commission Staff Response
Chris Carvalho	Increased space requirements for modern living and aging in place.	Proposed changes to Guideline 3.E(1) allow modest increases in size for replacement structures. No other public comment suggested the size increases should differ from the proposed text. Staff does not recommend making further changes to this guideline
	Visual subordination standards need to reflect defensible space guidelines.	Proposed changes to Guideline 3.F(3) specify that landscaping for replacement structures may consider recommendations for defensible space in the Scenic Resources Implementation Handbook. Staff does not recommend making further changes to this guideline.
	Review fire management plan for the Gorge and impact of fire risk due to sparks from railroads.	These comments are beyond the scope of the plan amendment; the Gorge Commission does not have a fire management plan and does not review other agencies' plans; the Gorge Commission does not regulate railroad operations.
Elizabeth Turner	Extend comment period.	This comment was made on the same day that staff sent the draft plan amendment to the public for comment. The staff report noted that the Commission would accept comment at the public hearing on November 12, 2025.
Sheila Dooley	Counties should be required to implement the plan amendment changes directly and bypass the process of adopting them locally.	The final staff report includes a new section on whether the Gorge Commission should require counties to implement the plan amendment changes directly before adopting them into their land use ordinances. The recommended motion in the staff report also includes this.
Guideline 3.E(3) Jess Harris	Guideline 3.E(3) – questions whether the square foot size standards in Guideline 3.E(3) include a garage (presumably an attached garage) and whether the 10-year period to	Staff answered the first question, noting that an attached garage is part of the size of the structure. In response to the second question, the Management Plan does not restrict transferring existing uses to future

Author	Comment	Gorge Commission Staff Response
	replace a destroyed structure may be transferred to a future owner.	owners. The 10-year allowance in the plan amendment would follow the same approach. Staff does not recommend adding this to plan amendment because it is the default rule.
Wendy Huskey	No approval should be necessary to replace a destroyed home.	This comment is a general viewpoint. Staff does not recommend changing the plan amendment text in response to this comment.
Hood River County Community Development	Guideline 2 – question why the one-year period for replacement of existing uses <u>not</u> destroyed by disaster was removed and whether the Commission intended to allow 10 years for such replacements.	The staff report explains this. The proposed plan amendment removes the sentence noting the one-year period for replacement of existing uses <u>not</u> destroyed by disaster because it was redundant. Current Guideline 5 (renumbered as Guideline 8 in the proposed plan amendment) already specifies that any use or structure that has been discontinued for one year or longer is not considered an existing use. Retaining the one-year standard in Guideline 2 would be redundant. The Commission could retain it if it wishes to do so.
	Section 3.E(4) – recommendation that the phrase, “shall be considered to reduce the protrusion” does not require taking a meaningful action to reduce an increased protrusion of a replacement structure into the skyline.	Staff agrees with this comment. The proposed plan amendment requires that the height of replacement building must be the same as the original and that a different roof pitch or style must be used to retain the original height. Staff adjusted the text of the proposed plan amendment to require that a different roof shape or type shall be used to reduce the protrusion above the skyline.
	Guidelines 4.A and 4.B – recommendation that temporary structures have a limitation on size.	Staff agrees. This comment is similar to a comment by Friends of the Columbia Gorge. Staff adjusted the text of the proposed plan amendment to allow only recreational vehicles as temporary residences. This addresses

Author	Comment	Gorge Commission Staff Response
		<p>discussion that staff had with Wasco County about the different complexities of building and health permitting for different types of temporary structures. Although staff intended to give flexibility to landowners to choose different types of structures, the complexities effectively made recreational vehicles the only reasonable temporary residential use. RVs are limited in size, so a size limitation is not needed for temporary residential uses.</p> <p>For other temporary structures staff added a 320-square-foot limit. This is the size of a 40-foot shipping container, a popular temporary storage structure. The staff report above describes more why staff chose this size and alternatives that staff considered.</p>
	<p>Guidelines 4(E) and 6 – question about what “immediately” means for removal of a temporary structure.</p>	<p>The Management Plan specifies that <i>Webster’s Third New International Dictionary (unabridged)</i> is the dictionary to use for definitions. Staff is aware that counties may apply “immediately” in context, perhaps differently for different parcels, and does not recommend changing the proposed plan amendment text.</p>
	<p>The plan amendment should be made mandatory and effective immediately upon receiving concurrence to allow for quicker implementation.</p>	<p>The final staff report includes a new section on whether the Gorge Commission should require counties to implement the plan amendment changes directly before adopting them into their land use ordinances. The recommended motion in the staff report also includes this.</p>
<p>USDA Forest Service, CRGNSA</p>	<p>Several comments related to need for some type of review for temporary structures to ensure that landowners place them outside of buffers zones and sensitive resource areas.</p>	<p>Staff added a new sentence in Guideline 4.C, requiring approval for temporary structures. The proposed plan amendment text does not specify the approval process, which allows the counties to use whatever</p>

Author	Comment	Gorge Commission Staff Response
		<p>process works best for them. For example, Wasco County uses a ministerial approval process (list a checklist) for temporary structures outside the National Scenic Area. Wasco County could use that process for temporary uses in the National Scenic Area.</p>
	<p>Create a definition for “disaster” to make clear when the disaster replacement provisions apply.</p>	<p>Staff does not recommend this suggestion. Staff has applied the disaster replacement provisions to all structures lost in a natural disaster or fire, regardless of the origin of the fire. Most of the reasoning for the plan amendment applies similarly to single-structure fires originating from other than a natural disaster.</p>
	<p>Guideline 4 – remove “resident” from the standards for temporary structures; including residents could multiply the number of temporary structures and attempt to place temporary structures without landowner approval.</p>	<p>Staff intended this to recognize that a person may have a long-term lease or is a family member occupying the original home with permission of the landowner. Staff adjusted the proposed plan amendment text to clarify that the landowner must place RV, that just one RV is permitted, and that the landowner may allow occupancy of a person who rented or leased the dwelling at the time of the disaster.</p>
<p>Wasco County Board of County Commissioners</p>	<p>General comments of support for the plan amendment.</p>	<p>The Gorge Commission appreciates Wasco County’s support and assistance with developing this proposed plan amendment.</p>
	<p>Allow, upon a state Emergency Declaration, the ability for counties to implement directly from the Management Plan.</p>	<p>The final staff report includes a new section on whether the Gorge Commission should require counties to implement the plan amendment changes directly before adopting them into their land use ordinances. The recommended motion in the staff report also includes this.</p>
	<p>Allow an exception for location of a replacement structure if deemed</p>	<p>The proposed plan amendment removes this exception from the</p>

Author	Comment	Gorge Commission Staff Response
	necessary from a qualified professional.	current text. The staff report explains that the exception required a full review of the new location, so it did not provide any benefit to a landowner and was confusing to administer. Staff considered this, but there is not an expedited manner of ensuring that the location would not affect cultural and natural resources. A landowner that wants or needs to change the location of their replacement home would need to use the full review process. Staff does not recommend changing the proposed plan amendment text to allow this exception.
Hood River County Board of Commissioners	General comments of support for the plan amendment.	The Gorge Commission appreciates Hood River County's support and assistance with developing this proposed plan amendment.
Brenda Sorensen, obo Sorensen Family Ranch, LLC	Guideline 3.E(1) - Allow expedited review of essential agricultural buildings such as barns, shops and structures for feed and equipment storage as well as accommodations for footprint expansion of agricultural structures in excess of 3,000 square feet in size.	The proposed plan amendment allows an expedited review of structures that exceed 3000 square feet in size, but not if a landowner wants to increase the size of the structure. A landowner would need a full review to increase the size of a structure exceeding 3000 square feet. The staff report explains that the full review minimizes conflicts with the compatibility standard that requires new structures be compatible with the size and height of structures in the vicinity. The proposed plan amendment does not allow for an expanded footprint because there is not an expedited manner of ensuring that the location would not affect cultural and natural resources.
Carrie Buchanan & Jeffrey Johnston	General comments of support for the plan amendment.	The Gorge Commission appreciates the support for this proposed plan amendment.

Author	Comment	Gorge Commission Staff Response
Klickitat County Board of Commissioners	General comments of support for the plan amendment.	The Gorge Commission appreciates Klickitat County’s support and assistance with developing this proposed plan amendment.
	Guideline 3.E(2) – consider using a cubic footage for measuring agricultural structures, not just the footprint when enabling expedited review.	Staff understands this comment to suggest that a replacement structure with the same volume as an original building should be permitted using the expedited review process. Staff experimented with using volume but found in many situations, it did not result in significantly different shaped structures when also considering height and footprint (or it resulted in smaller square foot structures where, for example, a higher ceiling height was used). Staff recommends retaining the existing height and footprint approach because those are measurements used for new structures and because there is not an expedited manner of ensuring that the location would not affect cultural and natural resources for a different footprint of a replacement structure.
Friends of the Columbia Gorge	The draft staff report, as currently drafted, lacks sufficient evidence of significant change justifying a plan amendment.	Staff disagrees. The full comment about this suggests that the significant change justifying the plan amendment is an increase in the number and severity of natural disasters. This is not correct. The staff report describes two significant changes: (1) new information about the length of time that many landowners need to rebuild after a disaster based on the experience of recent disasters in Oregon and beyond and (2) new information about the need to clarify the replacement standards based on Wasco County and Gorge Commission staff’s experience using those standards in response to the Rowena and Burdoin fires.

Author	Comment	Gorge Commission Staff Response
	<p>Require applicants to file applications for existing use determinations within two years of the disaster, when the evidence for evaluating whether the destroyed structure was in fact an existing use at the time of the disaster will still be relatively “fresh” and available. This comment is reflected in proposed changes shown to Guideline 3.G.</p>	<p>Staff does not recommend this suggested addition. Staff agrees that documenting a destroyed structure may be difficult and could be more difficult if a landowner waits several years to submit an application. In the Gorge Commission staff’s experience, there are two principal records used to document a destroyed structure—the landowner’s photos and other records, and local government records. In staff’s experience, landowners typically save whatever records they can after a disaster or work hard to find family members or friends with photos and records documenting a destroyed structure. Staff’s experience with local government records is that old records do not exist or are incomplete. That problem exists whether an applicant applies within two years or ten years of the disaster. Old records are actually more available today than in the past as local government convert their records to electronic. Staff is also concerned that this suggestion that a landowner first seek an existing use determination would require a two-step application process, which is confusing and burdensome for landowners and creates additional burden on county staff.</p>
	<p>Require permitting for placement of temporary structures and require size limits.</p>	<p>This comment is addressed above in response to the first comments by the USDA Forest Service, CRGNSA.</p>
	<p>Guideline 3.E – add “A replacement structure shall be <u>up to</u> the same square foot size, footprint, . . .”</p>	<p>Staff agrees and the proposed plan amendment allows a replacement structure “shall not exceed . . .” Similar changes were made in Guidelines 3.E.(2), (3), and (4)</p>
	<p>Guideline 3.E(4) – conform terminology in the proposed plan</p>	<p>Staff agrees and the proposed plan amendment reflects these changes.</p>

Author	Comment	Gorge Commission Staff Response
	<p>amendment to the current Management Plan to ensure consistent use of terms (“above” or “below” the skyline, instead of “into”).</p>	
	<p>Guideline 3.E(5) – add underlined text: “If, after applying guidelines 3.E(1) through 3.E(4), an applicant demonstrates that the size, footprint, or height of a replacement manufactured building that is closest in size, footprint, or height of the original manufactured building is not reasonably available (<i>e.g.</i>, considering time to manufacture, distance to manufacturer, cost to customize, and similar factors), then the applicant may place a <u>reasonably available</u> manufactured building that is closest in size, footprint, and height to the original manufactured building, even if it exceeds the standards in guidelines 3.E(1) through 3.E(4).”</p>	<p>Staff is unsure what difference this addition would make. The intent of this provision was to allow an applicant to place a manufactured building closest in size to the original building if a manufactured building that meets the size, footprint, and height standards in Guidelines 3.E(1) to (4) is not reasonably available. In this situation, it does not matter whether the replacement building would be reasonably available. The proposed plan amendment does not add these words, but the Commission could add them if it wishes.</p>
	<p>Guideline 3.F(5) – a significant historic structure that was destroyed by disaster and that is preserved, rehabilitated, restored, or reconstructed in accordance with the National Register of Historic Places guidelines should be subject to Guideline 3.F(2) (prohibiting enclosing decks, verandas and balconies).</p>	<p>Staff recommends this as unnecessary. The standards for historic properties require “Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.” 36 C.F.R. 68.3(d)(4).</p>
	<p>Add new Guideline 3.F(6) “Regardless of the land use designation of the building site, dwellings destroyed by wildfire shall comply with the Approval Criteria</p>	<p>Staff does not recommend this suggested new guideline. The Approval Criteria for Fire Protection standards contained in the GMA Guidelines for Forest lands contain requirements for a standpipe (for</p>

Author	Comment	Gorge Commission Staff Response
	for Fire Protection contained in the GMA Guidelines for Forest lands.”	plumbed buildings, a pond or other water storage, and minimum width for a driveway. These standards may be prohibitive for parcels, such as in Rowena, which are small or require new ground disturbing activity that would require a full review. If the Gorge Commission would add this suggested guideline, it would need to be tailored to address the problems of applying the standard to existing development and to apply only for GMA parcels.
	Add new Guideline 3.F(7) “Proposed development shall not affect or modify any treaty or other rights of any Indian tribe.”	Staff does not recommend this suggested new guideline. The purpose of the standards in the plan amendment is to ensure that replacement of destroyed structures do not affect treaty rights or other rights by allowing expedited review for narrowly defined in-kind replacements. Tribes will receive notice of the proposed replacements and if there would be an effect on treaty or other rights, the replacement could not be processed through the expedited review procedures.
	Guideline 4.A – add a 1500-square-foot limit on the size of temporary structures.	This comment is addressed above in response to Hood River County Community Development’s comments on Guidelines 4.A and 4.B.
	Guideline 4.D – require documentation of the need for a temporary structure <u>up to</u> every two years.	Staff does not recommend this change. This change would allow counties to require documentation of the need for a temporary structure more often than every year. Staff believes that a county may already do so if it believes there is a unique need to do so.
	Guideline 4.E – suggestions to add additional situations under which the 90-day period for a landowner to	Staff revised the proposed plan amendment to add one of the suggestions—that the 90-day period begins when the need for the temporary structure no longer exists.

Author	Comment	Gorge Commission Staff Response
	remove a temporary structure begins.	Staff agrees there may be a situation in which a landowner no longer uses the temporary structure but has not yet occupied the permanent replacement structure.
	Guideline 6 – non-substantive clarifications	Staff agrees and made the suggested changes in the proposed plan amendment
	Development Eligible for Expedited Review Guideline W. – suggested adding review of temporary structures through expedited review.	Permitting temporary structures is addressed above in response to the first comments by the USDA Forest Service, CRGNSA.
Department of Land Conservation and Development	Guideline 3.G – recommend that the guideline provide a time to apply followed by a time begin construction.	The proposed plan amendment uses a simple 10-year period that allow a landowner to apply at any point in that period and commence construction at any point in that period. This approach is based on staff’s research into other disasters. There are many landowners who have not yet applied to replace their destroyed structures many years after the disaster. Landowners may not be able to file an application until they have financing or engineering to determine the scope of work (including whether they are able to reuse the same location and utilities) or must wait for other activities to make a parcel safe to use again. Staff does not recommend providing a separate period during which a landowner must apply for the replacement.
	Guideline 6 – comment: “Considering Wasco County’s current efforts to develop a new campground to meet this need, and the ten-year timeline the commission is considering for the commencement of development, the department would like to suggest the word “existing” be removed to allow for the development of new campgrounds to meet the short and long-term recovery needs of the	Staff believes this change is not necessary. If Wasco County successfully permits and develops a campground for use by disaster displaced people, then that campground would be “existing.”

Author	Comment	Gorge Commission Staff Response
	community. Perhaps the commission could consider replacing “existing” with “lawfully established” to ensure the appropriate coordination or permitting has occurred.”	
	Guideline 3 – comment: “We would like to share however that destroyed foundations and septic systems can often necessitate new locations for health and safety reasons. Identifying a suitable replacement envelope (e.g. within 100 feet of existing or undamaged septic drain fields) in residential zones and other appropriate zones, may allow for more creative responses to expedited redevelopment that still achieve the requirements of the National Scenic Area.”	Staff agrees that destroyed foundations and septic systems may require creative land planning; however, new ground disturbance in areas that have not been reviewed for the presence of resources cannot be ignored. Future-proofing land use applications through approving a second (replacement) drain field location is possible (and has always been possible). The Management Plan does not require this but does not prohibit applicants and counties from doing so. This is an issue for all new development. Staff will add this issue to its list of issues for consideration in next Plan Review
	Implementing the plan amendment directly before adopting a land use ordinance.	The staff report contains a new section on this. Staff is recommending that the Gorge Commission direct counties to directly implement this plan amendment before adopting it into their NSA ordinances for reasons explained in that new section of the staff report.



COMMUNITY DEVELOPMENT

2705 E 2nd St • The Dalles, OR 97058
p: [541] 506-2560 • wcplanning@co.wasco.or.us • www.co.wasco.or.us

Pioneering pathways to prosperity.

December 2, 2025

Columbia River Gorge Commission
PO Box #730
White Salmon, WA 98672
(Sent by email to PublicComment@gorgecommission.org)

Dear Chair Mills, Vice Chair Meninick, and Commissioners and CRGC Staff;

I am writing to address comments made at the Plan Amendment hearing on November 12th and provide additional information that may be helpful in deliberations.

Wildfire Risk Assessment

Comments suggested staff findings of changes to the National Scenic Area necessitating a plan amendment were insufficient because they did not include an analysis of wildfire risk assessment. This suggestion seems largely geared at mitigation rather than response and recovery, and are likely better suited to work already under way by the Commission staff to require new defensible space standards.

Wasco County has made hazard mitigation a priority, including being a state leader with defensible space standards, for over two decades. In our experience, it's common that people conflate response and recovery with mitigation and preparedness not understanding the nuanced difference; mitigation and preparedness center around actions that can be taken to reduce disaster risk and destruction whereas response and recovery addresses the real issues facing communities, stakeholders, responders, and others in the face of disaster.

Columbia River Gorge Commission staff provided a thorough analysis, backed by Wasco County's own assessment and literature review as well as expert input, on the realities of recovery with respect to land use. The scope of the Plan Amendment is intentionally narrowed to focus on modernizing disaster response and recovery based on best practices and data that were not available during the original drafting of the Management Plan or past reviews.

Best practices with mitigation will likely change some standards within the Management Plan and therefore will be much larger in scope, making it a more appropriate topic for plan review.

Disaster Response, Structure Loss Records, and Pre-Existing Use Determinations

Immediately following the ignition of the Rowena Fire, Wasco County Planning Division staff mobilized to collect and aggregate land use records, including any infrastructure information, to be utilized by response. Our Assessment and Taxation Department also inventoried all existing records of properties to aid with final counts of property damage. This is a part of the normal response process to support

first responders, insurers, and government agencies like FEMA to evaluate needed aid and final assessments of the incident.

Generally, this is standard practice following a disaster like wildfire. Like counterparts in the National Scenic Area, Wasco County has a variety of tools to determine structural loss including land use permit records, aerial imagery, taxation records, building codes permits, and septic permits. In the State of Oregon, jurisdictions are required to keep most land use records in perpetuity, and many counties like Wasco have made efforts to back up records with digital records. These tools and techniques are standard practice for local government, and our citizens depend on us to maintain quality and reliable data.

Staff's early work has been incredibly helpful to us expediting our research processes and delivering faster timelines for the current applications we are processing. We will maintain these records as part of the incident response and recovery record as standard operation.

The assertion that after years have passed we will somehow not have record or data demonstrates an ignorance about current local government practices, requirements, and the value added services we provide residents and property owners. Requiring a separate use determination is unnecessarily costly, time consuming, and traumatizing to disaster survivors.

State behavioral health experts have provided the following feedback, based on research and experience:

- Survivors often experience trauma and mental health impacts that make long range planning harder, especially while navigating day to day recovery
- Complex or repetitive processes, including multiple permits, can unintentionally reinforce power imbalances between outside systems and impacted community members
- Additional procedural steps can compound stress, especially when survivors are already dealing with insurance, rebuilding decisions, temporary housing, and navigating multiple agencies
- Adding extra layers of permitting, especially something that requires survivors to prove preexisting use multiple times "has real potential to be retraumatizing". The emotional impact can feel like questioning the legitimacy of loss or adding another barrier to a process that is already overwhelming.

State experts recommend anything that can simplify the path forward, reduce duplicative requests, and minimize re-exposure to trauma.

RV Definition

The Columbia River Gorge National Scenic Area Management Plan advises that if a term is undefined, jurisdictions should rely on the Webster's Third New International Dictionary (2002) (pg. 258). The Management Plan, however, does define Camping or recreational vehicle as:

A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is (1) connected to a sewer system (including septic tank), water, and electrical lines, or (2) occupied on the same parcel for more than 60 days in any consecutive 12-month period.

This definition may permit a tiny home if it remains on a chassis and wheels, however would prevent a tiny home from being placed onto a foundation. Oregon law (ORS 215.490) requires that to meet the definition of recreational vehicle, it cannot be structurally immobile and must be titled with the Department of Transportation.

Planning staff is generally trained, as we implement regulations with RVs in the larger County, to understand both these definitions and apply them to the application.

Pre-Emptive Adoption of Ordinance

Written and verbal testimony proposed Wasco County could, and should, pre-emptively adopt an Ordinance stating we can directly implement regulations from the Management Plan. Friends of the Columbia Gorge themselves acknowledge that there are no current mechanism for counties to implement without amending our ordinance, consistent with 16 U.S.C. 544e(b). As Gorge Commission Staff Attorney Litwak stated, the suggestion of a blanket ordinance raises potential conflict with the ruling *Advocates for Effective Regulation v. City of Eugene*, 160 Or App 292 (1999).

Wasco County's attorney specializing in National Scenic Area issues will be providing comment as to their analysis on implementation. Their analysis, combined with our understanding of state law, the Management Plan, the National Scenic Act, and our own local ordinance has made it clear Wasco County has the need for the one time, emergency declaration that allows for direct implementation from the Management Plan while we complete the local legislative process consistent with our ordinance, state law, the Management Plan, and the Columbia River Gorge National Scenic Act.

Anticipating New Rules in Final Decisions

The suggestion that Wasco County can apply "Applying New Less-Stringent Regulations to Development Approved Under Prior National Scenic Area Regulations" in the Management Plan (page 258) misinterprets that provision. This provision allows counties some flexibility with interpretation of existing rules, and allows the County to apply Management Plan provisions where the local ordinance is more restrictive. It is not an early adoption mechanism, and there is no precedent or policy that suggests Wasco County can deviate from the common interpretation of this provision.

Wasco County's attorney specializing in National Scenic Area issues will be providing comment as to their analysis on this proposal. Their analysis, coupled with our own experience, results in the conclusion that Wasco County has the need for the one time, emergency declaration that allows for direct implementation from the Management Plan while we complete the local legislative process consistent with our ordinance, state law, the Management Plan, and the Columbia River Gorge National Scenic Act.

I would like to add that there was testimony that direct implementation is unprecedented for land use in the State of Oregon. In fact, Oregon jurisdictions are routinely used to implementing mandatory changes to state law, as the Department of Land Conservation and Development has authority for forbearance on local adoption, recognizing that the legislative process is time consuming and costly.

Thank you for the opportunity to provide additional testimony on the proposed disaster recovery modernization plan amendment. Wasco County appreciates the continued collaboration and support of Columbia River Gorge Commission staff, and the compassion and drive from the Commission to support our residents and property owners through recovery.

Thank you,

A handwritten signature in black ink, appearing to read "Kelly Howsley Glover". The signature is fluid and cursive, with the first name "Kelly" being the most prominent.

Kelly Howsley Glover, PhD
Wasco County Community Development Managing Director



Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

Community Services Division

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

December 3, 2025

Michael Mills, Commission Chair
Krystyna Wolniakowski, Executive Director
Columbia River Gorge Commission
PO Box 730
White Salmon, WA 98672
(provided by email to krystyna.wolniakowski@gorgecommission.org and
connie.acker@gorgecommission.org)



Greetings Chair Mills and Director Wolniakowski,

Thank you for the continued opportunity to comment on management plan rule revisions that address the disaster recovery needs of Oregonians in the National Scenic Area. Public comments provided at your November meeting were raised in a recent state-level Rowena sheltering and housing taskforce meeting, specifically those regarding an applicant's ability to demonstrate lawful establishment more than two years after suffering a loss. To ensure timely statewide coordination across departments and programs, the department wishes to add the following information to the Commission record.

DLCD supports county comments regarding record retention and replacement timelines. It would be atypical for any Oregon county to lose or terminate records of land use decisions and permits that approve dwellings outside of urban growth boundaries. Establishing a home on rural lands or in resource zones typically involves a land use decision and anything approved under Scenic Area rules would have a conditional use permit. Furthermore, county assessor records document structures by type, size, and value, twice annually for taxation. Building permits are not always retained in perpetuity, however, the land use compatibility statement (LUCS) process ensures coordination between planning and building programmatic requirements.

Scenarios and circumstances do exist across the state in which records of lawful establishment cannot be located. In most cases, this is due to the lack of lawful establishment or establishment prior to the existence of land use regulations. In the case of the latter, tax records would assist in the documentation of lawful establishment prior to land use permitting requirements. In the case of unlawful establishment, it will not matter if the landowner pursues replacement today, two years from now or ten years from now because a new land use approval will be required to lawfully establish the use.

If there is a desire to document lawful establishment of damaged structures at the time of disaster, a county could employ that strategy as part of their record keeping process to ensure a streamlined path forward for future replacement. **The department strongly encourages the commission to consider lessons learned following Oregon's catastrophic Labor Day fires and approve the proposed ten-year timeline for replacement dwellings and structures.**

In reviewing public comments received by the commission, the department wishes to also provide comments regarding implementing land use regulations directly from rule and amending the management plan outside of the formal plan review process.

As noted in our November comment letter, ORS 197.646 requires local governments to implement state statutes and administrative rules related to land use directly if they are in conflict with or are absent from local land use ordinances. Examples of instances in which state rules are less prescriptive or less restrictive than local rules and must be applied can be provided at the commission's request. The department encourages the commission to employ the adoption strategy that will most urgently assist affected residents while also honoring treaty rights and tribal consultation obligations of the National Scenic Area Act.

Commission Rule 350-50 specifies the plan amendment process the commission must adhere to when considering amendments to the management plan. Rule 350-05-020 notes the process is at the discretion of the commission and amendments can be made at any time that conditions have significantly changed. Rule 350-05-030 defines "significant change" and is pasted below. This rule does not indicate a temporal requirement for a qualifying change. Furthermore, it is our understanding the commission did not address this element of disaster recovery during its last formal plan review process. The department encourages the commission to pursue the proposed plan amendments as drafted by commission staff and in coordination with gorge county planning departments.

Coordination between the Oregon land use program and the National Scenic Area land use program is imperative for gorge Oregonians, communities, and resources. Thank you again for the opportunity to participate in your rulemaking process. Please contact Angie Brewer at angie.brewer@dlcd.oregon.gov if you have any additional needs or have any questions.

Sincerely,



Matthew Crall
Planning Services Division Manager

cc:

Gordon Howard, Community Services Division Manager, DLCD
Dr. Kelly Howsley Glover, Wasco County Community Development
Eric Walker, Hood River County Community Development
Margi Bradway, Multnomah County Community Development
Casey Gatz, USDA Forest Service Columbia River Gorge National Scenic Area Office
Angie Brewer, DLCD
Kelly Reid, DLCD
Susan Milhauser, DLCD

350-50-030. Criteria for Plan Amendment Approval.

The Commission must find the following criteria are satisfied before it approves an amendment to the Management Plan:

- (1) Conditions in the Scenic Area have significantly changed. This means:
 - (a) physical changes that have widespread or major impacts to the landforms, resources, or land use patterns in the Scenic Area;
 - (b) new information or inventory data regarding land uses or resources that could result in a change of a plan designation, classification, or other plan provision;
 - (c) changes in legal, social, or economic conditions, including those that affect public health, safety, or welfare, not anticipated in the Management Plan; or

- (d) a demonstrable mistake in the Management Plan that has resulted in significant impacts or that involves significant issues, such as, but not limited to, a land use guideline that is less protective of Gorge resources than the policies the guideline was intended to implement; a land use designation that does not conform to the corresponding designation policies; or two or more guidelines that cannot be reasonably reconciled.

December 4, 2025

Columbia River Gorge Commission
PO Box 730
White Salmon, WA 98672

Re: Management Plan Amendment to Clarify and Address Landowners' Needs for Disaster Recovery

Dear Commissioners:

As you may recall, our office assists Wasco County (County) on matters involving the Columbia River Gorge Commission. The County has asked us to:

- evaluate its procedural options for efficiently implementing the referenced proposal; and
- review comments submitted by Friends of the Columbia Gorge (FCG) regarding whether any portion of the amendment could take effect before local adoption.

Chapter 9 of the County's NSA LUDO governs the process for ordinance amendments. The County expressed to the Commission concern that, even after Secretarial concurrence, the additional six to ten months required to complete a Planning Commission hearing, two Board of County Commissioner meetings, a Gorge Commission hearing, and a second round of federal concurrence is unnecessary and burdensome for residents who need certainty in their recovery planning. See County Written Testimony Dated November 11, 2025. After reviewing Chapter 9, relevant federal and state law, and FCG's comments, we conclude that, under existing requirements, the County's Chapter 9 procedures remain the most streamlined and legally sound path for implementing the plan amendment. The early implementation theories raised by FCG do not provide a lawful alternative to local ordinance adoption.

1. Proceeding Under Existing Chapter 9 Procedures

Under the current Chapter 9 framework, the County may complete a compressed but fully compliant legislative process. The Planning Commission would hold its hearing and issue a recommendation, mailing the recommendation notice the same day. NSA-LUDO 9.080. Once the notice is mailed, LUDO 9.090 prohibits the Board of County Commissioners only from taking final action for twenty days; it does not require or restrict the timing of a Board hearing. Accordingly, the Board could hold its hearing during a joint session immediately following the Planning Commission



hearing or at any other point during the twenty-day period. The Board would then adopt the ordinance amendment on or after Day 21. See NSA-LUDO 9.080, 9.090, 9.100. At final adoption, the Board can make a finding under ORS 197.610(5) that the amendments do not implicate statewide planning goals or administrative rules.

After the Board adopts its ordinance amendment, LUDO 9.100 requires the County's final order to be provided to the Gorge Commission. Upon receipt, the Commission must schedule a hearing and take such action as may appear appropriate within ninety days, with approval deemed if no action is taken. LUDO 9.100. For amendments involving the Special Management Area, the Commission must then submit the amendment to the Secretary of Agriculture, who has an additional ninety days to concur, with concurrence deemed if no action is taken. *Id.* These federal review steps occur after the County completes its Chapter 9 process and do not limit the County's ability to use the compressed local process described above. This approach appears to preserve all procedural requirements while providing the most efficient option available under the County's code.

2. Code Amendment to Establish an Expedited Legislative Track

As a long term measure, the County may consider adopting a code amendment that creates an expedited legislative track for future Management Plan consistency updates. Such an amendment could allow the Board to adopt federally required consistency amendments directly, without a separate Planning Commission hearing. This would create a predictable and more efficient path under the code for future federally mandated updates.

3. Review of FCG's Proposals and Assertions

The County also asked us to evaluate FCG's comment regarding whether any Management Plan amendments could be applied before the County completes its Chapter 9 process. After reviewing the comments and the governing legal framework, we did not identify a legally supported basis for early implementation.

FCG begins by correctly noting that counties may not directly apply new Management Plan amendments in land use decisions upon Secretarial concurrence. FCG Written Testimony dated Oct. 30, 2025 – Supplemental Comments, at 2. They observe that no mechanism exists in the National Scenic Area Act, the Management Plan, state law, or county ordinances for immediate implementation by counties. *Id.*, at 2. This is consistent with Section 7(b) of the Act, 16 U.S.C. 544e(b), which requires counties to amend their land use ordinances before implementing Management Plan updates.

FCG also cites NSA-LUDO section 1.070 and asserts that more restrictive provisions in the plan amendment could be applied immediately because section 1.070 requires Wasco County to apply the more restrictive of two standards in land use decisions. FCG Written Testimony dated Oct. 30, 2025 – Supplemental Comments, at 2. However, section 1.070 operates as an interpretive rule that guides how the



County applies standards that are already enforceable under existing ordinance text. It does not create a mechanism for early applicability of new standards that have not yet been adopted into local code. The section presumes that the County has already incorporated the relevant provisions into its ordinance.

FCG further references NSA-LUDO section 2.030, which is the standard process for allowing landowners with existing approvals to seek review under newly adopted less restrictive regulations. We understand FCG to suggest that this process would be readily available and applicable for the County to directly apply new standards. FCG Written Testimony dated Oct. 30, 2025 – Supplemental Comments, at 3. Nonetheless, Section 2.030 is narrow in scope and applies only after the County has adopted the new standards into local code.

Finally, FCG suggests that counties could adopt a blanket ordinance that would automatically allow direct implementation of future amendments, and they note that such an ordinance could be adopted in advance, conditioned upon Secretarial concurrence. FCG Written Testimony dated Oct. 30, 2025 – Supplemental Comments, at 3. Although the Scenic Area Act does not expressly prohibit preparatory ordinances, any ordinance purporting to automatically incorporate the content of future Commission rules would raise significant prospective delegation concerns. We read the decision in *Advocates for Effective Regulation v. City of Eugene*, 160 Or App 292 (1999) to preclude a county from delegating future legislative authority to another entity, rendering automatic implementation of future Commission amendments vulnerable as a matter law.

In sum, the County's Chapter 9 procedures remain the most timely and legally sound path for adopting and implementing the plan amendment under existing procedural rules. A one-time emergency ordinance, supported by the Commission's temporary direction, can provide immediate, interim application of the new provisions, but permanent implementation under code requires completion of the Chapter 9 legislative process. As a longer-term measure, the County may also wish to consider a code amendment to streamline future federally required updates.

I appreciate your attention to this matter and your efforts to support counties in implementing Management Plan consistency amendments efficiently and in compliance with applicable procedural requirements.

Very truly yours,

Ty K. Wyman

cc: Wasco County



December 9, 2025

Columbia River Gorge Commission
P.O. Box 730
White Salmon, WA 98672
Via email to: publiccomment@gorgecommission.org

Re: Post-Hearing Comments on Proposed “Plan Amendment to Clarify and Address Landowners’ Needs for Disaster Recovery” (CRGC No. PA-25-01)

Dear Chair Miller and Gorge Commissioners:

Friends of the Columbia Gorge (“Friends”) submits the following comments regarding the above-referenced proposed plan amendment. These written comments primarily summarize Friends’ oral testimony at the Commission’s November 12, 2025 public hearing.

Friends deeply respects the balance the Commission must strike between disaster recovery and resource protection. Friends continues to generally support the proposed plan amendment, but some key changes to the proposal are needed. With a few careful adjustments, this plan amendment can provide the flexibility landowners need, while still upholding the structure and integrity of the Columbia River Gorge National Scenic Area Act. The suggestions below are intended to improve the proposal.

1. The Commission needs to define the minimum review process for temporary structures.

While the proposed plan amendment language would require the review of temporary structures, it would not define a required process for that review. Additionally, the Staff Report suggests that Wasco County could use a ministerial action, called “Type I (Ministerial/Nondiscretionary)” under the county code, to make such decisions. (Staff Report at 46.¹) But under Wasco County’s definition of Type I review, that would eliminate public notice and participation from the review process, thus precluding interested parties from receiving notice and commenting on proposed temporary structures.

In addition, there is no authorization in the NSA-LUDO for using Type I review for temporary structures. In order for a land use or development activity to be allowed in the National Scenic Area, that type of land use or development activity must be listed in the County’s or Gorge Commission’s National Scenic Area Land Use Ordinance as potentially allowable (e.g., as a conditional use, review

¹ All citations in this letter to the Staff Report are to the November 12, 2025 version of the Staff Report, available at

https://www.gorgecommission.org/images/uploads/meetings/Staff_Report_and_Text_-_Management_Plan_Amendment_for_Disaster_Recovery_-_2025.11.12.pdf.

use, expedited review use, or use allowed outright). If a land use or development activity is not so listed, it is prohibited. *See, Friends of the Columbia Gorge, Inc. v. Skamania County* (“*Nature Friends Northwest*”), CRGC No. COA-S-95-01 (Nov. 16, 1995) (If the National Scenic Area rules do not allow a use outright or through review, it is not permitted.); *also see*, NSA-LUDO § 1.080 (“No structure or premises in the Columbia River Gorge National Scenic Area portion of Wasco County shall hereafter be used or occupied and no part or structure or part thereof shall be erected, moved, reconstructed, extended, enlarged, or altered contrary to the provisions of this Ordinance.”).

Moreover, Wasco County’s ministerial approval would not even be legally available here. That can only be used when there are no approval standards to apply.² Here, the proposed plan amendment language in fact includes approval standards (*see, e.g.*, proposed guideline 4.C³), which would need to be applied and which would require the exercise of discretion by county decision makers.

Finally, there is no process in the NSA-LUDO for Type I permits so it is unclear what procedures would be followed by the County in Type I permitting. A ministerial process for reviewing and approving temporary structures is simply unavailable.

In its final order on the proposed plan amendment, the Commission should clarify that Wasco County’s ministerial process will not be available to review and approve temporary structures. In addition, the proposed plan amendment language should be revised to clarify the minimum required review procedures for temporary structures. For example, the Commission could apply the expedited review process (or a similar process) to such structures. Failure to make these changes would, in effect, authorize the counties to violate applicable law, frustrate public participation, and potentially lead to varying levels of resource protection among the counties.

2. A typographical error in the proposed plan amendment language involving the review process for recreational vehicles and temporary structures should be corrected.

The last sentence of proposed Guideline 4.C would apparently *require* the local government to approve the placement of recreational vehicles and temporary structures, whether they meet the approval standards or not: “The local government **shall** approve the placement of a recreational vehicle and temporary structure.” (Staff Report at 39 (emphasis added).)

That sentence should be changed to “The local government **shall review and may approve** the placement of **any** recreational vehicle and temporary structure.”

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² “These procedures are decided by the Director, or the Director’s designee without public notice or public hearing. They do not require interpretation or the exercise of policy or legal judgment in evaluating approval standards.” NSA-LUDO § 1.200 (definition of “Review Types”).

³ “The recreational vehicle and temporary structure shall be placed outside of resource sites and buffer zones on the subject parcel; must not require a permanent foundation or grading, including ground disturbing actions for placement of water, sewage disposal, or other infrastructure; and **shall comply with all applicable state and county requirements.**” (emphasis added).

3. Proposed replacements of structures destroyed by disaster should not be exempted from the Treaty Rights Protection Guidelines.

Friends is concerned about the treatment of tribal treaty rights under the proposal. The proposed plan amendment language for GMA/SMA Existing Uses and Discontinued Uses Guideline 1.W⁴ would expressly apply only the “Procedural Guidelines” of the expedited development review provisions to the review of replacement structures,⁵ but none of the substantive guidelines or approval standards of the expedited review provisions, to proposed replacements of structures destroyed by disaster. In other words, the proposed language would effectively exempt such projects from the “Resource and Treaty Rights Protection Guidelines” applicable to all other projects via the expedited review process.⁶ The result would be no criteria or procedures for ensuring that tribal treaty rights are protected and upheld.

Additionally, under existing law for the expedited development review process, if and when one or more tribes assert that their treaty rights would be violated, the process is supposed to revert to full review to ensure that those treaty rights are protected.⁷ However, under this proposal, counties and other decision makers would be free to ignore comments or objections from the tribes regarding potential violations of treaty rights, without providing any further public review process. This loophole in the proposed plan amendment language should be avoided.

The proposed plan amendment language should be revised to expressly apply the Treaty Rights Protection Guidelines⁸ of the expedited development review process to these types of projects. This change is necessary to satisfy section 17(a)(1) of the National Scenic Area Act, which prohibits interference with the tribes’ treaty rights and other rights.⁹

On a related note, the following language under Expedited Review Procedural Guideline 2.C in the existing Gorge Management Plan contains an obvious typographical error: “Comments received **by** a tribal government at any time during the expedited review process shall be considered, to ensure that the proposed development or use does not affect or modify the treaty or other rights of that tribe.” (Gorge Management Plan at 274 (emphasis added).) In that sentence, the word “**by**” should be changed to “**from**.”

⁴ “The following development may be reviewed using the expedited development review process, provided they comply with the resource protection and procedural guidelines listed below. * * * * W. Replacement of Existing Structures Destroyed by Disaster as provided [in] Existing Uses and Discontinued Uses GMA/SMA Guideline 3. Only the Procedural Guidelines apply to this use.” (Staff Report at p. 41.)

⁵ The “Procedural Guidelines” are found in the Gorge Management Plan at page 274.

⁶ These “Resource and Treaty Rights Protection Guidelines” are found in the Gorge Management Plan at pages 271 through 274.

⁷ “The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if a tribal government submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.” (Expedited Review Resource and Treaty Rights Protection Guideline 2 (Gorge Management Plan at 273–74).)

⁸ The “Treaty Rights Protection Guidelines” for expedited review are found in the Gorge Management Plan at pages 273 through 274.

⁹ “Nothing in [the National Scenic Area Act] shall . . . affect or modify any treaty or other rights of any Indian tribe.” 16 U.S.C. § 544o(a)(1).

4. The Staff Report fails to sufficiently identify and provide evidence of significant change in conditions within the National Scenic Area to justify the proposed plan amendment.

Pursuant to the National Scenic Area Act, the Gorge Management Plan may be amended only when “conditions within the scenic area have significantly changed.” 16 U.S.C. § 544d(h). Although Friends believes that conditions within the National Scenic Area have in fact significantly changed sufficient to justify changes to the disaster replacement rules in the Management Plan, the Staff Report fails to sufficiently identify and provide evidence of such significant change. Instead, the Staff Report does little more than allege that Commission Staff have newfound awareness and beliefs that these rules should be clarified and revised, and in circular fashion relies on this newfound awareness and beliefs as, itself, significant changes in conditions within the National Scenic Area. (*See* Staff Report at 8–15, 48.)

The Staff Report mentions the recent Rowena, Burdoin, and Tunnel 5 fires by name (*see* Staff Report at 8, 10, 14–17), but without providing context, information, or evidence about these fires and their impacts,¹⁰ and without considering whether these fires, themselves, represent a significant change in conditions within the National Scenic Area, and whether similar wildfires might occur in the National Scenic Area in the future.

Friends is concerned that adopting the approach to “significant change” recommended in the Staff Report would set a low bar for future proposed plan amendments, such that any time the Commission staff (or any other National Scenic Area permitting agency) believes a provision of the Management Plan should be clarified, such a belief, in and of itself, could be treated as a significant change—even if it would involve minimal (or no) changes to actual, on-the-ground conditions within the National Scenic Area. In this way, any potential change to the Management Plan identified as appropriate at any time by any National Scenic Area permitting agency could automatically constitute a significant change justifying a plan amendment.

To avoid these potential problems, any Commission final order adopting the proposed plan amendment should bolster the analysis of significant change by identifying and providing significant changes involving disasters and their impacts that have occurred, and are continuing to occur, in the National Scenic Area. This should be easy enough to do.

For example, the Commission could cite the increased frequency, risks, severity, and impacts of wildfires in the National Scenic Area as caused by climate change and other factors; the threat of potential resource impacts that could be caused by rebuilding development activity in the wake of the recent fires; and the expected impacts to the National Scenic Area agencies’ permitting system of these recent fires, with a large influx of development applications expected within the time limits set by current law unless those time limits are relaxed. There could be an analysis of the historical wildfire risk in the Gorge, how it has changed, and how Commission anticipates it might change into the future. There could be an analysis of the characteristics of the land and structures impacted by wildfires and other disasters, and how expected changes in the wildfire regime may cause future, ongoing impacts. At a minimum, the final order should evaluate whether, and by how much, the numbers of applications for disaster replacement buildings and structures have increased over time. Any and all of these factors

¹⁰ The Staff Report does state that “dozens of landowners and residents lost their homes and other structures, and more” in the Rowena and Burdoin fires. (Staff Report at 3.) But this statement is in the “Background” section of the Staff Report, not in the “significant change” portions of the Staff Report.

would likely constitute significant change, but are missing from the Staff Report; they should be included in any Commission final order.

5. The plan amendment should establish an efficient process for verifying legally existing structures.

The proposed ten-year timeframe for submitting applications for replacement structures raises an important procedural issue. Nearly ten years after a disaster occurs, it can be difficult to evaluate and verify whether structures were legally existing at the time of the disaster, and even more difficult to establish the details about such structures, such as the exact locations of former building footprints. The proposed plan amendment language does not provide any specific process or standards for making such verifications.

Applicants, who will have the burden of proof, will be required to prove all of this information. But the more time goes by, the less likely applicants may have access to evidence and information to meet these burdens. This could lead to more errors and contested decisions, as well as potential non-compliance scenarios and even impacts to resources. For everyone’s benefit, there should be a required mechanism for verifying the existence and details of legally existing uses on a shorter timeframe than ten years, with the relaxed ten-year period then applying to the start of construction for replacement buildings and structures.

6. The Commission should neither mandate nor authorize immediate, direct implementation by the counties of any newly adopted plan amendment language that would be less restrictive than county code language.

As required by the National Scenic Area Act’s legal framework, if this proposed plan amendment is adopted, it would be unlawful for the counties to immediately begin directly implementing the plan amendment language within their county land use decisions where the plan amendment language is less restrictive than a county code provision. Instead, a county would first need to implement the plan amendment language directly into the county code.

The Staff Report implicitly acknowledges this, where it says that requiring the counties to directly implement the entirety of the plan amendment immediately upon its adoption would be a “departure from the regulatory structure” of the National Scenic Area Act. (Staff Report at 31.) Yet the Staff Report recommends that the Commission should nevertheless mandate the counties to immediately begin implementing the plan amendment, even though there is no lawful mechanism for doing so. (Staff Report at 30–32.)

In the Staff Report, and at the November 12, 2025 hearing, Commission Staff attempted to distinguish this proposed plan amendment based on the fact that it was borne of emergencies. (*See* Staff Report at 31.) Unfortunately, as compelling as that may sound, there is no basis in the law for any exceptions specifically for emergencies. The standard, lawful, required process is for the counties to adopt any new regulatory language into their county codes before implementing it, pursuant to the National Scenic Area Act. *See* 16 U.S.C. § 544e(b).¹¹

¹¹ This legal issue is not a problem for Gorge Commission land use decisions, because the Management Plan is the Gorge Commission’s own document, which gives the Commission lawful authority to directly implement the Plan in its land use decisions. *See, e.g.*, 16 U.S.C. § 544e(a) (“The

For Wasco County (the only known county where these legal issues may be currently presented), the best solution is for the County to begin its implementation process as soon as possible. For example, as soon as the plan amendment is adopted, Wasco County could quickly adopt a one-sentence ordinance that says it will directly implement the language of the plan amendment while the county works to integrate all of the plan amendment language into the code. At the November 12, 2025 hearing, Wasco County’s Community Development Director explained that the County could complete its process for any ordinance (especially including a one-sentence ordinance) within three months.¹² That timeline could allow for the Gorge Commission to approve a Wasco County ordinance at its March 2026 meeting, or shortly thereafter at a special meeting. The Secretary of Agriculture could concur shortly afterwards—a realistic scenario of approximately four months from start to finish for a Wasco ordinance.

In addition, for any landowner who wants to apply now and then enjoy the benefits of Wasco County’s changes in the law adopted later, there is already a process in place for people to apply for changes to their land use approvals if and when the law changes in Wasco County. *See, e.g.*, Wasco County National Scenic Area Land Use and Development Ordinance at § 2.030 (“A landowner may submit a land use application to alter conditions of approval for an existing use or structure approved under prior Scenic Area regulations . . . subject to the following standards . . .”).¹³ Thus, the practical impacts to landowners of a four-month process for Wasco County’s implementation would be minimal.

There is no lawful basis for forcing (or even authorizing) counties to immediately and directly implement less restrictive provisions of the Plan Amendment in their land use decisions. The Commission’s final order should either stay silent on this issue or should explain that only more restrictive provisions of the Plan Amendment will apply immediately to county land use decisions. To decide otherwise would be unlawful and would establish an adverse precedent for future plan amendments that adopt less restrictive provisions.

Conclusion

Thank you for your time, for your thoughtful attention to these issues, and for your continued stewardship of the Columbia River Gorge. Friends appreciates the opportunity to submit these supplemental comments.

Sincerely,



Steven D. McCoy
Staff Attorney



Nathan Baker
Senior Staff Attorney

non-Federal lands within the scenic area shall be administered by the Commission in accordance with the management plan . . .”).

¹² According to Wasco County’s Community Development Director, this would allegedly include several weeks to publish notice in the newspaper. There was no explanation of why that step would take several weeks.

¹³ This process is also available, and will continue to be available, to the numerous Wasco County landowners who have already filed applications under current Wasco County law to replace buildings and structures destroyed by the Rowena fire.