

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