



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,



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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.