



# 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](http://www.oregon.gov/LCD)

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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](mailto:krystyna.wolniakowski@gorgecommission.org) and  
[connie.acker@gorgecommission.org](mailto: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](mailto: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.