



## **FRIENDS OF THE COLUMBIA GORGE**

March 22, 2019

Co-Chair Senator Taylor

Co-Chair Rep. Reardon

Members of the Ways and Means Subcommittee on Natural Resources

**RE: HB 5009 - Support funding for the Columbia River Gorge Commission**

Dear Co-Chairs and Members of the Subcommittee:

Thank you for the opportunity to comment in support of funding for the Columbia River Gorge Commission.

Friends of the Columbia Gorge (“Friends”) is a nonprofit group with 7,000 members dedicated to protecting the scenic beauty and the natural and cultural heritage of the Columbia River Gorge for our children and future generations. Our members live, work and recreate within the Columbia River Gorge.

The Columbia River Gorge National Scenic Area is a natural scenic treasure and also home to nearly 70,000 people in Oregon and Washington. It is protected by the Columbia River Gorge National Scenic Area Act. The primary purpose of the Scenic Area Act is to protect and enhance the scenic, natural, cultural and recreation resources of the Columbia River Gorge. The second purpose is to support the economy by encouraging economic growth to occur in existing urban areas and to take place in a manner consistent with resource protection.

Friends supports the Columbia River Gorge National Scenic Area Act, the corresponding Columbia River Gorge Compact between Oregon and Washington (ORS 196.150 and RCW

43.97.015, respectively) and also supports full funding for the Columbia River Gorge Commission (“Commission”), including funding for an additional planner.

### **What is the Columbia River Gorge Commission?**

The Columbia River Gorge Commission was created by the states of Oregon and Washington with the consent of Congress in 1987. Its primary mission is to protect and enhance the scenic, natural, cultural and recreational resources of the Columbia River Gorge National Scenic Area. The National Scenic Area was created in 1986 by an act of Congress and signed into law by President Ronald Reagan.

There are thirteen members on the Commission. Six are appointed by the counties along the Columbia River Gorge, three by the Governor of Oregon and three by the Governor of Washington. Two of the six Governor’s appointees must reside within the National Scenic Area. This ensures a strong local voice in the administration of the National Scenic Area Act. In addition, there is one ex-officio, nonvoting member of the Commission from the United States Forest Service.

The Columbia River Gorge Compact (ORS 196.150 and RCW 43.97.015) is the law that joins the states of Oregon and Washington in a partnership to protect the Columbia River Gorge by jointly carrying out their requirements under the National Scenic Area Act. The Compact incorporates the Columbia River Gorge National Scenic Area Act into state law by reference. The state legislatures of Oregon and Washington jointly fund the Commission pursuant to the Compact, which calls on the state legislatures to provide funding necessary to fulfill the powers and duties imposed upon and entrusted to the Commission. Oregon and Washington must equally fund the Commission and the lower amount controls.

This year, the Oregon State Legislature will consider HB 5009, the proposed 2019-2021 budget for the Commission, which would provide funding for critical conservation programs in the Columbia River Gorge. In particular, it will fund the Gorge Commission’s review and revision of the National Scenic Area Management Plan, improve consultation with the Columbia River Basin treaty tribes, ensure that increased recreation and tourism helps the Gorge economy and does not harm sensitive Gorge resources, and protect the economy of the Gorge by encouraging growth in existing urban areas.

### **The Columbia River Gorge deserves strong protections**

As the only sea-level passage through the Cascade Mountain range, the Gorge contains five distinct ecosystems, 16 species of wildflowers found nowhere else in the world, and boasts the largest concentration of waterfalls in North America. The Gorge provides habitat to many sensitive fish and wildlife species, including 12 salmonids listed under the federal Endangered Species Act. The Columbia River Gorge has been home to Native Americans for more than 10,000 years, is rich in cultural resources and is subject to tribal treaty rights. As a tourism and recreation mecca, millions of visitors flock to the Gorge every year to enjoy its natural scenic beauty, abundant recreation opportunities, wineries and distinct communities. The primary role of the Gorge Commission is to protect and enhance the scenic, natural, cultural and recreation resources consistent with the requirements of the National Scenic Area Act.

### **Support funding for the Gorge Commission**

Friends of the Columbia Gorge supports increasing funding for the Commission to enable it to perform its mandatory functions. HB 5009 provides necessary funding for the Commission to fulfill its required functions. As introduced, it would appropriate \$1,356,856 for Oregon's share of the Commission's operating expenses. This is a step in the right direction, as the Commission is in need of an additional planner to help perform short and long-term planning tasks and enforcement duties.

### **The mandatory functions of the Commission:**

- 1) Protect and enhance the scenic, natural, cultural and recreation resources of the Columbia River Gorge.
- 2) Protect and support the economy of the Gorge in a manner consistent with resource protection.
- 3) Use mandatory enforcement authority to remedy violations in all six counties within the National Scenic Area.
- 4) Update its inventories for sensitive, threatened and endangered fish, wildlife and plants.
- 5) Improve water resource protection for salmon and steelhead habitat.
- 6) Develop a cumulative effects monitoring system, which the Commission does not currently have.
- 7) Provide ongoing technical assistance to the counties to ensure accurate implementation of the scenic area development standards and fair treatment for landowners.
- 8) Consult with treaty tribes and protect treaty rights.

- 9) Support efforts to link communities in the Gorge to recreation sites through a series of trails.
- 10) Complete review and revision of the National Scenic Area management plan at least every ten years. The National Scenic Area Act requires review of the management plan every ten years. This review is five years behind schedule due to insufficient funding. The management plan was adopted in 1991 and has been reviewed once in 28 years. Many of the resource protection and land use planning provisions are based on resource inventories, science and policies that are more than 26 years old and are out of date. For example, there is not one mention of climate change in the entire plan.

### **Lack of Enforcement**

While Friends supports the Governor's budget for the Commission, we are very concerned that the Gorge Commission is not carrying out its mandatory duty to enforce violations of Gorge protection laws.

For the past several years, the Commission has not performed its mandatory duties to monitor land use activities in the counties and ensure compliance throughout the National Scenic Area. Instead of using its broad enforcement and civil penalty authority over major violations, it has attempted to pass these responsibilities on to citizens and to the gorge counties that possess far less authority.

The ongoing violations are large in scale and involve significant resource damage. In the case of an unpermitted quarry near Steigerwald Lake National Wildlife Refuge, the quarry continues to operate without a valid permit and in violation of a 1997 consent decree signed by the Commission. Surrounding landowners have repeatedly asked the Commission staff to enforce against these violations, including 200 gravel trucks per day driving down a residential road. Yet no action has been taken by the Commission. The Commission alone has the authority to enforce this consent decree. The Oregon Legislature provided \$259,200 for enforcement related activities to the Commission in the 2017-2019 agency budget.

The Columbia River Gorge National Scenic Area Act requires the Commission to monitor land use activities in the National Scenic Area and to ensure compliance. 16 U.S.C. 544m(a)(1). The Commission staff are required to investigate alleged violations. Commission Rule 350-30-020(1) ("The Director *shall* investigate alleged violations of the measures listed in subsection 1 of 350-30-015 of this Division." (emphasis added)). In addition, the Commission staff are required to issue a notice of violation when presented with evidence of a violation. Commission

Rule 350-30-030(1) (“If the violation is not de minimis, the Director *shall* serve written notice of violation on the alleged violator by personal service or by registered or certified mail.” (emphasis added)).

The Commission staff are also authorized to “issue a summary order requiring the alleged violator to promptly stop work or take other necessary action pending a notice of alleged violation” if “an imminent threat exists to resources protected under the law and/or to public health, safety or welfare.” Commission Rule 35-30-100. Finally, if necessary to ensure compliance, the Commission has authority to assess civil penalties and to institute civil actions for injunctive relief. 16 U.S.C. 544m(a)(3), 544m(b)(1)(B).

**Friends requests that the subcommittee provide direction and funding to the Gorge Commission to prioritize enforcement against violations of the National Scenic Area Act by implementing Commission Rule 350-30.**

Thank you very much for your interest in protecting the Columbia River Gorge and for providing funding to the Commission so it may carry out these important functions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Lang".

Michael Lang

Conservation Director