



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Columbia River Gorge Commission

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: February 10, 2004

(2) Purpose: The purpose of this rule is to define the process by which the Gorge Commission certifies economic development grants and loans, awarded by the Washington and Oregon investment boards, as consistent with the federal Columbia River Gorge National Scenic Area Act, the management plan, and land use ordinances adopted pursuant to the Act. This rule amendment establishes an expedited certification process for certain types of economic grants and loans. The amendment allows the Executive Director of the Gorge Commission to certify these grants and loans, rather than the full Gorge Commission, saving several weeks for applicants.

(3) Citation of existing rules affected by this order:

Repealed: none
 Amended: 350-120-010, 020, 030, 040
 Suspended: none

(4) Statutory authority for adoption: RCW 43.97.015

Other Authority: ORS 196.150; 16 U.S.C. § 544i

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-01-020 on 12/8/2003 (date).

Describe any changes other than editing from proposed to adopted version: none

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

- Yes
 - No
- If Yes, explain:

(6) Effective date of rule:

Permanent Rules

- 31 days after filing
- Other (specify) 4/1/2004*

Emergency Rules

- Immediately
- Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)

Nancy A. Andring

Signature

Title

Rules Coordinator

Date

2/23/04

CODE REVISER USE ONLY

FILE

W

FEB 25 2004

TIME 3:43

WSR 04-06-033

FILE

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>2</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>1</u>	Amended	<u>4</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>3</u>	Amended	<u>4</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

AMENDATORY SECTION

350-120-010. Authority.

Section 11(c)(1) of the Scenic Area Act requires the Commission to certify all activities undertaken under a National Scenic Area economic development grant and/or loan are consistent with the purposes of the Act, the management plan, and land use ordinances adopted pursuant to the Act.

The Scenic Area Act states as follows:

§ 544i. Economic development

~~(a) Economic development plan.~~ Based on the Economic Opportunity Study and other appropriate information, each State, in consultation with the counties and the Commission, shall develop a plan for economic development projects for which grants under this section may be used in a manner consistent with this Act.

~~(b) Funds provided to States for grants.~~ Upon certification of the management plan, and receipt of a plan referred to in subsection (a) of this section, the Secretary shall provide \$5,000,000 to each State which each State shall use to make grants and loans for economic development projects that further the purposes of this Act.

~~(c) Conditions of grants.~~ Each State making grants under this section shall require as a condition of a grant that—

- ~~(1) all activities undertaken under the grant are certified by the Commission as being consistent with the purposes of the Act, the management plan, and land use ordinances adopted pursuant to this Act;~~
- ~~(2) grants and loans are not used to relocate a business from one community to another;~~
- ~~(3) grants and loans are not used for program administration; and~~
- ~~(4) grants and loans are used only in counties which have in effect land use ordinances found consistent by the Commission and concurred on by the Secretary pursuant to section 8 of this Act [16 USCS § 544f].~~

~~(d) Report.~~ Each State shall—

- ~~(1) prepare and provide the Secretary with an annual report to the Secretary on the use of the funds made available under this section;~~
- ~~(2) make available to the Secretary and to the Commission, upon request, all accounts, financial records, and other information related to grants and loans made available pursuant to this section; and~~
- ~~(3) as loans are repaid, make additional grants and loans with the money made available for obligation by such repayments.~~

16 USCS § 544i.

NEW SECTION

350-120-015. Definitions.

For the purpose of this rule, the following definitions apply:

(1) “Activity” refers to the specific proposed action for which the grant or loan is being sought.

(2) “Project” refers to the ultimate business enterprise, development, and/or land use for which the activity supports or is a component part.

AMENDATORY SECTION

350-120-020. Application for Certification.

- (1) The applicant shall submit one complete application to the Executive Director of the Commission.
- (2) A complete application shall include:
 - (a) One complete copy of the application materials required by the state agency administering the grant or loan program, excluding confidential financial information;
 - (b) If the proposed project will be located entirely or partially within the general management area or special management area one complete copy of a Scenic Area land use ordinance development review decision, issued by the applicable county planning director, approving the proposed project as consistent with the ordinance requirements, or a copy of a letter from the applicable county planning director stating why the proposed project does not require review under the county's Scenic Area land use ordinance;
 - (c) One completed application for certification form, available from the Gorge Commission and/or the state agencies administering the grant or loan program. The form shall include the following information:
 - (A) applicant's name and business address;
 - (B) description of proposed project and activity for which a Scenic Area grant or loan is sought;

- (C) legal description and map of the specific location of proposed project; if project has multiple or regional locations, these should be identified;
 - (D) description of the existing use of the property or properties on which the project will be located and/or used;
 - (E) a statement setting forth any local, state or federal permits required and a report on their status; and
 - (F) signature of applicant and property owner if, different from applicant.
- (d) One copy of each of any state and federal environmental permits that have been issued for the proposed project. If permits have not been received, copies of permit applications shall be submitted instead.
- (3) The Director shall review the application and determine if it is complete. If it is not complete, the applicant is required to submit the additional information requested by the Director. Once the Director determines the application is complete, the process of staff analysis shall begin.

NEW SECTION

350-120-025. Certification Procedures.

All applications for certification shall follow either the process in 350-120-030 through 040 or the process in 350-120-050.

AMENDATORY SECTION

350-120-030. Recommendation of the Director.

- (1) In making a recommendation on a proposed grant or loan the Director shall:
- (a) Consult with the applicant and such agencies as the Director deems appropriate;
 - (b) Consider information submitted by the applicant and all other relevant information available;
- (2) The Director shall recommend a grant or loan for certification only if it is consistent with the purposes of the Act, the management plan and land use ordinances adopted pursuant to the Act.
- (3) Within ~~15 working~~ 21 days of acceptance of the application as complete, the Director shall issue a report setting forth the recommendation and the basis for it.

(4) The Director shall mail a copy of the decision report to the applicant, Gorge Commissioners, the Forest Service, the States of Oregon and Washington, the Indian Tribes with treaty rights in the Scenic Area, and the planning director of the applicable county or city.

AMENDATORY SECTION

350-120-040. Review and Decision by Commission.

(1) The Commission shall review the recommendation and report of the Director at a scheduled meeting. Public comment shall be allowed.

(2) The Commission may request further information at the meeting if it is deemed relevant to its decision.

(3) At the first Commission meeting occurring five (5) or more working days of after issuance of the Director's report, the Commission shall make a decision on the grant or loan, as follows:

- (a) approve the request, certifying the grant or loan is consistent with the purposes of the Act, the management plan and land use ordinances adopted pursuant to the Act;
- (b) approve the request contingent upon approval of certain required state and/or federal environmental permits;
- (c) defer the decision, pending receipt of further information; or
- (d) deny the request, stating that the grant or loan is not consistent with the purposes of the Act, the management plan and land use ordinances adopted pursuant to the Act.

(4) The Director shall notify the applicant, and the applicable state investment board of the Commission's decision.

NEW SECTION

350-120-050. Expedited Certification.

(1) The Executive Director of the Gorge Commission may issue a decision for a certification application that meets all of the following criteria. The Executive Director may, at his or her discretion, require an application be reviewed pursuant to 350-120-030 and 040 above.

- (a) The project and activity shall not involve ground disturbance or changes to structures that are 50 years old or older;

(b) The project shall be located wholly within an Urban Area;

(c) The project and activity shall be consistent with the economic development policies in the Management Plan

(d) The project and activity shall be consistent with the Economic Development Plans for Oregon and Washington as amended from time to time by the states consistent with Section 11 (a) of the Scenic Area Act;

(e) The project shall not involve relocation of a business from one National Scenic Area community to another;

(f) The activity shall not involve program administration; and

(g) The project shall occur only in counties that have in effect land use ordinances found consistent by the Commission and concurred on by the Secretary.

(2) In making a decision to certify a proposed grant or loan the Director shall:

(a) Consult with the applicant and such agencies as the Director deems appropriate, and

(b) Consider information submitted by the applicant and all other relevant information available.

(3) The Director shall approve a grant or loan for certification only if it is consistent with the purposes of the Act, and the management plan.

(4) Within 14 days of acceptance of the application as complete, the Director shall issue a decision along with findings of fact and conclusions of law setting forth the basis for the decision.

(5) The Director shall mail a copy of the decision to the applicant, the Forest Service, the States of Oregon and Washington, the Indian Tribes with treaty rights in the Scenic Area, the planning director of the applicable county or city, and any person who requests a copy of the decision.

(6) The Executive Director shall prepare periodic summaries of the certifications approved through this expedited process for submission to the Gorge Commission.