

CERTIFICATE AND ORDER

FOR FILING

PERMANENT

ADMINISTRATIVE RULES WITH THE OFFICE OF THE CODE REVISER

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on May 8, 1990, by the Columbia River Gorge Commission to become effective upon filing.

The within matter having come before the Columbia River Gorge Commission after all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises.

Notice of Intended Action in Code Revisers Register

No _____ Yes X

NOW THEREFORE, IT IS HEREBY ORDERED that the following action to be taken:

Amended: 350-20; 350-16

as Administrative Rules of the Columbia River Gorge Commission

DATED this 15th day of May, 1990.

By: Richard P. Benner

Title: Richard P. Benner, Executive Director

Statutory Authority: RCW 43.97.015 to 43.97.035, Chapter 499, Washington Laws 1987

For Further Information Contact: Richard P. Benner, Executive Director, (509) 493-3323.

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAY 17 1990

TIME: 2:35 AM
WSR 90-4-085

COLUMBIA RIVER GORGE COMMISSION

350-16

350-16-024. Commission Record for Review.

(1) Within thirty days after service of a petition for judicial review, or within further time allowed by the court, the commission shall transmit to the court the original or a certified copy of the commission record specified in 350-16-020.

(2) The commission may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay this cost to the commission relieves the commission from the responsibility for preparation of the record and transmittal to the court. For the purposes of this paragraph, a nonindigent person is one whose income is more than 130 percent of the poverty income guidelines published in the Federal Register by the U.S. Department of Health and Human Resources.

COLUMBIA RIVER GORGE COMMISSION

**Chapter 350
Division 16**

Administrative Rules

With Amendments of January 9, 1990

350-16-001. Commission Required to Prepare Public Writings in Readable Form.

(1) The commission shall when reasonable prepare its public writings in simple language with short, precise, affirmative, active-voice sentences.

(2) As used in this section, "public writing" means any rule, form, license or notice prepared by the commission.

350-16-002. Definitions for 350-16-002 to 350-16-018.

(1) "Commission" means the Columbia River Gorge Commission or any officer authorized by the commission to make rules or to issue orders.

(2) (a) "Contested case" means a proceeding before the commission:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after a hearing at which such specific parties are entitled to appear and to be heard:

(B) Where the commission has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing.

(b) "Contested case" does not include proceedings in which any commission decision rests solely on the result of a test.

(3) "Economic effect" means the costs of compliance with a rule for businesses including but not limited to the costs of equipment, supplies, labor and administration.

(4) "License" includes the whole or part of any commission permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(5) (a) "Order" means any commission action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of the commission. "Order" includes any commission determination or decisions issued in connection with a contested case proceeding.

(b) "Final order" means final commission action expressed in writing. "Final order" does not include any tentative or preliminary commission declaration or statement that:

(A) Precedes final commission action; or

(B) Does not preclude further commission consideration of the subject matter of the statement or declaration.

(6) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the commission;

(b) Each person or agency named by the commission to be a party; or

(c) Any person requesting to participate before the commission as a party or in a limited party status which the commission determines either has an interest in the outcome of the commission's proceeding or represents a public interest in such result.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the commission.

(8) "Rule" means any commission directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within the commission, between its officers or between employees.

(b) Action by commission directed to other agencies or other units of government which do not substantially affect the interests of the public.

- (c) Declaratory rulings.
- (d) Intra-agency memoranda.

(9) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses which has 50 or fewer employees.

350-16-003. Description of Organization; Service of Order; Effect of Not Putting Order in Writing.

(1) In addition to other rulemaking requirements imposed by law, the commission shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) An order shall not be effective as to a person or party unless it is served upon him either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(3) An order is not final until it is reduced to writing.

350-16-004. Notice Requirements for Rule Adoption; Temporary Rule Adoption, or Amendment; Substantial Compliance Required.

(1) Prior to the adoption, amendment or repeal of any rule, the commission shall give notice of its intended action:

- (a) In the manner established by rule adopted by the commission, which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;
- (b) In the Oregon bulletin and Washington register at least 20 days prior to the commencement of any commission action; and
- (c) No later than three days after publication in the register and bulletin, to persons who have requested notice pursuant to subsection (7) of this section.

(2)(a) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The commission shall include with the notice of intended action given under subsection (1) of this section:

- (A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;
- (B) A statement of the need for the rule and a statement of how the rule is intended to meet the need;
- (C) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;
- (D) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.
- (E) A statement of the anticipated effects of the proposed rule;
- (F) A statement whether the rule is necessary as a result of federal law or a court decision;
- (G) An indication of the person or persons proposing the rule;
- (H) The date on which the commission intends to adopt the rule; and
- (I) The commission personnel responsible for implementation and enforcement of the rule, with office location and telephone number.

(3) When the commission proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views at a public hearing. The commission shall consider fully any written or oral submission.

(4) Upon request of an interested person received within 15 days after commission notice pursuant to subsection (1) of this section, the commission shall postpone the date of its intended

action no less than 10 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude the commission from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, the commission may adopt or amend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the commission prepares:

- (a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interests of the parties concerned and the specific reasons of its findings of prejudice;
- (b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;
- (c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and
- (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspections.

(6) A rule adopted or amended under subsection (5) of this section is temporary and may be effective for a period of not longer than 90 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(7) Any person may request in writing that the commission mail to the person copies of its notice of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the commission shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. The commission may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(8) This section does not apply to public contracts and purchasing.

(9) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted.

(10) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

350-16-005. Procedure for Commission Adoption of Federal Rules.

(1) Notwithstanding 350-16-004, when the commission is required to adopt rules or regulations promulgated by an agency of the Federal Government and the Agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the commission shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation and the subject matter of the rule or regulation in the manner established in 350-16-004(1).

(3) After giving notice the commission may add to the rule or regulation by filing a copy with the Oregon Secretary of State and the Washington Code Reviser. The commission is not required to conduct public hearings concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes the commission to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearings as required by 350-16-004.

350-16-006. Filing and Taking Effect of Rules; Filing of Executive Orders; Copies.

(1)(a) The commission shall file in the office of the Oregon Secretary of State and Washington Code Reviser a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the commission adopting a rule incorporating published standards of reference is not required to file a copy of those standards with the Oregon Secretary of State or the Washington Code Reviser if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule identifies the location of the standards to be incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon the expiration of 30 days after the date of filing as required by subsection (1) of this section, except that:

- (a) If a later effective date is required by constitution, statute or court order, the later date is the effective date.
- (b) If a different effective date is specified in the rule and the commission finds that action is necessary because of imminent peril to public health, safety or welfare, the specified date is the effective date.
- (c) A temporary rule becomes effective upon filing with the Oregon Secretary of State and Washington Code Reviser, or at a designated later date, only if the statement required by 350-16-004(5) is filed with the rule. The commission shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by the commission, the commission shall file a certified copy of the amendment or notice of repeal with the Oregon Secretary of State and Washington Code Reviser.

(4) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if the commission, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the commission may rely upon such decision in disposition of later cases.

350-16-007. Petitions Requesting Adoption of Rules.

An interested person may petition the commission requesting the promulgation, amendment or repeal of a rule. The commission shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 30 days after the date of submission of a petition, the commission shall deny the petition in writing or shall initiate the rulemaking proceedings. If the commission denies the petition it shall set forth in writing its reasons for doing so.

350-16-008. Notice to Party Before Hearing of Rights and Procedure; Legislative Findings; Failure to Provide Notice.

(1) Citizens have a right to be informed as to the procedures by which contested cases are heard by the commission, their rights in hearings before the commission, the import and effect of hearings before the commission and their rights and remedies with respect to actions taken by the commission. Accordingly, it is the purpose of subsections (2) to (4) of this section to set forth certain requirements of the commission so that citizens shall be fully informed as to these matters when exercising their rights before the commission.

(2) Prior to the commencement of a contested case hearing before the commission, the commission shall inform each party to the hearing of the following matters:

- (a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.
- (b) The manner of making the record and its availability to the parties.
- (c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the commission.
- (d) Whether an attorney will represent the commission in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.
- (e) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, whether the person presiding at the hearing is or is not an employee, officer or other representative of the commission and whether that person has the authority to make a final independent determination.
- (f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.
- (g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the commission and the hearing reopened.
- (h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the commission to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(i) A description of the appeal process from the determination or order of the commission.

(3) The information required to be given to a party to a hearing under subsections (2) and (3) of this section may be given in writing or orally before commencement of the hearing.

(4) The failure of the commission to give notice of any item specified in subsections (2) and (3) of this section, shall not invalidate any determination or order of the commission unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the commission for a reopening of the hearing and shall direct the commission as to what steps it shall take to remedy the prejudice to the rights of the complaining party.

350-16-009. Notice, Hearing and Record in Contested Cases; Informal Dispositions; Hearings Officer; Statement of Ex Parte Communications.

(1) In a contested case hearing, all parties shall be afforded an opportunity for hearing after notice of not less than 20 days, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) The commission may adopt rules of procedure governing participation in contested cases by person appearing as limited parties.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the commission. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance

of the order, and if the order is based only on material included in the application or other submissions of the party, the commission may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested. The commission shall serve a default order upon the defaulted party or the party's attorney, if any.

(7) Within seven days after service of a default order under subsection (6) of this section, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness form when received. The officer presiding at the hearing shall administer oaths or affirmatives to witnesses.

(9) A presiding officer who receives an ex parte communication during the pendency of a proceeding shall place on the record of the proceeding all written communications received, all written responses to the communications and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record.

(10) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.

(11) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

- (f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.
- (g) Proposed findings and exceptions.
- (h) Any proposed, intermediate or final order prepared by the commission or a hearings officer.

(12) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The commission may charge the party requesting transcription, unless the party files an appropriate affidavit of indigency.

350-16-010. Presiding Officer - Disqualification, Substitution.

(1) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(2) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(3) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the commission.

350-16-011. Interpreter for Handicapped Person in Contested Case.

(1) When a handicapped person is a party to a contested case, the handicapped person is entitled to a qualified interpreter to interpret the proceedings to the handicapped person and to interpret the testimony of the handicapped person to the commission.

(2)(a) Except as provided in paragraph (b) of this subsection, the commission shall appoint the qualified interpreter for the handicapped person; and the commission shall fix and pay the fees and expenses of the qualified interpreter if:

(A) The handicapped person makes a verified statement and provides the information in writing under oath showing the inability of the handicapped person to obtain a qualified interpreter, and provides any other information required by the commission concerning the inability of the handicapped person to obtain such an interpreter; and

(B) It appears to the commission that the handicapped

person is without means and is unable to obtain a qualified interpreter.

- (b) If the handicapped person knowingly and voluntarily files with the commission a written statement that the handicapped person does not desire a qualified interpreter to be appointed for the handicapped person, the commission shall not appoint such an interpreter for the handicapped person.
- (3) As used in this section:
 - (a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the handicapped person, or is incapable of presenting or assisting in the presentation of the defense of the handicapped person, because the handicapped person is deaf, or because the handicapped person has a physical hearing impairment or physical speaking impairment.
 - (b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the commission.

350-16-012. Depositions or Subpoena of Material Witness; Discovery.

(1) On petition of any party to a contested case, the commission may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in Oregon or Washington and is unwilling to appear, the commission may issue a subpoena, requiring his appearance.

(2) On petition of any party to a contested case the commission may order that the party be allowed an opportunity to visit the property that is the subject of a hearing before the commission. The petition shall set forth the name, address and telephone number of the person or persons who will visit the property and a showing of the materiality of the evidence to be obtained from the visit. The applicant, the owner of the property or a representative shall be entitled to accompany the petitioning party while on the property and shall be given access to any written report or notes from the site visit prepared for the petitioning party that is not subject to protection under the attorney-client privilege.

(3) The commission may allow petitions to take depositions, for subpoenas, admissions or other forms of discovery prescribed by law in civil actions upon a showing of necessity and unavailability by other means. In determining whether to allow the discovery the commission shall consider:

- (a) Whether all parties are represented by counsel;
- (b) Whether undue expense or delay in bringing the matter to hearing will result;
- (c) Whether the discovery will promote the orderly and prompt conduct of the proceeding; and
- (d) Whether the interests of justice will be promoted.

350-16-013. Subpoenas in Contested Cases.

(1) The commission shall issue subpoenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. A party, other than the commission, entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the commission, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court or superior court of any county, on the application of the commission or of a designated representative of the commission or of the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

350-16-014. Evidence in Contested Cases.

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude commission action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. The commission shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to an except as provided in subsection (4) of this section no other factual

information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the commission.

(4) The commission may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and the sources of the materials and they shall be afforded an opportunity to contest the facts so noticed. The commission may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(6) The commission may, at its discretion, be represented at the hearings by the Attorney General of Washington or Oregon.

350-16-015. Examination of Evidence by Agency in Contested Cases.

Whenever in a contested case a majority of the officials of the commission who are to render the final order have not heard the case or considered the record, the order, if adverse to party other than the commission itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision.

350-16-016. Commission Statement of Ex Parte Communications; Notice.

Any commissioner who receives an ex parte communication during the pendency of a proceeding shall place on the record of the proceeding all written communications received, all written responses to the communications and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the commissioner received an ex parte communication. The commissioner shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte

communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record.

350-16-017. Proposed Order by Hearings Officer; Amendment by Commission; Exemptions.

(1) Except as otherwise provided in subsections (1) to (3) of this section, unless a hearings officer is authorized or required by law or commission rule to issue a final order, the hearings officer shall prepare and serve on the commission and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the commission within that period issues an amended order.

(2) The commission may be rule specify a period of time after which a proposed order will become final that is different from that specified in subsection (1) of this section.

(3) If the commission determines that additional time will be necessary to allow the commission adequately to review a proposed order in a contested case, the commission may extend the time after which the proposed order will become final by a specified period of time. The commission shall notify the parties to the hearing of the period of extension.

350-16-018. Orders in Contested Cases.

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law, and the reasons and basis therefore, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction. Any findings based substantially upon credibility of evidence or demeanor of witnesses shall be so identified. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of facts and as to each ultimate fact required to support the commission's order.

(3) The commission shall serve in writing any final order within 90 days after the hearing or after the submission of any additional memoranda, briefs or proposed findings. The commission shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed.

350-16-020. Commission Record of Contested Case.

(1) The commission shall maintain an official record of each contested case.

(2) The commission record shall include:

(a) Notices of proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, requests and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of any matters officially noticed;

(f) Proffers of proof and objections and rulings thereon;

(g) Proposed findings, requested orders and exceptions;

(h) The recording prepared for the commission at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(i) Any final order, initial order or order on reconsideration;

(j) Staff memoranda or data submitted to the commission; and

(k) Matters placed on the record after an ex parte communication.

350-16-022. Service of Process.

A petition for judicial review of a final order in a contested case shall be served upon the commission by delivery of a copy of the petition to the office of the executive director or chairperson of the commission at the principal office of the commission.

350-16-024. Commission Record for Review.

(1) Within thirty days after service of a petition for judicial review, or within further time allowed by the court, the commission shall transmit to the court the original or a certified copy of the commission record specified in 350-16-020.

(2) The commission may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay this cost to the commission relieves the commission from the responsibility for preparation of the record and transmittal to the court. For the purposes of this paragraph,

a nonindigent person is one whose income is more than 130 percent of the poverty income guidelines published in the Federal Register by the U.S. Department of Health and Human Resources.

350-16, DIR.7

COLUMBIA RIVER GORGE COMMISSION

350-20

350-20-017. Pre-Hearing Conference.

(1) The Commission Chair or its designee may schedule a pre-hearing conference with the parties to an appeal no later than five (5) working days prior to the date set for the hearing. The purpose of the pre-hearing conference shall be to:

- (a) List witnesses and exhibits to be presented at the hearing by each party;
- (b) Note objections to any of the witnesses or exhibits by any party;
- (c) Identify, simplify and clarify issues to be raised at the hearing;
- (d) Consider other matters which may facilitate the orderly conduct of the hearing.

(2) All witnesses and exhibits to be presented by the parties at the hearing must be introduced at the pre-hearing conference. The Commission Chair or its designee shall prepare a list of witnesses and exhibits for introduction at the hearing and inclusion in the record of the hearing. Any witness or exhibit not introduced at the pre-hearing conference may not be presented at the hearing unless the party demonstrates that the witness or exhibit was not available at the time of the conference, or that the witness or exhibit is needed for purposes of rebuttal, or that the testimony or exhibit is based upon newly discovered information.

350-20-018(7). Conduct of the Hearing. (Note renumbering only)

350-20-019(8). Final Order. (Note renumbering only)

350-20-020(19). Resubmission of Disapproved Application. (Note renumbering only)

350-20-021(0). Changes or Alterations to an Approved Action. (Note renumbering only)

COLUMBIA RIVER GORGE COMMISSION

**Chapter 350
Division 20**

**Review and Approval of
Major Development Actions and New Residential Development**

**With Amendments of
May 10 and November 15, 1988,
June 13, 1989 and January 9 and May 8, 1990**

350-20-001. Purpose.

The purpose of this division is to define the procedures and guidelines used by the Columbia River Gorge Commission in reviewing and approving major development actions and new residential development pursuant to section 10(c) of the Columbia River Gorge National Scenic Area Act (P.L. 99-663).

350-20-002. Definitions.

For the purposes of this division, the following definitions shall apply, unless context requires otherwise:

(1) "City" means any city whose boundaries extend into a Special or General Management Area.

(2) "Commission" means the Columbia River Gorge Commission as authorized by ORS 390.500 to 390.515, Chapter 14, Oregon Laws 1987 and RCW 43.97.015 to 43.97.035, Chapter 499, Washington Laws 1987.

(3) "Director" means the Executive Director of the Columbia River Gorge Commission or staff designee.

(4) "Counties" means Multnomah, Hood River and Wasco Counties, Oregon; and Clark, Skamania and Klickitat Counties, Washington.

(5) "General Management Areas (GMAs)" means those lands within the boundaries of the National Scenic Area except for those areas designated as Special Management Areas (SMAs) or Urban Areas (UAs).

(6) "File" means to deliver to Commission offices by mail or otherwise. To be considered filed, a document must be received at Commission offices by 5:00 p.m.

(7) "Forest Service" means U.S.D.A. Forest Service Columbia River Gorge National Scenic Area Office.

(8) "Major Development Action" means any of the following:

- (a) subdivisions, partitions, and short plat proposals outside of Urban Areas;
- (b) any permit for siting or constructing outside Urban Areas of multifamily residential, industrial or commercial facilities, except such facilities as are included in the recreation assessment prepared pursuant to section 6 of P.L. 99-663;
- (c) the exploration, development, and production of mineral resources in General and Special Management Areas unless such exploration, development, or production can (i) be conducted without disturbing the surface of any land within the boundaries of a Special Management Area or (ii) is for sand, gravel, and crushed rock used for the construction, maintenance or reconstruction of roads within the Special Management Areas used for the production of forest products; and
- (d) permits for siting or construction within the Special Management Areas of any residence or other related major structure on any parcel less than forty (40) acres in size.

(9) "National Scenic Area" or "Scenic Area" means the Columbia River Gorge National Scenic Area established pursuant to section 4 of P.L. 99-663.

(10) "Person" means any individual, partnership, corporation, association, governmental division or public or private organization or any character other than the Commission.

(11) "Party" means:

- (a) Each person or agency entitled as of right to a hearing before the Commission;
- (b) Each person or agency named by the Commission to be a party; or
- (c) Any person requesting to participate before the Commission as a party or in a limited status which the Commission determines either has an interest in the outcome of the Commission's proceedings or represents a public interest in such result.

(12) "Related Major Structure" means any detached structure which is accessory to a residence.

(13) "Residential Development" means the permitting for siting or construction of any single family residence, related major structure, or alteration to the exterior of any single family residence or related major structure deemed significant by the Commission or its designee.

(14) "Special Management Areas (SMAs)" means areas within the National Scenic Area established or revised pursuant to section 4(b) of P.L. 99-663.

(15) "Indian Tribes" means the Nez Perce Tribe, the Confederated Tribes and Bands of the Yakima Nation, the Confederated Tribes of the Warm Springs of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(16) "Urban Areas (UAs)" means those areas within the Scenic Area identified as Urban Areas on the map referred to in section 4(e) of P.L. 99-663 or within the boundaries of an Urban Area as revised pursuant to section 4(f).

350-20-003. Review and Approval Required.

Prior to the effective date of a county's land use ordinance adopted and approved pursuant to sections 7 and 8 of P.L. 99-663, the Commission shall review all proposals for major development actions and new residential development within Special and General Management Areas in that county. Only major development actions and new residential development found by the Commission to be consistent with the standards of section 6 and the purposes of P.L. 99-663 and the Final Interim Guidelines referred to in section 350-20-004 shall be allowed. No major development action or new residential development shall be undertaken or initiated without prior Commission approval.

350-20-004. Review Standards and Guidelines.

(1) The Columbia River Gorge National Scenic Area Final Interim Guidelines, published by the Forest Service and dated June 30, 1987, are adopted by reference as amended in paragraph (2) below and declared to be a part of this rule. In reviewing major development actions and new residential development for consistency with the standards of section 6 and the purposes of P.L. 99-663, Chapter 3 of the Final Interim Guidelines, as amended in paragraph (2) below, shall be utilized.

(2) The Final Interim Guidelines identified in paragraph (1) above are amended as follows:

- (a) The definition of agricultural lands shall be revised to read as follows: "Agricultural lands are those lands which are primarily used or are suitable for the production of farm commodities including the growing of crops, fruits or Christmas trees or the pasturing, grazing or feeding of livestock. Lands designated as open space by the Commission shall not be considered agricultural lands."
- (b) The definition of forest lands shall be revised to read as follows: "Forest lands are those lands which are used for growing forest products or are capable of producing in excess of twenty (20) cubic feet per acre per year of

Douglas fir, Ponderosa pine or other merchantable tree species. Lands designated as open space by the Commission shall not be considered forest lands."

- (c) The guidelines for existing uses shall be revised as follows: "When a structure is destroyed or partially destroyed, it will be considered an existing use when replaced in kind and in the same location within one year. The exterior color and reflectivity of replacement structures must be consistent with the scenic guidelines in Chapter III. Replacement of a structure or use that differs in size or location from the original shall be subject to a consistency determination. Replacement of a mobile home in a special management area with a modular or site-built home, to be used in the same manner and for the same purposes, shall be considered the continuation of an existing use except that it shall be subject to review for consistency with the guidelines on scenic resources in section B(1).

350-20-005. Application for Review and Approval.

(1) Review of a major development action or new residential development shall commence upon the acceptance of an application by the Director.

(2) Applications for the review and approval of major development actions and new residential development shall provide the following information:

- (a) The applicant's name, address and telephone number;
- (b) The land owner's name, address and telephone number (if different from applicant's);
- (c) The county in which the proposed development would be located;
- (d) The section, quarter section, township and range in which the proposed development would be located;
- (e) The street address of the proposed development;
- (f) The tax lot number(s) and size in acres of the parcel(s) involved;
- (g) A description of the current land use for the parcel(s) involved and adjoining lands;
- (h) A narrative description in sufficient detail to clearly explain the major aspects and the features of the proposed development;
- (i) A site plan drawn in black ink, either on the application form or on a separate sheet. The site plan must include:

scale and north arrow; boundaries of the parcel(s) involved; the location and width of all existing and proposed streets and roads; location and size of any existing and proposed structures; outside lighting; significant topographic features such as rock outcrops, swales, cliff or bluff lines; type and approximate location and height of trees 6" dbh (diameter at breast height) within 100 feet of proposed structures, roads, excavations or storage areas; trees 6" dbh (diameter at breast height) to remain on site after completion of development and other post-construction landscaping; boundary and depth of all grading and excavation to be done for road construction, building site preparation or landscaping purposes; location of water courses and bodies of water, including existing drainage patterns and proposed modifications to drainage patterns; location of source of water supply; for surface mining applications, the boundaries of the area to be mined, the depth of excavations and the proposed final site contours.

If the information required above is included on a site plan required for county or city permit approval, then the county or city site plan may be submitted in lieu of the above plan.

- (j) A listing of major travel routes, scenic viewpoints, and public park and recreational facilities from which the proposed development would be visible;
- (k) A description of the height, exterior color(s) and roofing and siding materials for all proposed structures;
- (l) A description of any historic, archaeological, or cultural features on or adjacent to the development site;
- (m) A description of how the proposed development would affect existing recreational uses or create new recreational opportunities;
- (n) A description of how the proposed development action would affect air quality, water quality and quantity, fish and wildlife, soils, threatened or endangered plants or animals, native plants, and forest and agricultural lands; and
- (o) Any additional information which the applicant feels will assist in the evaluation of the proposal including, but not limited to, maps, drawings, and development plans.
- (p) The signature of the property owner or, if the applicant is other than the property owner, a signed statement by

the property owner that he or she is aware that the application is being filed or a copy of the purchase agreement with the applicant;

- (q) The signature of the applicant to a statement that authorizes the Director or the Director's designee reasonable access to the site in order to prepare a report on the application.

(3) Standard application forms shall be available at county and city planning offices, the office of the Columbia River Gorge Commission and the Forest Service.

350-20-006. Pre-Application Conference.

An applicant may request a pre-application conference prior to the submission of any application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of this division, to discuss the principle elements of the proposed action, and to identify policies and regulations that create opportunities or pose constraints for the proposed action.

350-20-007. Submission of Applications.

Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission. Applications shall be accompanied by a statement from the applicable county or city planning department either that no approval or permit is required or that the applicant has been informed that approval or a permit is required.

350-20-008. Acceptance of Application.

Within five (5) working days of the receipt of an application, the Director shall review the application for completeness and adequacy.

(1) No application shall be accepted until all omissions and deficiencies noted have been corrected by the applicant.

(2) No application shall be accepted which the Director deems cannot be acted upon reasonably within thirty (30) working days, unless the applicant consents to a longer period for action.

(3) No application shall be accepted unless accompanied a statement from the applicable county or city planning department either that no approval or permit is required or that the applicant has been informed that approval or permit is required.

350-20-009. Notice of Development Review.

(1) Within seven (7) working days of the acceptance of an application, the Director shall issue notice of a proposed

development review. The notice shall provide the following information:

- (a) The name of the applicant;
- (b) The general location of the subject property;
- (c) A brief description of the proposed action;
- (d) The deadline for rendering a decision; and
- (e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(3) The notice shall be mailed to:

- (a) The Forest Service, the States of Oregon and Washington, Indian Tribes and the planning director of the applicable county or city; and
- (b) Owners of property within two hundred fifty (250) feet of the subject parcel(s) for all major development actions; and
- (c) The appropriate newspaper(s).

(4) The notice shall be posted at the Commission and Forest Service offices and shall be made available for posting at the applicable county or city planning office(s) and applicable library or libraries.

(5) For all development, notice shall be published in a newspaper of general circulation nearest to the site of the proposed action.

(6) A copy of the notice shall be filed in the records of the Commission.

(7) Interested persons shall have the following time periods to submit written comments to the Director relative to the consistency of the proposed actions with the guidelines of 350-20-004:

- (a) Fifteen (15) working days from the date the notice was mailed, or
- (b) Ten (10) working days from the date the notice was mailed, where the proposed action is:
 - (1) A related major structure of 400 square feet or less in a General Management Area;

- (2) An alteration to the exterior of or an addition to any residence or related major structure in a General Management Area;
- (3) Replacement of a residence or related major structure of the same size and in the same location as the structure replaced; or
- (4) Replacement of a structure destroyed or partially destroyed by fire if an application under 350-20-005 is filed within one year of the date of the fire.

350-20-010. Decision of the Director.

(1) In making a decision on a proposed development action 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;
- (c) Consider all comments submitted pursuant to 350-20-009(7); and
- (d) Solicit and consider the comments of the Forest Service.

(2) The Director shall approve a major development action and new residential development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and the Final Interim Guidelines referred to in section 350-20-004. In approving a proposed development action, the Director may impose conditions as necessary to ensure consistency with the standards and guidelines of 350-20-004.

(3) The Director shall issue a decision on a proposed development action including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and the Final Interim Guidelines referred to in section 350-20-004 within thirty (30) working days after acceptance of the application unless the applicant consents to an extension of time.

(4) The Director shall mail a copy of the decision to the applicant, the Commission, the Forest Service, the States of Oregon and Washington, the Indian Tribes, the planning director of the applicable county or city and each person who submitted comments under 350-20-009(7). The decision shall set forth the rights of appeal under 350-20-011.

(5) The decision of the Director shall be final unless a Notice of Appeal is filed in accordance with 350-20-011 or a Notice

of Commission Initiated Review is filed in accordance with 350-20-013.

(6) The decision of the Director approving a proposed development action shall become void

- (a) in one year if the development action is not undertaken within that year, or
- (b) when the development action is discontinued for any reason for one continuous year or more.

(7) An applicant may request an extension of the validity of a development approval. Such request shall be considered an Administrative Action and shall be submitted to the Executive Director prior to the expiration of such approval, in writing, stating the reason why an extension should be granted. The Executive Director may grant an extension of up to twelve (12) months in the validity of a development approval if it is determined that conditions, for which the applicant was not responsible, would prevent the applicant from commencing his operation within the original time limitation.

350-20-011. Appeal of Decision by Director.

(1) The applicant or any person who submitted comments on a proposed development action pursuant to 350-20-009(7) may appeal the decision of the Director by filing a Notice of Appeal within the following time periods:

- (a) Twenty (20) working days after the date the decision was mailed under 350-20-010(4); or
- (b) Fifteen (15) working days after the date the decision was mailed under 350-20-010(4) where the proposed development action is one of these described in 350-20-009(7)(b).

(2) The Notice of Appeal shall:

- (a) Refer to the decision being appealed;
- (b) Show that the person filing the appeal is either the applicant or submitted comments within the time specified in 350-20-009(7);
- (c) Set forth the specific standards, guidelines or other grounds upon which the appeal is based;
- (d) State the date of the Director's decision; and
- (e) Indicate that the appellant has served by mail a copy of the Notice of Appeal upon the applicant, if other than the appellant, and those persons who submitted comments on the proposed development action pursuant to 350-20-009(7).

(3) Notices of Appeal not received within the time allotted by this section shall not be accepted.

350-20-012. Intervention in Appeal Hearing

(1) The applicant or any person who submitted comments on a proposed development action pursuant to 350-20-009(7) may participate in an appeal of the Director's decision by filing a Notice of Intervention with the Director within fifteen (15) working days of the date of the Notice of Appeal or Notice of Commission Initiated Review was mailed. The Notice of Intervention shall also be served by mail upon the applicant, the appellant if other than the applicant, and all persons who submitted comments on the proposed development action pursuant to 350-20-009(7).

(2) The Notice of Intervention shall:

- (a) Refer to the Notice of Appeal for which intervenor status is being sought;
- (b) Show that the person filing the Notice of Intervention is either the applicant or submitted comments on the proposed development action pursuant to 350-20-009(7);
- (c) Set forth the specific standards, guidelines or other grounds upon which the Notice of Intervention is based;
- (d) State the date of the Notice of Appeal; and
- (e) Show service by mail upon those persons listed in subsection (1).

(3) Failure to file a Notice of Intervention which satisfies the requirements of subsection (2) above will deprive a person of the opportunity to participate under this section.

350-20-013. Commission Initiated Review

(1) A decision of the Director shall be referred directly to the Commission for hearing if three (3) or more members of the Commission file a written Notice of Commission Initiated Review with the Director within twenty (20) working days after the date the Notice of Decision was mailed. Copies of the Notice shall also be served by mail upon the applicant, the appellant if other than the applicant, and all persons who submitted comments on the proposed development action pursuant to 350-20-009(7).

(2) The Notice of Commission Initiated Review shall:

- (a) Refer to the decision being appealed;
- (b) Identify the Commission members filing the Notice;
- (c) Set forth the specific policy issues, standards, guidelines or other grounds upon which the Notice of

Commission Initiated Review is based;

- (d) State the date of the Director's decision; and
- (e) Show service by mail upon those persons listed in subsection (1).

350-20-014. Stay of Development Action.

No major development action or new residential development approved by the Director shall be undertaken or initiated during the appeal filing period set forth in 350-20-011 if the Director received any adverse comments during the comment period set forth in 350-20-009(7). If the Director received no adverse comments, major development action or new residential development approved by the Director may be undertaken or initiated during the appeal filing period, subject to the risk and consequences of an appeal or a Commission initiated review pursuant to 350-20-013. The application remains subject to rules and regulations of other state and local authorities with jurisdiction over the proposed development.

350-20-015. Hearing Date and Notice.

(1) The Commission shall at the earliest practical date set a time and place to hear an appeal. In any event, the Commission shall conduct a hearing within forty-five (45) working days after the receipt of a Notice of Appeal or Notice of Commission Initiated Review, unless the parties agree to a later date.

(2) Notice of Hearing shall be mailed to all parties at least ten (10) working days in advance of the scheduled hearing in the form prescribed in 350-16-010, the Commission's Administrative Procedures Rule.

350-20-016. Content and Transmittal of the Record.

Unless otherwise stipulated by all parties to the review, the record shall include:

(1) The final decision of the Director including the findings and conclusions;

(2) The written comments on the proposed action submitted pursuant to 350-20-009(7);

(3) The application and any other documentation submitted by the applicant;

(4) Written comments or recommendations submitted to the Director during consultations pursuant to 350-20-010(1); and

(5) Documents and other materials not described above relied on by the Director in making a decision.

350-20-017. Pre-Hearing Conference.

(1) The Commission Chair or its designee may schedule a pre-hearing conference with the parties to an appeal no later than five (5) working days prior to the date set for the hearing. The purpose of the pre-hearing conference shall be to:

- (a) List witnesses and exhibits to be presented at the hearing by each party;
- (b) Note objections to any of the witnesses or exhibits by any party;
- (c) Identify, simplify and clarify issues to be raised at the hearing;
- (d) Consider other matters which may facilitate the orderly conduct of the hearing.

(2) All witnesses and exhibits to be presented by the parties at the hearing must be introduced at the pre-hearing conference. The Commission Chair or its designee shall prepare a list of witnesses and exhibits for introduction at the hearing and inclusion in the record of the hearing. Any witness or exhibit not introduced at the pre-hearing conference may not be presented at the hearing unless the party demonstrates that the witness or exhibit was not available at the time of the conference, or that the witness or exhibit is needed for purposes of rebuttal, or that the testimony or exhibit is based upon newly discovered information.

350-20-018. Conduct of the Hearing.

(1) The Commission's review of the Director's decision shall be de novo. De novo means that the Commission shall hear the matter as if no decision had been rendered by the Director, except that all materials and information received by the Director and the Director's decision including findings and conclusions shall be included in the record.

(2) The hearing shall be conducted by the Commission or a hearings officer, if the Commission so chooses, in accordance with 350-16-009 through 350-16-017, the Commission's Administrative Procedures Rule.

350-20-019. Final Order.

(1) Unless the parties agree to an extension of time, the Commission shall within fourteen (14) working days after the completion of a hearing adopt a final order upholding, amending or reversing the decision of the Director.

(2) The order shall be in the form prescribed in 350-16-018 and shall be distributed in accordance with the provisions of 350-16-018, the Commission's Administrative Procedures Rule.

(3) The order of the Commission shall be final and shall be subject only to judicial review pursuant to the provisions of P.L. 99-663 and the applicable laws of Oregon and Washington.

350-20-020. Resubmission of Disapproved Application.

If a proposed action is disapproved by the Director, and the Commission does not approve the development on appeal, no new application for the same or substantially similar action shall be filed for at least twelve (12) months from final Commission action on the application.

350-20-021. Changes or Alterations to an Approved Action.

Any change or alteration to a development action approved by the Commission or Director pursuant to this division shall be processed as new action, except that the Director may approve minor changes or alterations deemed to be consistent with the guidelines of 350-20-004 and the findings and conclusions for the original action. The decision to approve a minor alteration or change shall be supported by written findings and conclusions.

350-20, DIR.7