



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Columbia River Gorge Commission

Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

31 days after filing.
 Other (specify) May 1, 2006 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

Immediately upon filing.
 Later (specify) _____

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

Yes No If Yes, explain:

Purpose: The amendments to Commission Rules 350-11, 12, and 16 are necessary due to changes made during the 2005 legislative sessions. The amendment to Commission Rule 350-13 requires Gorge Commissioners to file financial disclosure in their respective states only rather than both states. The amendments to Commission Rule 350-50 improves the Commission's process for reviewing Plan Amendments.

Citation of existing rules affected by this order:

Repealed: 350-50-075, 350-50-110

Amended: 350-11-004, 350-12-006, 350-12-007, 350-12-008, 350-13-001, 350-16-004, 350-50-030, 350-50-040, 350-50-050, 350-50-060, 350-50-070, 350-50-080, 350-50-085, 350-50-090, 350-50-100

Statutory authority for adoption: RCW 43.907.015

Other authority : ORS 196.150, 16 USC 544c(b)

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 06-03-067 on January 12, 2006 (date).

Describe any changes other than editing from proposed to adopted version: several clarifications made to Commission Rule 350-50, sections 030, 040, 045, 050, 060, 080, 085, 100 in response to discussion at a workshop on the rule and public comments.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- 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.
- 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:

Date adopted: March 14, 2006

NAME (TYPE OR PRINT)

Nancy A. Andring

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAR 23 2006

TIME 10:14 AM
06-08-007 PM

**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	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>1</u>	Amended	<u>5</u>	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>2</u>	Amended	<u>9</u>	Repealed	<u>2</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>2</u>	Amended	<u>9</u>	Repealed	<u>2</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION

350-11-004

Public notice required; special notice for executive sessions, special or emergency meetings

- (1) The commission shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by the commission.
- (2) The Commission shall file with the Secretary of State in Oregon and the Code Reviser in Washington a schedule of the time and place of such meetings on or before January of each year for publication in the states' registers. Notice of any change from such meeting schedule shall be published in the states' registers for distribution at least twenty days prior to the rescheduled meeting date. For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.
- (3) The commission shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of the commission to consider additional subjects.
- (4) If an executive session only will be held, the notice shall be given to the members of the commission, the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.
- (5) No special meeting shall be held without at least 24 hours' notice to the members of the commission, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. The call and notice of the meeting shall specify the time and place of the meeting and the business to be transacted. Notice of a special meeting may be given by delivering written notice personally, by mail, by fax, or by electronic mail. Final disposition shall not be taken on any other matter at a special meeting of the Commission.
- (6) The commission shall not adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.
- (7) The commission may adjourn or continue a meeting to a time and place specified in an order of adjournment or continuance. Written notice of the adjournment or continuance shall be provided in accordance with subsection (3) above. A copy of the order of adjournment or continuance shall be conspicuously posted immediately after adjournment or continuance on the door where the meeting was held.

AMENDATORY SECTION

350-12-006

Fees

(1) The Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media, and for routine notices and agendas. This applies to both regular and certified copies of records.

(2) If the Commission makes a request available on a partial or installment basis, the Commission may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the Commission is not obligated to fulfill the balance of the request.

AMENDATORY SECTION

350-12-007

Fulfilling requests. Prompt response required.

(1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond; or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.

(2) The Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or make ready for inspection or disclosure.

(3) The Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

AMENDATORY SECTION

350-12-008

Public records exempt from disclosure.

(1) The following public records are exempt from disclosure under 350-12-001 to 350-12-008 unless the public interest requires disclosure in the particular instance:

(a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigation and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information relating to the appraisal of real estate prior to its acquisition;

(f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complain is resolved, or a final administrative determination is made;

(h) Investigatory information relating to any complaint filed relating to unfair labor practices;

(i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and

(j) A personnel discipline action, or materials or documents supporting that action.

(k) Sensitive fish, wildlife, and plant data obtained by or created by the Gorge Commission. However, sensitive fish, wildlife and plant data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive fish, wildlife, and plant data includes:

(1) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;

(2) Radio frequencies used in or locational data generated by telemetry studies;

(3) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:

(A) The species has a known commercial or black market value

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(1) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(1) An individual;

(2) Buildings or other property; or

(3) Information processing, communication or telecommunication systems, including the information contained in the systems.

(2) The following public records are exempt from disclosure under 350-12-001 to 350-12-008:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the commission clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;

(e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;

(f) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(g) Information about review or approval of programs relating to the security of:

- (1) Generation, storage or conveyance of:
- (A) Electricity;
 - (B) Gas in liquefied or gaseous form;
 - (C) Hazardous substances as defined by Oregon or Washington state law;
 - (D) Petroleum products;
 - (E) Sewage; or
 - (F) Water;
- (2) Telecommunications systems, including cellular, wireless or radio systems.
- (3) Data transmissions by whatever means provided.
- (h) Records of mediation communications that are privileged under the Uniform Mediation Act.
- (3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.
- (4) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.
- (a) A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.
- (b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.
- (c) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.
- (5) Notwithstanding the exemptions in 350-12-008(1) and (2), public records that are more than 25 years old shall be available for inspection
- (6) Notwithstanding 350-12-001 through 350-12-008, the Commission shall not disclose records in violation of a user agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.
- (7) Disclosure of information in violation of Rule 350-12-006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.

NEW SECTION

350-12-009

Public records officer.

The Commission's Executive Director or her appointee shall serve as the Commission's public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the Commission's compliance with the public records disclosure requirement of this division.

AMENDATORY SECTION

350-13-001

Financial Disclosure.

(1) The members of the commission shall file annual financial disclosure forms with their respective state. ~~the States of Washington and Oregon and shall otherwise comply, to the extent possible, with the financial disclosure requirements of both states.~~

~~(2) Financial disclosure forms filed by members of the commission shall also be maintained at the offices of the commission.~~

AMENDATORY SECTION

350-16-004

Notice Requirements for Rule Adoption; Temporary Rule Adoption, or Amendment; Substantial Compliance Required.

(1) The commission shall prepare a semiannual agenda for rules under development. The commission shall file the agenda with the Oregon Secretary of State and Washington Code Reviser for publication in the states' registers not later than January 31st and July 31st of each year. Not later than three days after its publication in the states' registers, the commission shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda.

(2) When applicable under Washington law, the commission shall prepare a statement of inquiry on the form provided by the Washington Code Reviser, that shall be: filed with the Washington Code Reviser for publication in the state's register at least thirty days before the date the agency files notice of proposed rule making, sent to any party that has requested receipt of the agency's statements of inquiry, and published on the Commission's website or other similar means of electronic communication.

(3) 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 21 days prior to the commencement of any commission action;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (9) of this section; and,

(d) On its website or other similar means of electronic communication.

(e) Notice of an intended action under subsection (1)(a), (c) and (d) of this section may be given by regular mail or by electronic mail.

(4)(a) The notice required by subsection (3) 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 (3) 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.

(J) If an advisory committee is not appointed, or an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided, an explanation as to why no advisory committee or participation by interested persons was used to assist the agency in drafting the rule.

(5) 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 submissions, including all submissions received by facsimile, telephonic communication, or electronic mail.

(6) Upon request of an interested person received within 15 days after commission notice pursuant to subsection (2) of this section, the commission shall postpone the date of its intended action no less than 21 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 (7) of this section.

(7) Notwithstanding subsections (1) to (6) 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.
- (8) A rule adopted or amended under subsection (7) of this section is temporary and may be effective for a period of not longer than 120 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (6) of this section.
- (9) Any person may request in writing that the commission mail to the person copies of its notice of intended action given pursuant to subsection (3) 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.
- (10) This section does not apply to public contracts and purchasing.
- (11) ~~No~~ A rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted on the date that the notice required under subsection 3 of this section is delivered to the Oregon Secretary of State and the Washington Code Reviser for the purpose of publication.
- (12) 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.
- (13) The commission may correct its failure to substantially comply with the requirements of subsections (4) and (7) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subsection (3)(b)(D) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.
- (14) When the commission establishes a deadline for comment on a proposed rule under the provisions of subsection (4) of this section, the commission may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

AMENDATORY SECTION

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; ~~or~~
 - (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.
- ~~(32)~~ The proposed amendment is consistent with the purposes and standards of the Scenic Area Act; and,
- ~~(23)~~ No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists; ~~and~~

NEW SECTION

350-50-035

Matters Not Constituting a Plan Amendment

- (1) The Executive Director and Area Manager may jointly correct any typographical, grammatical, cross-reference or other similar error contained in the Management Plan that does not change the substantive provisions of the Management Plan.
- (2) The Executive Director and Area Manager shall report such changes to the Commission at a regularly noticed meeting. The meeting agenda shall include notice of a report under this section. For such changes, the Commission shall not be required to amend the Management Plan as provided in this division of the Commission's rules, nor seek concurrence by the Secretary of Agriculture.
- (3) A correction shall be considered a final action for the purpose of judicial review at the time the Executive Director and Area Manager report the correction to the Commission.

AMENDATORY SECTION

350-50-040

Origin of Applications.

~~Applications to amend the Management Plan may originate from the Commission, Commission staff, or interested persons, including state and local governments, all four Indian governments, public interest groups, or affected landowners.~~

- (1) Any person may request that the Commission initiate a legislative amendment to the Management Plan.

(2) Any person may submit an application for a quasi-judicial amendment to the Management Plan. All owners of parcels to which the proposal applies shall give written consent to the application.

(3) For the purpose of this division of the Commission Rules, a quasi-judicial amendment shall be one that proposes to change the land use designation, recreation intensity class or landscape setting on one or any clearly identifiable set of parcels that share a similar set of facts, and the change does not establish new policies. All other amendments shall be considered a legislative amendment.

(4) The Executive Director shall determine whether the proposal is for a legislative or a quasi-judicial amendment. The Executive Director may make this determination prior to or at the pre-application conference.

NEW SECTION

350-50-045

Pre-Application Conference

(1) Prior to submitting any application for an amendment to the Management Plan, an applicant shall attend a pre-application conference with the Executive Director.

(2) The applicant shall submit a statement of the proposed change to the land use designation, landscape setting, or recreation intensity class and the purpose for which the changes are sought. Proposals for quasi-judicial amendments shall include a list of all parcels to which the proposal applies and the names and addresses of the owners of the parcels. The Executive Director may request the applicant submit additional information about the proposal prior to scheduling a pre-application conference.

(3) The Executive Director shall hold a pre-application conference within 30 days after an applicant requests a pre-application conference. The Executive Director shall notify the following persons of the pre-application conference:

(a) The applicant;

(b) For quasi-judicial amendments, the owners of all parcels to which the proposal applies;

(c) Representatives of the USDA Forest Service, the county or counties where the subject parcel or parcels are located, the four Indian Tribes with treaty rights in the National Scenic Area, and appropriate state agencies;

(d) Any other person the Executive Director believes may have an interest in the proposal or requests notice of the pre-application conference; and,

(e) For legislative amendments, the person who submitted the original request.

(4) The Commission may charge a fee for holding a pre-application conference. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for pre-application conferences.

(5) The purpose of the pre-application conference is to assist the applicant to complete the Plan Amendment process successfully and expeditiously, determine the nature of the proposal as quasi-judicial or legislative, identify possible practicable alternatives, identify issues that concern the Commission and other agencies and interested persons, determine what information will be necessary for the Executive Director to review the application, give an estimated schedule for considering the application, and identify possible conditions of approval.

(6) Within 14 days after a pre-application conference, the Executive Director shall issue a pre-application conference report, which shall summarize the discussion at the conference and shall contain a preliminary list of information necessary to review the application. The list of necessary information shall be as comprehensive as reasonably possible, but shall not be exclusive.

(7) The Executive Director may require an applicant to attend a new pre-application conference if the application submitted is materially different than the proposal discussed at the pre-application conference, or conditions in the Scenic Area have materially changed.

AMENDATORY SECTION

350-50-050

Application for Quasi-Judicial Plan Amendments.

(1) Applications to amend the for quasi-judicial plan amendments shall contain the following: a statement from the sponsor. The statement shall:

(a) explain why the proposed plan amendment is necessary; and The land use designation, landscape setting, or recreation intensity class the applicant proposes for the subject parcels;

(b) A statement of the applicant's ultimate development proposal;

(c) An explanation why the proposed change to the land use designation, landscape setting, or recreation intensity class is more appropriate for the parcels than the existing designation, and why the proposed change is necessary to accomplish the applicant's ultimate development proposal;

(d) demonstrate why Information identified at the pre-application conference necessary to demonstrate that the proposed plan amendment complies with the purposes and standards of the Act, the provisions in Section 6(h), and this rule;

(e) The names and addresses of all landowners for parcels that are within 200 feet of the boundaries of all parcels to which the proposal applies;

(f) Other information not identified at the pre-application conference, based on content of information already submitted or changes to the proposal; and,

(g) The signature of all owners of the parcels to which the proposal applies, or the owners' representatives.

(2) The Commission may charge a fee for review of quasi-judicial plan amendment applications. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for review of quasi-judicial plan amendment applications.

AMENDATORY SECTION

350-50-060

Processing of Application.

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of quasi-judicial applications it will process.

Applications shall be reviewed pursuant to sections 070 through 120 of this division.

(2) The Executive Director shall maintain requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.

(3) For legislative amendments, the Executive Director shall hold a pre-application conference as provided in 350-50-045. Following the pre-application conference, the Executive Director shall process a legislative amendment pursuant to sections 080 through 120 of this division.

Each application for a plan amendment is reviewed according to the provisions in the Management Plan [Part IV, Chapter 1, section Amendment of the Management Plan, Policy 2] and this rule.

AMENDATORY SECTION

350-50-070. Submittal and Acceptance of Application for Quasi-Judicial Plan Amendment Application.

(1) The sponsor of the plan amendment shall submit an application to the Commission office. Fifteen copies of each application are required after an application is accepted as complete by the Executive Director.

(12) Within ~~ten (10) working~~ 14 days of receiving an application, the Executive Director shall review the application for completeness and adequacy and notify the applicant in writing of any deficiencies, and any additional information that is required as provided in 350-50-050(1)(f).

(23) The Executive Director ~~will~~ shall not accept an application as complete until the applicant corrects all omissions and deficiencies and submits all additional information noted by the Executive Director ~~are corrected~~.

(3) The applicant shall submit 15 copies of the application after the Executive Director determines the application is complete.

REPEALED SECTION

350-50-075

Preliminary Review and Commencement of Review Process

(1) Once the application is determined complete, the Executive Director shall notify the applicants and shall bring the matter to the Commission for preliminary review.

(2) When more than one application is pending, the preliminary review of proposed amendments shall be scheduled in the order they were accepted as complete by the Executive Director.

(3) The purpose of preliminary review is to allow the Commission to:

- ~~(a) ask questions of Commission staff and of applicants regarding the plan amendment; and~~
- ~~(b) provide an opportunity to applicants, if they so choose, to revise the application to address issues raised in the preliminary review, provided that such changes are made within 15 working days of the preliminary review.~~
- ~~(4) Following the preliminary review, the Commission shall either commence or postpone the process for all complete applications. The Commission may postpone the process after evaluating the resources, including financial and personnel, required to process the proposed plan amendment and determining its priority relative to existing or anticipated work. A majority vote of the Commission at a regularly scheduled meeting is required to commence the process for a proposed plan amendment; the process is postponed for proposals that fail to receive the majority vote needed to commence.~~
- ~~(5) The Commission may reconsider a postponed plan amendment at any subsequent regularly scheduled meeting, and may commence the review process by a majority vote.~~

AMENDATORY SECTION

350-50-080

Notice of Application.

- ~~(1) Once the application is deemed complete and 15 working days have expired after the Commission has voted to commence the process, the~~ The Executive Director shall send public notice of the completed application, including any revisions, to the U.S. Forest Service - National Scenic Area Office, States of Oregon and Washington appropriate state agencies, all four Indian tribal governments, the six Gorge county planning offices, and interested parties who have requested notice, and for quasi-judicial applications, all landowners within 200 feet of the boundaries of all parcels to which the proposal applies.
- ~~(2) The Executive Director shall publish notice of a quasi-judicial plan amendment application in a newspaper serving the community where the parcels to which the proposal would apply are located.~~
- ~~(3) The Executive Director shall publish notice of the~~ a legislative plan amendment application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.
- ~~(4) The Executive Director shall make copies of the complete application available for inspection at the Commission office during normal office hours.~~

AMENDATORY SECTION

350-50-085

Public Comment.

- ~~(1) Interested persons shall have twenty (20) working~~ 30 days from the date the notice is posted to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.
- ~~(2) The Commission shall provide copies of the written comments submitted during the comment period to the applicant prior to or with the staff report to enable the applicant to address the comments at the hearing.~~

AMENDATORY SECTION

350-50-090

Report of the Executive Director.

(1) Unless otherwise specified in the pre-application conference, Within thirty (30) working 60 days following the end of the public comment period, the Executive Director will shall prepare a staff report, which may include recommendations. Upon application of the Executive Director, the Commission may extend the time for submission of the report. The report will analyze the proposed amendment based on the criteria of the Scenic Area Act and Rule 350-50-030.

(2) For legislative amendments, the Executive Director shall include recommended plan amendment language in the staff report.

AMENDATORY SECTION

350-50-100

Hearings.

(1) The Commission shall conduct a hearing on every plan amendment application, the Commission has decided to review pursuant to 350-50-075(4).

(2) The Commission shall provide 30 20 days notice of the hearing to all persons who received the notice of application, and any other person who submitted comment on the application. The notice of the application may include the notice of hearing.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues.

(a) The Executive Director shall present the staff report. The Commission may ask questions concerning the staff report.

(ba) The applicant is required to proceed first in the hearing and shall present the proposed plan amendment.

(cb) Interested persons, Federal, state, county, tribal and other government officials may participate through submission of present oral or written comments.

(e) Members of the public may participate through submission of present oral or written comments.

(d) After those who participate in the hearing on behalf of the government or the public are finished, Following testimony from interested persons, the applicant shall have the opportunity to respond to the comments presented.

(e) After all presentations are complete, the Chair shall invite close the public hearing, and the Commission to shall deliberate on the proposed plan amendment.

(f) If the Commission makes no changes to the original amendment, For quasi-judicial plan amendment applications, the Commission may proceed to vote on the proposal application as submitted or attach conditions of approval necessary to ensure the proposal complies with the criteria for approval. The Commission shall allow the applicant to comment on proposed conditions of approval prior to voting on the application. If the Commission proposes a condition different than recommended by the applicant or by the staff, or discussed during the hearing, the Commission shall allow the applicant to

comment on the proposed condition of approval prior to voting on the application. The Commission shall deny the proposed plan amendment if any of the criteria in 350-50-030 are not satisfied by the application as submitted and cannot be satisfied through imposing reasonable conditions of approval.

(g) For legislative amendments, the Commission may modify the recommended language in any manner.

(i) If the Commission makes clarifying changes to the recommended language, then it only changes to the amendment are for the purposes of clarification, the Commission may proceed to vote on whether to adopt the amendment recommended language, as clarified, after providing an opportunity for public comment during the hearing on any change.

~~(h)(ii)~~ If the Commission makes substantive changes, i.e. those not covered by subparagraph (ig) immediately above, to the amendment are approved by the Commission during the hearing recommended language, the Commission shall:

~~(i)(A)~~ provide an opportunity for additional public comment during the hearing on the new proposed language, and then proceed to vote on whether to adopt the amendment; or

~~(i)(B)~~ continue the hearing to a new date to allow for adequate public notice of the content of the modifications language and for further consideration of the issues. When the hearing is resumed, the Commission shall provide a reasonable opportunity for the applicant and members of the public to respond to the proposed modifications under review language, and then proceed to vote on whether to adopt the amendment.

(h) The Commission shall determine if the amendment as approved is mandatory for counties to adopt into their land use ordinances. Unless otherwise specified by the Commission, amendments to county land use ordinances shall follow the procedures established in Sections 7 and 8 of the Scenic Area Act (16 U.S.C. §§ 544e and 544f).

REPEALED SECTION

350-50-110

Consultation.

In considering an amendment to the Management Plan, the Gorge Commission shall consult with the Forest Service, both states, the six Gorge counties, all four Indian tribal governments and agencies or organizations that have a specific interest.