



Ken Eikenberry

ATTORNEY GENERAL OF WASHINGTON

7th FLOOR, HIGHWAYS-LICENSES BUILDING • OLYMPIA, WASHINGTON 98504

September 10, 1987

Mr. Gary Reid
Chief Assistant Code Reviser
Legislative Building AS-15
Olympia, WA 98504-0415

Re: Regulations of Columbia River Gorge Commission

Dear Gary:

Enclosed are regulations adopted by the Columbia River Gorge Commission, established by Compact between the States of Washington and Oregon (Washington statute, Chapter 499, Laws of 1987, approved by Congress PL 99-663, 16 U.S.C. 544 et seq.).

The Compact requires the Commission to publish its regulations and also to "file a copy thereof and of any amendment thereto, with the appropriate agency or officer in each of the party states (Chapter 499, Laws of 1987, Art. I(g)).

As we have previously discussed, the "appropriate agency or officer" in Washington is the Code Reviser.

Accordingly, please file and retain this copy of the Gorge Commission's regulations. The filing date should be September 10, as we are attempting to assure concurrent filing with Washington and Oregon.

Sincerely,

JAMES M. JOHNSON
Senior Assistant Attorney General
Attorney for Columbia River
Gorge Commission
753-4556

sam
enc.

STATE OF WASHINGTON
FILED

SEP 10 1987

CODE REVISER'S OFFICE
WSR 87-19-017

CHAPTER 350-11
OPEN MEETINGS

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3 350-11-001. Definitions for 350-11-001 to 350-11-010.

4 (1) "Decision" means any determination, action, vote or
5 final disposition upon a motion, proposal, resolution, order,
6 ordinance or measure on which a vote of the commission is
7 required at any meeting at which a quorum is present.

8 (2) "Executive session" means any meeting or part of a
9 meeting of the commission which is closed to certain persons
10 for deliberation on certain matters.

11 (3) "Commission" means the Columbia River Gorge
12 Commission or any public body which consists of two or more
13 members, with the authority to make decisions for or
14 recommendations to the commission on policy or administration.

15 (4) "Meeting" means the convening of the commission for-
16 which a quorum is required in order to make a decision or to
17 deliberate toward a decision on any matter. "Meeting" does not
18 include any onsite inspection of any project or program.
19 "Meeting" also does not include the attendance of members of
20 the commission at any national, regional or state association
21 to which the commission or members of the commission belong.
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14 350-11-002. Policy.

15 The Oregon and Washington forms of government require an
16 informed public aware of the deliberations and decisions of the
17 commission and the information upon which such decisions were
18 made.
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18 350-11-003. Meetings of commission to be open to public;
19 location of meetings.

20 (1) All meetings of the commission shall be open to the
21 public and all persons shall be permitted to attend any meeting
22 except as otherwise provided by 350-11-001 to 350-11-010.

23 (2) No quorum of the commission shall meet in private for
24 the purpose of deciding on or deliberating toward a decision on
25 any matter except as otherwise provided by 350-11-001 to
26 350-11-010.

(3) The commission shall not hold a meeting at any place
where discrimination on the basis of race, creed, color, sex,
age or national origin is practiced. However, the fact that
organizations with restricted membership hold meetings at the
place shall not restrict its use by the commission if use of a
place by a restricted membership organization is not the
primary purpose of the place or its predominate use.

(4) Meetings of the commission shall be held within the geographic boundaries over which the commission has jurisdiction, or at the administrative headquarters of the commission or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographical boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

350-11-004. Public notice required; special notice for executive sessions, special or emergency meetings.

(1) 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.

(2) If an executive session only will be held, the notice shall be given to the members of the commission, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) 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.

350-11-005. Written minutes required; content; content of minutes for executive sessions.

(1) The commission shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- 1 (a) All members of the commission present;
2 (b) All motions, proposals, resolutions, orders,
ordinances and measures proposed and their disposition;
3 (c) The results of all votes and, except for public
bodies consisting of more than 25 members unless requested by a
4 member of the body, the vote of each member by name;
5 (d) The substance of any discussion on any matter; and
6 (e) Subject to 350-12-001 to 350-12-006 relating to
public records, a reference to any document discussed at the
meeting but such reference shall not affect the status of the
document under 350-12-001 to 350-12-006.

7 (2) Minutes of executive sessions shall be kept in
accordance with subsection (1) of this section. Instead of
8 written minutes, a record of any executive session may be kept
in the form of a sound tape recording which need not be
9 transcribed unless otherwise provided by law. However,
excluded materials are authorized to be examined privately by a
10 court in any legal action and the court shall determine their
admissibility.

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13 350-11-006. Executive sessions permitted on certain matters;
procedures; news media representatives' attendance;
14 limits.

15 (1) The commission can hold executive session during a
regular, special or emergency meeting, after the presiding
officer has identified the authorization for the holding of
16 such executive session. Executive session may be held:

17 (a) To consider the employment of a public officer,
employee, staff member or individual agent. The exception
contained in this paragraph does not apply to:

18 (A) The filling of a vacancy in an elective office.

19 (B) The filling of a vacancy on any public committee,
commission or other advisory group.

20 (C) The consideration of general employment policies.

21 (D) The employment of the chief executive officer, other
public officers, employees and staff members of any public body
unless the vacancy in that office has been advertised,
22 regularized procedures for hiring have been adopted by the
public body and there has been opportunity for public input
into the employment of such an officer. However, the
23 standards, criteria and policy directives to be used in hiring
chief executive officers shall be adopted by the commission in
24 meetings open to the public in which there has been opportunity
for public comment.

25 (b) To consider the dismissal or disciplining of, or to
hear complaints or charges brought against, a public officer,
26 employee, staff member or individual agent, unless such public
officer, employee, staff member or individual agent requests an
open hearing.

1 (c) To conduct deliberations with persons designated by
2 the commission to carry on labor negotiations.

3 (d) To conduct deliberations with persons designated by
4 the commission to negotiate real property transactions.

5 (e) To consider records that are exempt by law from
6 public inspection.

7 (f) To consider preliminary negotiations involving
8 matters of trade or commerce in which the commission is in
9 competition with governing bodies in other states or nations.

10 (g) To consult with counsel concerning the legal rights
11 and duties of the commission with regard to current litigation
12 or litigation likely to be filed.

13 (h) To review and evaluate, pursuant to standards,
14 criteria and policy directives adopted by the commission, the
15 employment-related performance of the chief executive officer
16 of the commission, a public officer, employe or staff member
17 unless the person whose performance is being reviewed and
18 evaluated requests an open hearing. The standards, criteria
19 and policy directives to be used in evaluating chief executive
20 officers shall be adopted by the commission in meetings open to
21 the public in which there has been opportunity for public
22 comment. An executive session for purposes of evaluating a
23 chief executive officer or other officer, employe or staff
24 member shall not include a general evaluation of any agency
25 goal, objective or operation of any directive to personnel
26 concerning agency goals, objectives, operations or programs.

(i) To carry on negotiations with private persons or
business regarding proposed acquisition, exchange or
liquidation of public investments.

(2) Labor negotiations may be conducted in executive
session if either side of the negotiators requests closed
meetings. Subsequent sessions of the negotiations may continue
without further public notice.

(3) Representatives of the news media shall be allowed to
attend executive sessions other than those held under paragraph
(c) of subsection (1) of this section relating to labor
negotiations but the commission may require that specified
information subject of the executive session be undisclosed.

(4) No executive session may be held for the purpose of
taking any final action or making any final decision.

23 350-11-007. Meetings by means of telephonic or electronic
24 communication.

25 (1) Any meetings, including an executive session, of the
26 commission which is held through the use of telephone or other
electronic communication shall be conducted in accordance with
350-11-001 to 350-11-006.

1 (2) When telephone or other electronic means of
2 communication is used and the meeting is not an executive
3 session, the commission shall make available to the public at
4 least one place where the public can listen to the
5 communication at the time it occurs by means of speakers or
6 other devices. The place provided may be a place where no
7 member of the commission is present.

8 350-11-008. Enforcement of 350-11-001 to 350-11-007;
9 effect of violation on validity of decision of
10 the commission; liability of members.

11 (1) Any person affected by a decision of the commission
12 may commence a suit in the circuit court or superior court for
13 the county in which the commission ordinarily meets, for the
14 purpose of requiring compliance with, or the prevention of
15 violations of 350-11-001 to 350-11-008, by members of the
16 commission, or to determine the applicability of 350-11-001 to
17 350-11-008 to matters or decisions of the commission. The
18 court may order such equitable relief as it deems appropriate
19 in the circumstances. A decision shall not be voided if other
20 equitable relief is available. The court may order payment to
21 a successful plaintiff in a suit brought under this section of
22 reasonable attorney's fees at trial and on appeal, by the
23 commission.

24 (2) If the court makes a finding that a violation of
25 350-11-001 to 350-11-008 has occurred under subsection (1) of
26 this section and that the violation is the result of wilful
misconduct by any member or members of the commission, that
member or members shall be jointly and severally liable to the
commission for the amount paid by the commission under
subsection (1) of this section.

(3) The provisions of this section shall be the exclusive
remedy for an alleged violation of 350-11-001 to 350-11-008.

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21 350-11-009. Prima facie evidence of violation required of
22 plaintiff.

23 In any suit commenced under 350-11-008(1), the plaintiff
24 shall be required to present prima facie evidence of a
25 violation of 350-11-001 to 350-11-008 before the commission
26 shall be required to prove that its acts in deliberating toward
a decision complied with the law. When a plaintiff presents
prima facie evidence of a violation of the open meetings law,
the burden to prove that the provisions of 350-11-001 to
350-11-008 were complied with shall be on the commission.

1 350-11-010. Smoking in public meetings prohibited.

2 (1) No person shall smoke or carry any lighted smoking
3 instrument in a room where a public meeting is being held or is
4 to continue after a recess. For purposes of this subsection, a
5 public meeting is being held from the time the agenda or
6 meeting notice indicates the meeting is to commence regardless
7 of the time it actually commences.

8 (2) As used in this section, "smoking instrument" means
9 any cigar, cigarette, pipe or other smoking equipment.
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CHAPTER 350-12
PUBLIC RECORDS

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3 350-12-001. Definitions for 350-12-001 to 350-12-006.

4 (1) "Person" includes any natural person, corporation,
5 partnership, firm or association.

6 (2) "Public record" includes any writing containing
7 information relating to the conduct of the public's business,
8 prepared, owned, used or retained by the commission regardless
9 of physical form or characteristics.

10 (3) "Writing" means handwriting, typewriting, printing,
11 photostating, photographing and every means of recording,
12 including letters, words, pictures, sounds, or symbols, or
13 combination thereof, and all papers, maps, magnetic or paper
14 tapes, photographic films and prints, magnetic or punched
15 cards, discs, drums, or other documents.

16 350-12-002. Right to inspect public records.

17 Every person has a right to inspect any public record of
18 the commission, except as otherwise expressly provided by
19 350-12-006.

20 350-12-003.

21 (1) The commission shall maintain and make available for
22 public inspection and copying a current index providing
23 identifying information as to the following records issued,
24 adopted, or promulgated.

25 (a) Final opinions, including concurring and dissenting
26 opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of
policy, statutes, and the Constitution which have been adopted
by the commission;

(c) Administrative staff manuals and instructions to
staff that affect a member of the public;

(d) Planning policies and goals, and interim and final
planning decisions;

(e) Factual staff reports and studies, factual
consultant's reports and studies, scientific reports and
studies, and any other factual information derived from tests,
studies, reports, or surveys, whether conducted by public
employees or others;

(f) Correspondence and materials referred to therein, by
and with the agency relating to any regulatory, supervisory, or
enforcement responsibilities of the agency, whereby the agency
determines, or opines upon, or is asked to determine or opine

1 upon, the rights of the state, the public, a subdivision of
2 state government, or of any private party.

3 (2) The commission need not maintain such an index, if to
do so would be unduly burdensome, but it shall in that event:

4 (a) Issue and publish a formal order specifying the
reasons why and the extent to which compliance would unduly
burden or interfere with agency operations; and

5 (b) Make available for public inspection and copying all
indexes maintained for agency use.

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8 350-12-004. Times for inspection and copying.

9 Public records shall be available for inspection and
copying during the customary office hours of the commission.
10 Provided, that if the commission does not have customary office
hours of at least thirty hours per week, the public records
11 shall be available from nine o'clock a.m. to noon and from one
o'clock p.m. to four o'clock p.m. Monday through Friday,
12 excluding legal holidays, unless the person making the request
and the commission or its representative agree on a different
time.

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15 350-12-005. Certified copies of public records; fees.

16 (1) The custodian of any public record which a person has
a right to inspect shall give the person, on demand, a
17 certified copy of it, if the record is of a nature permitting
such copying, or shall furnish reasonable opportunity to
inspect or copy.

18 (2) The public body may establish fees reasonably
calculated to reimburse it for its actual costs in making such
19 records available.

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21 350-12-006. Public records exempt from disclosure.

22 (1) The following public records are exempt from
disclosure under 350-12-001 to 350-12-006 unless the public
23 interest requires disclosure in the particular instance:

24 (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
25 commission shows that such litigation is reasonably likely to
occur. This exemption does not apply to litigation which has
26 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;

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

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

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

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

23 (C) The conditions of release;

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

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

(F) The circumstances of arrest, including time, place,
resistance, pursuit and weapons used; and

(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 employes 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 complaint 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

1 relating to a site that is all or part of an existing, commonly
2 known and publicized tourist activity or attraction; and

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

(2) The following public records are exempt from
5 disclosure under 350-12-001 to 350-12-006.

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

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

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

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

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

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

40 (3) If any public record contains material which is not
41 exempt under subsection (1) or (2) of this section, as well as
42 material which is exempt from disclosure, the commission shall
43 separate the exempt and nonexempt material and make the
44 nonexempt material available for examination.

45 (4) Student records required by state or federal law are
46 exempt from disclosure.

CHAPTER 350-13
FINANCIAL DISCLOSURE

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3 350-13-001.

4 (1) The members of the commission shall file annual
5 financial disclosure forms with the States of Washington and
6 Oregon and shall otherwise comply, to the extent possible, with
7 the financial disclosure requirements of both states.

8 (2) Financial disclosure forms filed by members of the
9 commission shall also be maintained at the offices of the
10 commission.
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CHAPTER 350-14
CONFLICT OF INTEREST

350-14-001. Definitions for 350-14-001 to 350-14-005.

As used in these rules, unless the context requires otherwise:

(1) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain.

(2) "Business with which the person is associated" means any business of which the person or a member of the person's household is a director, officer, owner or employe, or any corporation in which the person or a member of the person's household owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

(3) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or a member of the person's household, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of a state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged.

(4) "Gift" means something of economic value given to a public official or member of the official's household without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials on the same terms and conditions; and something of economic value given to a public official or member of the official's household for valuable consideration less than that required from others who are not public officials. However, "gift" does not mean:

(a) Campaign contributions.

(b) Gifts from relatives.

(c) The giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity.

(5) "Honoraria" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price.

Services include, but are not limited to,

1 speeches or other services rendered in connection with an event
2 at which the public official appears in an official capacity.

3 (6) "Income" means income of any nature derived from any
4 source, including, but not limited to, any salary, wage,
5 advance, payment, dividend, interest, rent, honoraria, return
6 of capital, forgiveness of indebtedness, or anything of
7 economic value.

8 (7) "Legislative or administrative interest" means an
9 economic interest, distinct from that of the general public, in
10 one or more bills, resolutions, regulations, proposals or other
11 matters subject to the or vote of a person acting in the
12 capacity of a public official.

13 (8) "Member of household" means the spouse of the public
14 official and any children of either who reside with the public
15 official.

16 (9) "Public official" means any person who is serving in
17 a governmental capacity for the Columbia River Gorge Commission
18 as an officer, employe, agent or otherwise, and irrespective of
19 whether the person is compensated for such services.

20 350-14-002. Application.

21 Nothing in these rules is intended to affect:

22 (1) Any other statute or rule requiring disclosure of
23 economic interest by any public official or public employe.

24 (2) Any statute or rule prohibiting or authorizing
25 specific conduct on the part of any public official or public
26 employe.

27 350-14-003. Code of Ethics.

28 The following actions are prohibited regardless of whether
29 potential conflicts of interest are announced or disclosed
30 pursuant to 350-14-004:

31 (1) No public official shall use official position or
32 office to obtain financial gain for the public official, other
33 than official salary, honoraria or reimbursement of expenses,
34 or for any member of the household of the public official, or
35 for any business with which the public official or a member of
36 the household of the public official is associated.

37 (2) No public official or candidate for office or a
38 member of the household of the public official or candidate
39 shall solicit or receive, whether directly or indirectly,
40 during any calendar year, any gift or gifts from any single
41 source who could reasonably be known to have a legislative or
42 administrative interest in any governmental agency in which the
43 official has any official position or over which the official
44 exercises any authority.

1 (3) No public official shall solicit or receive, either
2 directly or indirectly, and no person shall offer or give to
3 any public official any pledge or promise of future employment,
4 based on any understanding that such public official's vote,
5 official action or judgment would be influenced thereby.

6 (4) No public official shall further the personal gain of
7 the public official through the use of confidential information
8 gained in the course of or by reason of the official position
9 or activities of the public official in any way.

10 (5) No person shall offer during any calendar year any
11 gifts to any public official or candidate therefor or a member
12 of the household of the public official or candidate if the
13 person has a legislative or administrative interest in a
14 governmental agency in which the official has any official
15 position or over which the official exercises any authority.

16 350-14-004. DECLARATION OF POTENTIAL CONFLICTS

17 Methods of handling potential conflicts.

18 (1) When met with a potential conflict of interest, a
19 public official shall:

20 (a) If the public official is an appointed public
21 official serving on the commission, announce publicly the
22 nature of the potential conflict prior to taking any official
23 action thereon.

24 (b) If the public official is any other appointed
25 official subject to this chapter, notify in writing the person
26 who appointed the public official to office of the nature of
the potential conflict, and request that the appointing
authority dispose of the matter giving rise to the potential
conflict. Upon receipt of the request, the appointing
authority shall designate within a reasonable time an alternate
to dispose of the matter, or shall direct the official to
dispose of the matter in a manner specified by the appointing
authority.

(2) Nothing in subsection (1) of this section requires
any public official to announce a potential conflict of
interest more than once on the occasion which the matter out of
which the potential conflict arises is discussed or debated.

(3) Nothing in this section authorizes a public official
to vote if the official is otherwise prohibited from doing so.

27 350-14-005. Recording of notice of potential conflict;
28 effect of failure to disclose conflict.

29 (1) When a public official gives notice of a potential
30 conflict of interest, the potential conflict shall be recorded
31 in the official records of the public body.

1 (2) No decision or action of any public official or any
2 board or commission on which the public official serves or
3 agency by which the public official is employed shall be voided
4 by any court solely by reason of the failure of the public
5 official to disclose a conflict of interest.
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CHAPTER 350-15
PUBLIC CONTRACTS

350-15-001. Definitions for 350-15-001 to 350-15-020.

The term "public work" shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the commission, or which is by law a lien or charge on any property within Washington or Oregon, but nothing herein shall apply to the construction, alteration, repair, or improvement of any municipal street railway system. All public works, including maintenance when performed by contract shall comply with the provisions of 350-15-002.

350-15-002. Plans and specifications; estimates; publications; emergencies.

(1) Whenever the commission shall determine that any public work is necessary to be done it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed with appropriate officials in Washington and Oregon.

(2) If the commission shall determine that it is necessary or advisable that such work shall be executed by any means or method other than by contract or by a small works roster process, and it shall appear by such estimate that the probable cost of executing such work will exceed the sum of fifteen thousand dollars, then the commission shall at least fifteen days before beginning work cause such estimate, together with a description of the work, to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which such work is to be done: Provided, that then any emergency shall require the immediate execution of such public work, upon a finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work.

350-15-003. Requirements for advertisement for bids.

(1) An advertisement for bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the commission may determine. If the contract is for a public improvement with an

1 estimated cost in excess of \$50,000, the advertisement for bids
2 shall be published in at least one trade newspaper of general
3 state-wide circulation. The commission may, by rule, require
4 an advertisement for bids to be published more than once or in
5 one or more additional publications.

6 (2) All advertisements for bids shall state:

7 (a) If the contract is for a public work, that no bid
8 will be received or considered by the commission unless the bid
9 contains a statement by the bidder as a part of its bid that
10 the provisions of prevailing wage rates are to be complied with;

11 (b) The date after which bids will not be received, which
12 date shall be not less than five days after the date of the
13 last publication of the advertisement;

14 (c) The date that prequalification applications must be
15 filed and the class or classes of work for which bidders must
16 be prequalified if prequalification is a requirement;

17 (d) The character of the work to be done or the material
18 or things to be purchased;

19 (e) The office where the specifications for the work,
20 materials or things may be seen;

21 (f) The name and title of the person designated for
22 receipt of bids;

23 (g) The date, time and place that the commission will
24 publicly open the bids; and

25 (h) The commission may reject any bid not in compliance
26 with all prescribed public bidding procedures and requirements,
and may reject for good cause any or all bids upon a finding of
the agency it is in the public interest to do so.

17 350-15-004. Disqualification of bidder.

18 (1) The commission may disqualify any person as a bidder
19 on a public contract if the commission finds:

20 (a) The person does not have sufficient financial ability
21 to perform the contract. If a bond is required to insure
22 performance of a contract, evidence that the person can acquire
23 a surety bond in the amount and type required shall be
24 sufficient to establish financial ability;

25 (b) The person does not have equipment available to
26 perform the contract;

(c) The person does not have key personnel available of
sufficient experience to perform the contract; or

(d) The person has repeatedly breached contractual
obligations to public and private contracting agencies.

(2) The commission may make such investigation as is
necessary to determine whether a person is qualified. If a
bidder or prospective bidder fails to supply promptly
information as requested by the public contracting agency
pursuant to such investigation, such failure is grounds for
disqualification.

1 (3) Any information voluntarily submitted by a bidder or
2 prospective bidder pursuant to an investigation under
3 subsection (2) of this section or in a prequalification
4 statement required by 350-15-005 or in a prequalification
5 request submitted pursuant to 350-15-006 shall be deemed a
6 trade secret if requested by the person submitting the
7 information.

8 350-15-005. Prequalification of bidder; notification.

9 (1) The commission may adopt a rule, resolution,
10 ordinance or other regulation requiring mandatory
11 prequalification for all persons desiring to bid for public
12 contracts that are to be let by the agency. The rule,
13 resolution, ordinance or other regulation authorized by this
14 section shall include the time for submitting prequalification
15 applications and a general description to the type and nature
16 of the contracts that may be let. The prequalification
17 application shall be in writing on a standard form prescribed
18 by the commission.

19 (2) The commission shall within 30 days of the receipt of
20 the prequalification application submitted pursuant to
21 subsection (1) of this section, notify the prospective bidder
22 if the prospective bidder is qualified or not, the nature and
23 type of contracts that the prospective bidder is qualified to
24 bid on and the time period for which the prequalification is
25 valid. If the commission disqualified the prospective bidder
26 as to any contracts covered by the rule, resolution, ordinance
27 or other regulation, the notice shall specify which subsections
28 of 350-15-004 the prospective bidder failed to comply with.
29 Unless the reasons are specified, the bidder shall be deemed to
30 have been prequalified in accordance with the application.

31 (3) If the commission subsequently discovers that a
32 person heretofore prequalified under subsections (1) and (2) of
33 this section is no longer qualified, the commission may revoke
34 the prequalification upon reasonable notice to the prospective
35 bidder; provided, however, that such revocation shall be
36 invalid as to any contract for which an advertisement for bids
37 has already been made under 350-15-003.

38 350-15-006. Application for prequalification; notification;
39 investigation, revocation or revision.

40 (1) When the commission permits or requires
41 prequalification of bidders, a person who wishes to prequalify
42 shall submit a prequalification application to the commission
43 on a standard form prescribed by the commission. Within 30

1 days after receipt of a prequalification application, the
2 commission shall investigate the prospective bidder as
3 necessary to determine if the prospective bidder is qualified.
4 The determination shall be made in less than 30 days, if
5 practical, if the prospective bidder requests an early decision
6 to allow the bidder as much time as possible to prepare a bid
7 on a contract that has been advertised. In making its
8 determination, the commission shall only disqualify a person in
9 accordance with 350-15-004. If shall promptly notify the
10 person whether or not that person is qualified.

11 (2) If the commission finds that a prospective bidder is
12 qualified, the notice shall state the nature and type of
13 contracts that the person is qualified to bid on and the period
14 of time for which the qualification is valid under the rule,
15 resolution, ordinance or other regulation. If the agency
16 disqualifies a prospective bidder as to any contracts covered
17 by the rule, resolution, ordinance or other regulation, the
18 notice shall specify the reasons found under 350-15-004 for the
19 disqualification.

20 (3) If the commission has reasonable cause to believe
21 that there has been a substantial change in the conditions of a
22 prequalified person and that the person is no longer qualified
23 or is less qualified, the agency may revoke or may revise and
24 reissue the prequalification after reasonable notice to the
25 prequalified person. The notice shall state the reasons found
26 under 350-15-004 for revocation or revision of the
prequalification of the person. A revocation or revision does
not apply to any contract for which publication of
advertisement for bids, in accordance with 350-15-003,
commenced prior to the date the notice of revocation or
revision was received by the prequalified person.

19 350-15-007. Work to be executed according to plans;
supplemental plans.

20 Whenever plans and specifications shall have been filed,
21 the work to be done shall be executed in accordance with such
22 plans and specifications unless supplemental plans and
23 specifications of the alterations to be made therein shall be
24 made and filed in the office where the original plans and
25 specifications are filed.

26 In the event that the probable cost of executing such work
in accordance with the supplemental plans and specifications
shall be increased or decreased from the estimated cost as
shown by the original estimate to an amount in excess of ten
percent of such estimate, then a supplemental estimate shall be
made of the increased or decreased cost of executing the work
in accordance.

1 350-15-008. Contents of original estimates.

2 Original estimates shall show in detail the estimated cost
3 of the work; the estimated quantities of each class of work;
4 the estimated unit cost for each class; the estimated total
5 cost for each class; the time limit allowed for the completion
6 of the work and the estimated dates of commencement and
7 completion.

8 350-15-009. Supplemental estimates.

9 Supplemental estimates shall show the estimated increase
10 or decrease in the total quantities of each class, in the unit
11 cost of each class, in the total cost for each class and in the
12 total cost of the work as shown by the original estimate,
13 together with any change in the time limit and in the estimated
14 dates of commencing and completing the work.

15 350-15-010. Account and record of cost.

16 Whenever the commission shall execute any public work by
17 any means or method other than by contract, it shall cause to
18 be kept and preserved a full, true and accurate account and
19 record of the costs of executing such work.

20 Such account and record shall show in accurately tabulated
21 form and under appropriate headings the totals of all classes
22 and kinds of work performed, the total cost and unit cost of
23 each class, together with the costs of executing such work,
24 including, under separate headings, the costs of labor;
25 material; equipment purchased; provisions and supplies; rental
26 of equipment; industrial insurance and medical aid;
superintendance; engineering; clerical and accounting service;
the reasonable value, including depreciation, of the use of
equipment owned by the commission, and all other expenses
incurred therein.

27 350-15-011. Records open to public inspection; certified
28 copies.

29 All plans, specifications, estimates, and copies of
30 accounts or records and all certificates attached thereto
31 shall, when filed, become public records and shall at all
32 reasonable times be subject to public inspection.

33 Certified copies of any estimate, account or record shall
34 be furnished by the officer having the custody thereof to any
35 person on demand and the payment of the legal fees for making
36 and certifying the same.

1 350-15-012. Pollution and preservation of natural resources
2 laws to be included in bidding invitations;
3 change orders, costs, arbitration.

4 All invitations for bid proposals for public construction
5 projects issued by the commission, shall set further in the
6 contract documents to the extent they are reasonably obtainable
7 by the public awarding authority those provisions of federal,
8 state and local statutes, ordinances and regulations dealing
9 with the prevention of environmental pollution and the
10 preservation of public natural resources that affect or are
11 affected by the projects. If the successful bidder must
12 undertake additional work due to the enactment of new or the
13 amendment of existing statutes, ordinances, rules or
14 regulations occurring after the submission of the successful
15 bid, the commission shall issue a change order setting forth
16 the additional work that must be undertaken, which shall not
17 invalidate the contract. The cost of such a change order to
18 the commission shall be determined in accordance with the
19 provisions of the contract for change orders or force accounts
20 or, if no such provision is set forth in the contract, then the
21 cost to the commission shall be the contractor's costs for
22 wages, labor costs other than wages, wage taxes, materials,
23 equipment rentals, insurance, and subcontracts attributable to
24 the additional activity plus a reasonable sum for overhead and
25 profit: Provided, that such additional costs to undertake work
26 not specified in the contract documents shall not be approved
unless written authorization is given the successful bidder
prior to his undertaking such additional activity. In the
event of a dispute between the commission and the successful
bidder, arbitration procedures may be commenced under the
applicable terms of the construction contract, or, if the
contract contains no such provision for arbitration, then the
obtaining rules of the American Arbitration Association.

20 350-15-013. Commission purchasing; use of recovered
21 resources and recycled material.

22 The commission, in purchasing supplies, materials,
23 equipment or personal services, shall:

24 (1) Review its procurement specifications currently
25 utilized in order to eliminate, wherever economically feasible,
26 discrimination against the procurement of recovered resources
or recycled materials.

(2) Provide incentives, wherever economically feasible,
in all procurement specifications issued by them for the
maximum possible use of recovered resources and recycled
materials.

1 (3) Develop purchasing practices which, to the maximum
2 extent economically feasible, assure purchase of materials
3 which are recycled or which may be recycled or reused when
4 discarded.

5 (4) Establish management practices which minimize the
6 volume of solid waste generated by them by limiting the amount
7 of materials consumed and discarded.

8 (5) Use and require persons with whom it contracts to
9 use, in the performance of the contract work, to the maximum
10 extent economically feasible, recycled paper.

11 350-15-014. Preference to recycled materials.

12 (1) Notwithstanding other rules requiring the commission
13 to enter into contracts with the lowest responsible bidder and
14 subject to subsection (2) of this section, the commission, in
15 the purchase of materials and supplies for any public use, may,
16 in its discretion, give preference to the purchase of materials
17 and supplies manufactured from recycled materials.

18 (2) The commission may give preference to materials and
19 supplies manufactured from recycled materials only if:

20 (a) The bids of the persons or manufacturing concerns
21 supplying the recycled materials, or the prices quoted by them,
22 do not exceed by more than five percent the lowest bid or
23 process quoted by persons and manufacturing concerns offering
24 nonrecycled materials; and

25 (b) The commission finds that the public good will will
26 be served thereby.

27 350-15-015. Specifications for contracts; exemptions.

28 (1) Specifications for public contracts shall not
29 expressly or implicitly require any product by any brand name
30 or mark, nor the product of any particular manufacturer or
31 seller unless the product is exempt under subsection (2) of
32 this section.

33 (2) The commission may exempt certain products or classes
34 of products from subsection (1) of this section upon any of the
35 following findings:

36 (a) It is unlikely that such exemption will encourage
37 favoritism in the awarding of public contracts or substantially
38 diminish competition for public contracts;

39 (b) The specification of a product by brand name or mark,
40 or the product of a particular manufacturer or seller, would
41 result in substantial cost savings to the commission;

42 (c) There is only one manufacturer or seller of the
43 product of the quality required; or

1 (d) Efficient utilization of existing equipment or
2 supplies requires the acquisition of compatible equipment or
3 supplies.
4

5 350-15-016. Bond required; conditions; retention of contract
6 amount in lieu of bond.

7 Whenever the commission shall contract with any person or
8 corporation to do any work for the commission, the commission
9 shall require the person or persons with whom such contract is
10 made to make, execute, and deliver to the commission, a good
11 and sufficient bond, with two or more sureties, or with a
12 surety company as surety, conditioned that such person or
13 persons shall faithfully perform all the provisions of such
14 contract and pay all laborers, mechanics, and subcontractors
15 and materialmen, and all persons who supply such person or
16 persons, or subcontractors, with provisions and supplies for
17 the carrying on of such work, and any person or persons
18 performing such services or furnishing material to any
19 subcontractor shall have the same right under the provisions of
20 such bond as if such work, services or material was furnished
21 to the original contractor: Provided, That on contracts of
22 \$25,000 dollars or less, at the option of the contractor the
23 commission may, in lieu of the bond, retain fifty percent of
24 the contract amount for a period of thirty days after date of
25 final acceptance.
26

17 350-15-017. Conditions of bond; notice of claim; action
18 on bond; attorney's fees.

19 The bond mentioned in 350-15-016 shall be in an amount
20 equal to the full contract price agreed to be paid for such
21 work or improvement, and shall be to the commission. All such
22 persons mentioned in 350-15-016 shall have a right of action in
23 his, her, or their own name or names on such bond for work done
24 by such laborers or mechanics, and for materials furnished or
25 provisions and goods supplied and furnished in the prosecution
26 of such work, or the making of such improvements: Provided,
That such persons shall not have any right of action on such
bond for any sum whatever, unless within thirty days from and
after the completion of the contract with an acceptance of the
work by the affirmative action of the commission, and the
laborer, mechanic or subcontractor, or materialman, or person
claiming to have supplied material, provisions or goods for the
prosecution of such work, or the making of such improvement,
shall present to and file with the commission, notice in
writing in substance as follows:

1 To (here insert the name of the commission):

2 Notice is hereby given that the undersigned (here insert
3 the name of the laborer, mechanic or subcontractor, or
4 materialman, or person claiming to have furnished labor,
5 materials or provisions for or upon such contract or work), has
6 a claim in the sum of \$_____ (here insert the amount) against
the bond taken from _____ (here insert the name of the
principal and surety or sureties upon such bond) for the work
of _____ (here insert a brief mention or description of the
work concerning which said bond was taken).

(here to be signed) _____

7 Such notice shall be signed by the person or corporation
8 making the claim or giving the notice, and said notice, after
9 being presented and filed, shall be a public record open to
10 inspection by any person, and in any suit or action brought
11 against such surety or sureties by any such person or
12 corporation to recover for any of the items herein before
13 specified, the claimant shall be entitled to recover in
14 addition to all other costs, attorney's fees in such sum as
shall be adjudged reasonable: Provided, however, That no
attorney's fees shall be allowed in any suit or action brought
or instituted before the expiration of thirty days following
the date of filing of the notice herein before mentioned.

15 350-15-018. Notice to contractor condition to suit on bond
16 when supplies are furnished to subcontractor.

17 Every person, firm or corporation furnishing materials,
18 supplies or provisions to be used in the construction,
19 performance carrying on, prosecution or doing of any work for
20 the the commission, shall, not later than ten days after the
21 date of the first delivery of such materials, supplies or
22 provisions to any subcontractor or agent of any person, firm or
23 corporation having a subcontract for the construction,
24 performance, carrying on, prosecution or doing of such work,
25 deliver or mail to the contractor a notice in writing stating
in substance and effect that such person, firm or corporation
has commenced to deliver materials, supplies or provisions for
use thereon, with the name of the subcontractor or agent
ordering or to whom the same is furnished and that such
contractor and his bond will be held for the payment of the
same, and no suit or action shall be maintained in any court
against the contractor or his bond to recover for such
material, supplies or provisions or any part thereof unless the
provisions of this section have been complied with.

1 350-15-019. Preferences; foreign contractor.

2 (1) In all public contracts, the commission shall prefer
3 goods or services that have been manufactured or produced in
4 Oregon or Washington if price, fitness, availability and
5 quality are otherwise equal.

6 350-15-020. Subcontracting to minority or women business
7 enterprise; good faith effort; fee.

8 (1) Whenever the commission requires a bidder to
9 subcontract some part of the contract or obtain materials to be
10 used in performing the contract to a business enterprise that
11 is a minority or women business enterprise, the commission
12 shall award the contract, if one is awarded, to the lowest
13 qualified bidder who has met the minority business enterprise
14 or women business enterprise goal established by the commission
15 or who has made a good faith effort prior to the time bids are
16 opened to comply with the subcontracting or material supplied
17 requirement.

18 (2) Performing all of the following actions by a bidder
19 constitute a rebuttable presumption that the bidder has made a
20 good faith effort to satisfy the subcontracting requirement
21 described in subsection (1) of this section:

22 (a) The bidder attended any presolicitation or prebid
23 meetings that were scheduled by the commission to inform
24 minority and women business enterprises of contracting and
25 subcontracting or material supply opportunities available on
26 the project;

(b) The bidder identified and selected specific
economically feasible units of the project to be performed by
minority and women business enterprises in order to increase
the likelihood of participation by such enterprises;

(c) The bidder advertised in general circulation, trade
association, minority and trade oriented, women-focus
publications, if any, concerning the subcontracting or material
supply opportunities;

(d) The bidder provided written notice to a reasonable
number of specific minority and women business enterprises,
soliciting bids for the selected subcontracting or material
supply work, in sufficient time to allow the enterprises to
participate effectively;

(e) The bidder followed up initial solicitations of
interest by contacting the enterprises to determine with
certainty whether the enterprises were interested;

(f) The bidder provided interested minority and women
business enterprises with adequate information about the plans,
specifications and requirements for the selected subcontracting
or material supply work;

1 (g) The bidder negotiated in good faith with the
enterprises, and did not without justifiable reason reject as
2 unsatisfactory bids prepared by any minority and women business
enterprises;

3 (h) Where applicable, the bidder advised and made efforts
to assist interested minority and women business enterprises in
obtaining bonding, lines of credit or insurance required by the
4 commission or contractor; and

5 (i) The bidder's efforts to obtain minority and women
business enterprise participation were reasonably expected to
produce a level of participation sufficient to meet the goals
6 or requirement of the commission.

7 (3) If a bidder has not met the minority business
enterprise or women business enterprise goal established by the
commission, the commission shall evaluate the good faith effort
8 of the bidder consistent with subsection (2) of this section.
If shall be a rebuttable presumption that a bidder has made a
9 good faith effort to comply with the requirement for
subcontracting or material supply described in subsection (1)
10 of this section if the bidder has acted consistently with the
actions described in subsection (2) of this section. It shall
11 be a rebuttable presumption that the bidder did not make a good
faith effort if the bidder has not acted consistently with the
12 actions described in subsection (2) of this section.

13 (4) For purposes of this section and for purposes of
certification of minority or women business enterprises by the
14 commission:

15 (a) "Minority or women business enterprise" means a
business concern which is a least 51 percent owned by one or
16 more minorities or women, as the case may be, or in the case of
a corporation, at least 51 percent of the stock of which is
17 owned by one or more minorities or women, and whose management
and daily business operations are controlled by one or more of
the minority or women stockholders.

18 (b) "Minority individual" is a person who is a citizen or
lawful permanent resident of the United States, who is a:

19 (A) Black American or person having origins in any of the
Black racial groups of Africa.

20 (B) Hispanic American or person of Mexican, Puerto Rican,
Cuban, Central or South American or other Spanish culture or
21 origin, regardless of race.

22 (C) Native American or person who is an American Indian,
Eskimo, Aleut or Native Hawaiian.

23 (D) Asian-Pacific American or person whose origin is from
Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the
Philippines, Samoa, Guam, the United States Trust Territories
24 of the Pacific or the Northern Marianas.

25 (E) Asian-Indian American or person whose origin is from
India, Pakistan or Bangladesh.

PERSONAL SERVICE CONTRACTS

350-15-025. It is the intent of these rules to establish a policy of open competition for all personal service contracts entered into by the commission, unless specifically exempted under these rules.

(1) "Commission" or agency means the Columbia River Gorge Commission.

(2) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(3) "Consultant" means an independent individual or firm contracting with the commission to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the commission except as to the result of the work. The commission monitors progress under the contract and authorizes payment.

(4) "Emergency" means a set of unforeseen circumstances beyond the control of the commission that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(5) "Evidence of competition" means documentation demonstrating that the commission has solicited responses from multiple firms in selecting a consultant.

(6) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (8) of this section.

(7) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the commission.

(8) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(9) "Sole Source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required.

1 350-15-026. All personal service contracts shall be entered
2 into pursuant to competitive solicitation, except for:

- 3 (1) Emergency contracts;
- 4 (2) Sole source contracts;
- 5 (3) Contract amendments;
- 6 (4) Contracts between a consultant and the commission of
7 less than ten thousand dollars. However, contracts of two
8 thousand five hundred dollars or greater, but less than ten
9 thousand dollars, shall have documented evidence of
10 competition. The commission shall not structure contracts to
11 evade these requirements; and
- 12 (5) Other specific contracts or classes or groups of
13 contracts exempted from the competitive solicitation process by
14 the commission when it has been determined that a competitive
15 solicitation process is not appropriate or cost effective.

16 350-15-027. No officer or activity of the commission subject
17 to these rules shall expend any funds for personal service
18 contracts unless the agency has complied with the competitive
19 procurement and other requirements of these rules.

20 350-15-028. These rules do not apply to:

- 21 (1) Contracts specifying a fee of less than two thousand
22 five hundred dollars if the total of the contracts with the
23 contractor within a fiscal year does not exceed two thousand
24 five hundred dollars;
- 25 (2) Contracts awarded to companies that furnish a service
26 where the tariff is established by a utilities and
27 transportation commission or other public entity;
- 28 (3) Intergovernmental agreements awarded to any
29 governmental entity, whether federal, state, or local and any
30 department, division or subdivision thereof;
- 31 (4) Contracts awarded for services to be performed for a
32 standard fee, when the standard fee is established by the
33 contracting agency or any other governmental entity and a like
34 contract is available to all qualified applicants;
- 35 (5) Contracts for services that are necessary to the
36 conduct of collaborative research if prior approval is granted
37 by the funding source;
- 38 (6) Contracts for the employment of expert witnesses for
39 the purposes of litigation.

ADMINISTRATIVE PROCEDURES

1
2
3 350-16-001. Commission required to prepare public writings
in readable form.

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

6 (2) As used in this section, "public writing" means any
rule, form, license or notice prepared by the commission.
7

8 350-16-002. Definitions for 350-16-002 to 350-16-018.

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

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

12 (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
13 such specific parties are entitled to appear and be heard;

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

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

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

18 (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.

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

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

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

25 (A) Precedes final commission action; or
26

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

3 (6) "Party" means:

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

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

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

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

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

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

25 (A) Between agencies, or their officers or their
26 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.

22 350-16-003. Description of organization; service of order;
23 effect of not putting order in writing.

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

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

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

6 350-16-004. Notice requirements for rule adoption;
7 temporary rule adoption, or amendment;
8 substantial compliance required.

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

11 (a) In the manner established by rule adopted by the
12 commission, which provides a reasonable opportunity for
13 interested persons to be notified of the agency's proposed
14 action;

15 (b) In the Oregon bulletin and Washington register at
16 least 20 days prior to the commencement of any commission
17 action; and

18 (c) To persons who have requested notice pursuant to
19 subsection (7) of this section.

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

26 (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; and

(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.

1 (3) When the commission proposes to adopt, amend or
2 repeal a rule, it shall give interested persons reasonable
3 opportunity to submit data or views. Opportunity for oral
4 hearing shall be granted upon request received from 10 persons
5 or from an association having not less than 10 members within
6 15 days after commission notice. The commission holding a
7 hearing upon a request made under this subsection is not
8 required to give additional notice of the hearing in the Oregon
9 bulletin or Washington register if the commission gives notice
10 in compliance with its rules of practice and procedure other
11 than a requirement that notice be given in the bulletin. The
12 commission shall consider fully any written or oral submission.

13 (4) Upon request of an interested person received within
14 15 days after commission notice pursuant to subsection (1) of
15 this section, the commission shall postpone the date of its
16 intended action no less than 10 nor more than 90 days in order
17 to allow the requesting person an opportunity to submit data,
18 views or arguments concerning the proposed action. Nothing in
19 this subsection shall preclude the commission from adopting a
20 temporary rule pursuant to subsection (5) of this section.

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

25 (a) A statement of its findings that its failure to act
26 promptly will result in serious prejudice to the public
interest or the interest of the parties concerned and the
specific reasons for 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 inspection.

(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

1 (B) The rule filed identifies the location of the
2 standards so incorporated and the conditions of their
availability to the public.

3 (2) Each rule is effective upon filing as required by
subsection (1) of this section, except that:

4 (a) If a later effective date is required by statute or
specified in the rule, the later date is the effective date.

5 (b) A temporary rule becomes effective upon filing with
6 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
7 take appropriate measures to make temporary rules known to the
persons who may be affected by them.

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

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

14
15
16 350-16-008. Petitions requesting adopting of rules.

17 An interested person may petition the commission
requesting the promulgation, amendment or repeal of a rule.
18 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
19 submission of a petition, the commission either shall deny the
petition in writing or shall initiate rulemaking proceedings.

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21
22 350-16-009. CONTESTED CASES.

23 Notice to party before hearing of rights and
procedure; legislative findings; failure to
24 provide notice.

25 (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
26 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)
Page to (4) of this section to set forth certain requirements of the

1 commission so that citizens shall be fully informed as to these
2 matters when exercising their rights before the commission.

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

6 (a) If a party is not represented by an attorney, a
7 general description of the hearing procedure including the
8 order of presentation of evidence, what kinds of evidence are
9 admissible, whether objections may be made to the introduction
10 of evidence and what kind of objections may be made and an
11 explanation of the burdens of proof or burdens of going forward
12 with the evidence.

13 (b) The manner of making the record and its availability
14 to the parties.

15 (c) The function of the record-making with respect to the
16 perpetuation of the testimony and evidence and with respect to
17 any appeal from the determination or order of the commission.

18 (d) Whether an attorney will represent the commission in
19 the matters to be heard and whether the parties ordinarily and
20 customarily are represented by an attorney.

21 (e) The title and function of the person presiding at the
22 hearing with respect to the decision process, including, but
23 not limited to, the manner in which the testimony and evidence
24 taken by the person presiding at the hearing are reviewed, the
25 effect of that person's determination, who makes the final
26 determination on behalf of the commission, whether the person
presiding at the hearing is or is not an employe, 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
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

1 determination or order a court finds that the failure affects
2 the substantial rights of the complaining party. In the event
3 of such a finding, the court shall remand the matter to the
4 commission for a reopening of the hearing and shall direct the
5 commission as to what steps it shall take to remedy the
6 prejudice to the rights of the complaining party.

7 350-16-010. Notice, hearing and record in contested cases;
8 informal disposition; hearings officer;
9 statement of ex parte communications.

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

13 (2) The notice shall include:

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

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

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

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

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

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

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

31 (6) An order adverse to a party may be issued upon
32 default only upon prima facie case made on the record of the
33 commission. When an order is effective only if a request for
34 hearing is not made by the party, the record may be made at the
35 time of issuance of the order, and if the order is based only
36 on material included in the application or other submissions of
37 the party, the commission may so certify and so notify the
38 party, and such material shall constitute the evidentiary
39 record of the proceeding if hearing is not requested.

40 (7) At the commencement of the hearing, the officer
41 presiding shall explain the issues involved in the hearing and
42 the matters that the parties must either prove or disprove.

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

46 (9) The officer presiding at the hearing shall place on
47 the record a statement of the substance of any written or oral
48 ex parte communications on a fact in issue made to the officer

1 during the pendency of the proceeding and notify the parties of
2 the communication and of their right to rebut such
communications.

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

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

6 (a) All pleadings, motions and intermediate rulings.

7 (b) Evidence received or considered.

8 (c) Stipulations.

9 (d) A statement of matters officially noticed.

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

11 (f) A statement of any ex parte communications on a fact
in issue made to the officer presiding at the hearing.

12 (g) Proposed findings and exceptions.

13 (h) Any proposed, intermediate or final order prepared by
the commission or a hearings officer.

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

17 350-16-011. Interpreter for handicapped person in contested
case.

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

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

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

25 (B) It appears to the commission that the handicapped
26 person is without means and is unable to obtain a qualified
interpreter.

1 (b) If the handicapped person knowingly and voluntarily
2 files with the commission a written statement that the
3 handicapped person does not desire a qualified interpreter to
4 be appointed for the handicapped person, the commission shall
5 not appoint such an interpreter for the handicapped person.

6 (3) As used in this section:

7 (a) "Handicapped person" means a person who cannot
8 readily understand or communicate the English language, or
9 cannot understand the proceedings or a charge made against the
10 handicapped person, or is incapable of presenting or assisting
11 in the presentation of the defense of the handicapped person,
12 because the handicapped person is deaf, or because the
13 handicapped person has a physical hearing impairment or
14 physical speaking impairment.

15 (b) "Qualified interpreter" means a person who is readily
16 able to communicate with the handicapped person, translate the
17 proceedings for the handicapped person, and accurately repeat
18 and translate the statements of the handicapped person to the
19 commission.
20
21
22

23 350-16-012. Depositions or subpoena of material witness;
24 discovery.

25 (1) On petition of any party to a contested case, the
26 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. Depositions may also be taken by
the use of audio or audio-visual records. 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 before such officer.

(2) The commission may, by rule, prescribe other methods
of discovery which may be used in proceedings before the
commission.
21
22

23 350-16-013. Subpoenas in contested cases.

24 (1) The commission shall issue subpoenas to any party to
25 a contested case upon request upon a showing of general
26 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.

1 Witnesses appearing pursuant to subpoena, other than the
2 parties or officers or employes of the commission, shall
3 receive fees and mileage as prescribed by law for witnesses in
4 civil actions.

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

15 350-16-014. Evidence in contested cases.

16 In contested cases:

17 (1) Irrelevant, immaterial or unduly repetitious evidence
18 shall be excluded but erroneous rulings on evidence shall not
19 preclude commission action on the record unless shown to have
20 substantially prejudiced the rights of a party. All other
21 evidence of a type commonly relied upon by reasonably prudent
22 persons in conduct of their serious affairs shall be
23 admissible. The commission shall give effect to the rules of
24 privilege recognized by law. Objections to evidentiary offers
25 may be made and shall be noted in the record. Any part of the
26 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 and
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 they 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 they shall be afforded an
opportunity to contest the facts so noticed. The commission

1 may utilize its experience, technical competence and
2 specialized knowledge in the evaluation of the evidence
presented to it.

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

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

7
8 350-16-015. Examination of evidence by agency in contested
9 cases.

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

15
16 350-16-016. Commission statement of ex parte communications;
notice.

17 The commission shall place on the record a statement of
18 the substance of any written or oral ex parte communications on
a fact in issue made to the commission during its review of a
19 contested case. The commission shall notify all parties of
such communications and of their right to rebut the substance
20 of the ex parte communications on the record.

21
22 350-16-017. Proposed order by hearings officer; amendment by
commission; exemptions.

23 (1) Except as otherwise provided in subsections (1) to
24 (3) of this section, unless a hearings officer is authorized or
required by law or commission rule to issue a final order, the
25 hearings officer shall prepare and serve on the commission and
all parties to a contested case hearing a proposed order,
26 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
Page commission within that period issues an amended order.

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

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

10 350-16-018. Orders in contested cases.

11 In a contested case:

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

15 (2) A final order shall be accompanied by findings of
16 fact and conclusions of law. The findings of fact shall
17 consist of a concise statement of the underlying facts
18 supporting the findings as to each contested issue of fact and
19 as to each ultimate fact required to support the commission's
20 order.

21 (3) The commission shall notify the parties to a
22 proceeding of a final order by delivering or mailing a copy of
23 the order and any accompanying findings and conclusions to each
24 party or, if applicable, the party's attorney of record.

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

0116H

Review and Approval of

Major Development Actions and New Residential Development

350-20-001. Purpose and Scope.

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

(2) Prior to the effective date of a county's land use ordinance adopted and approved pursuant to sections 7 and 8 of PL 99-663, the Commission shall review all major development actions and new residential development within that county which are located in the National Scenic Area, but outside Urban Areas. Only major development actions and new residential development found to be consistent with the standards of section 6 and the purposes of PL 99-663 shall be allowed.

350-20-002. Definitions.

For the purpose of this division, the following definitions shall apply:

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

(2) "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).

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

(a) subdivisions, partitions, and short plat proposals;

(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 section 6 of PL 99-663;

(c) the exploration, development, and production of mineral resources unless such exploration, development, or production can be conducted without disturbing the surface of any land within the boundaries of a special management area or 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 any residence or other related major structure on any parcel less forty acres in size.

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

(5) "Residential Development" means the permitting for siting or construction of any residence or other related major structure.

(6) "Special Management Areas (SMAs)" means areas within the National Scenic Area established pursuant to section 4 of PL 99-663.

(7) "Urban Areas" means those areas within the scenic area identified as urban areas on the map referred to in section 4(e) of PL 99-663 or within the the boundaries of an urban area as revised pursuant to section 4(f).

350-20-003. Review Standards and Guidelines.

In reviewing major development actions and new residential development for consistency with the standards of section 6 and the purposes of PL 99-663, the guidelines contained in Chapter 3 of the Columbia River Gorge National Scenic Area Final Interim Guidelines, published by the USDA Forest Service and dated June 30, 1987, as amended below shall be utilized:

(1) 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 or committed to non-farm uses shall not be considered agricultural lands."

(2) The definition of forest land 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 or committed to non-forest uses shall not be considered forest land."