



...ULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (7/10/97)

Agency:

Columbia River Gorge Commission

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: July 21, 1998

(2) Purpose:

To amend 350-11, 350-12 and 350-14 to provide clarificaiton and bring into compliance with state statutes.

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

Repealed:

Amended: See attached.

Suspended:

(4) Statutory authority for adoption: RCW 43.97.015

Other authority: ORS 196.150, 16 USC 544 et seq.

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 98.09.069 on April 20, 1998 (date).

Describe any changes other than editing from proposed to adopted version:

None

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

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

Reasons for this finding:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date).

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

- Yes
 - No
- If Yes, explain:

(6) Effective date of rule:

Permanent Rules

or Expedited Rule Making

- 31 days after filing
- Other (specify) _____*

Emergency Rules

- Immediately
- Later (specify) _____

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

NAME (TYPE OR PRINT)

Jan Brending

SIGNATURE

Jan Brending

TITLE Rules Coordinator

DATE 10/21/98

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

10/22/98

TIME 9:48 AM
PM

WSR 98-22-012

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

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

The number of sections adopted in order to comply with:

Federal statute:	New ____	Amended ____	Repealed ____
Federal rules or standards:	New ____	Amended ____	Repealed ____
Recently enacted state statutes:	New ____	Amended ____	Repealed ____

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

New ____ Amended ____ Repealed ____

The number of sections adopted on the agency's own initiative:

New ____ Amended ____ Repealed ____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New ____ Amended ____ Repealed ____

The number of sections adopted using:

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

Rule-Making Order

Attachment to CR-103

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

- Amended:** 350-11-001 Definitions for 350-11-001 to 350-11-010
350-11-003 Meetings of Commission to be open to public
350-11-004 Public notice required
350-11-006 Executive sessions permitted on certain purposes
350-11-008 Enforcement of 350-11-001 to 350-11-007
350-11-009 Prima facie evidence of violation required of plaintiff
350-12-005 Certified copies of public records
350-12-006 Public records exempt from disclosure
- Adopted:** 350-14-006 Ex parte contact
350-14-007 Appearance of Fairness

AMENDATORY SECTION

350-11-001. Definitions for 350-11-001 to 350-11-010. (1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of the commission is required at any meeting at which a quorum is present.

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

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

(4) "Meeting" means the convening of the commission for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any onsite inspection of any project or program. "Meeting" also does not include the attendance of members of the commission at any national, regional or state association to which the commission or members of the commission belong.

AMENDATORY SECTION

350-11-003. Meetings of commission to be open to public; location of meetings. (1) All meetings of the commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by 350-11-001 to 350-11-010.

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

(5) Notwithstanding the requirements of section (4) above, committee meetings may be held in any location where the committee deems it useful.

(6) Meetings of the commission shall be held in locations that are accessible to the disabled.

(7) Upon request of a hearing impaired person, the commission shall make a good faith effort to have an interpreter for hearing impaired persons provided at a regularly scheduled meeting. The person requesting the interpreter shall provide the commission at least 48 hours' notice of the request, shall provide the name of the requester, sign language preference and any other relevant

information the commission may require.

(8) Voting by the commission shall take place in public and each member's vote shall be recorded as it is cast.

AMENDATORY SECTION

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, 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.

(4) The commission may adjourn or continue a meeting to a time and place specified in an order of adjournment or continuance. Written notice of the adjournment or continuance shall be provided in accordance with subsection (3) above. A copy of the order of adjournment or continuance shall be conspicuously posted immediately after adjournment or continuance on the door where the meeting was held.

AMENDATORY SECTION

350-11-006. Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits. (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 such executive session. Executive session may be held:

(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:

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

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

(C) The consideration of general employment policies.

(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, regularized procedures for hiring have been adopted by the public body and their has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring chief executive officers shall be adopted by the commission in meetings open to the public in which there has been opportunity for public comment.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, unless such public officer,

employee, staff member or individual agent requests an open hearing.

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

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

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

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

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

(h) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the commission, the employment-related performance of the chief executive officer of the commission, a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers shall be adopted by the commission in meetings open to comment. An executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member shall not include a general evaluation of any agency goal, objective or operation of any directive to personnel 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))~~ no information that is the subject of the executive session shall be ~~((it))~~ disclosed.

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

AMENDATORY SECTION

350-11-008. Enforcement of 350-11-001 to 350-11-007; effect of violation on validity of decision of the commission; liability of members. (1) Any person affected by a decision of the commission may commence a suit in the circuit court or superior court of the county in which the commission ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of 350-11-001 to ~~((350-11-008))~~ 350-11-007, by members of the commission, or to determine the applicability of 350-11-001 to ~~((350-11-008))~~ 350-11-007 to matters or decisions of the commission. The court may order such equitable relief as it deems appropriate in the circumstances. A decision shall not be voided if other equitable relief is available. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney's fees at trial and on appeal, by the commission.

(2) If the court makes a finding that a violation of 350-11-001 to ~~((350-11-008))~~ 350-11-007

has occurred under subsection (1) of 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))~~ 350-11-007.

AMENDATORY SECTION

350-11-009. Prima facie evidence of violation required of plaintiff. In any suit commenced under 350-11-008(1), the plaintiff shall be required to present prima facie evidence of a violation of 350-11-001 to ~~((350-11-008))~~ 350-11-007 before the commission 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 meeting law, the burden to prove that the provisions of 350-11-001 to ~~((350-11-008))~~ 350-11-007 were complied with shall be on the commission.

AMENDATORY SECTION

350-12-005. Certified copies of public records; fees. (1) The custodian of any public record which a person has a right to inspect shall give the person, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) ~~((The public body may establish fees reasonably calculated))~~ The Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media. This applies to both regular and certified copies of records.

AMENDATORY SECTION

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

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

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

(c) Investigatory information compiled for criminal law purposes, except that the record of

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

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

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

(C) The conditions of release;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Information submitted to the commission in confidence and not otherwise required by law

to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

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

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

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

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

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

(5) Disclosure of information in violation of Rule 350-12-006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.

AMENDATORY SECTION

350-14 CONFLICT OF INTEREST, EX PARTE CONTACT, APPEARANCE OF FAIRNESS
(title change)

NEW SECTION

350-14-006. Ex Parte Contact. (1) Members of the Commission shall not have ex parte contact, i.e. discussion of specific issues regarding a pending land use permit, with applicants or interested parties seeking a land use permit, or opponents to the permit, while the application or appeal thereto is pending under a land use ordinance for the Scenic Area.

(2) Members of the Commission shall place on the record of the appeal or proceedings under these rules any ex parte contact set forth in subsection (1). The Chair or presiding officer shall notify all parties to the appeal or proceeding. The Chair or presiding officer shall consider the position of the parties and, after review of the matter, make a recommendation to the Commission to ensure the appearance of fairness is maintained. The member of the Commission who was the subject of the ex parte contact may voluntarily step down from hearing the matter. The Commission may also request the member of the Commission to participate in the appeal or proceedings or, the member of the Commission step down from hearing the matter.

NEW SECTION

350-14-007. Appearance of Fairness. (1) Members of the Commission shall comply with the appearance of fairness in appeals and proceedings under Rules 350-60 et seq. and Rules 350-70 et seq.