



RULE-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: April 13, 1999

(2) Purpose:
To amend rules to provide clarification.

(3) Citation of existing rules affected by this order:
Repealed:
Amended: 350-40, Revision of Urban Area Boundaries; 350-50, Plan Amendment Process
Suspended:

(4) Statutory authority for adoption: RCW 43.97
Other authority: ORS 196.150; 16 USC 544 et seq

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)
 Adopted under notice filed as WSR 99-05-057 on February 16, 1999 (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 <input type="checkbox"/> 31 days after filing <input checked="" type="checkbox"/> Other (specify) <u>5-17-99</u> * <small>*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)</small>	Emergency Rules <input type="checkbox"/> Immediately <input type="checkbox"/> Later (specify) _____
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NAME (TYPE OR PRINT) Jan Brending

SIGNATURE *Jan Brending*

TITLE Rules Coordinator **DATE** 4-14-99

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON

APR 16 1999

TIME 3:52

99-09-041

AM
PM

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

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

The number of sections adopted in order to comply with:

Federal statute:	New _____	Amended <u>23</u>	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 23 Repealed _____

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

New _____ Amended 23 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 <u>23</u>	Repealed _____

AMENDATORY SECTION

350-40-000. Purpose. This division specifies the process ~~((that will be used by))~~ of the Columbia River Gorge Commission (Commission) ~~((when it considers))~~ for considering minor revisions to the boundaries of any Urban Area.

AMENDATORY SECTION

350-40-020. Authority. (1) The Commission may make "minor revisions" to the boundaries of an Urban Area [Scenic Area Act, Section 4(f)]. Such revisions must comply with procedural requirements and criteria in the Scenic Area Act.

(2) Three procedural requirements are included in Section 4(f)(1) of the Scenic Area Act:

~~((+))~~a) Requests to revise an Urban Area boundary ~~((must be))~~ are submitted to the Commission by a county government;

~~((2))~~b) The Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and

~~((3))~~c) Two-thirds of the Commission members, including a majority of the members appointed from each state, must approve a ~~((ny))~~ revision of an Urban Area boundary. In the event of recusal, the doctrine of necessity shall apply.

(3) Section 4(f)(2) of the Scenic Area Act allows the Commission to revise the boundaries of an Urban Area only if the following criteria are satisfied:

~~((+))~~a) A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;

~~((2))~~b) Revision of Urban Area boundaries is ~~((would be))~~ consistent with the standards established in Section 6 and the purposes of the Scenic Area Act;

~~((3))~~c) Revision of Urban Area boundaries ~~((would))~~ will result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

~~((4))~~d) Revision of Urban Area boundaries ~~((would))~~ will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

AMENDATORY SECTION

350-40-030. Application for Revision. Applications to revise the boundaries of any Urban Area shall contain the following information:

(1) A statement from the county sponsoring the Urban Area boundary revision, signed by the county commissioners.

(2) A statement that the senior-elected or appointed official(s) of any affected municipality or special district ~~((have been notified))~~ were provided notice of the application.

(3) A statement that explains why the proposed Urban Area boundary revision is needed. The statement shall describe the anticipated land uses that would occur in the affected area and demonstrate(s) how the proposed revision complies with the criteria in the Scenic Area Act.

(4) A map of the area (~~(that would be added)~~) proposed for revision to the existing Urban Area. The map shall be drawn to scale and shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. It shall include the following elements:

- (a) North arrow;
- (b) Map scale;
- (c) Boundaries of all parcels within the subject area, with labels showing the name of each property owner and the size of each parcel;
- (d) Current municipal zoning designations, where applicable;
- (e) Significant terrain features or landforms;
- (f) Bodies of water and watercourses;
- (g) Existing roads and railroads;
- (h) Existing dwellings and other structures; and
- (i) Location of existing services, including water systems, sewage systems, and power and telephone lines.

- (5) For incorporated areas, a map of the current boundary of the municipality.
- (6) A map of adopted land use designations and zoning for the existing Urban Area.
- (7) For Oregon applications, a map of currently approved urban growth boundaries.
- (8) An analysis based on criteria in the Scenic Area Act. (For guidance see *Urban Areas Boundary Revisions Handbook*, Gorge Commission 1992).

AMENDATORY SECTION

350-40-040. Processing of Application. Each application to revise the boundaries of an Urban Area (~~(will be)~~) is reviewed according to the priorities established by the Commission in the Management Plan [see Part IV, Chapter 1, section *Revision of Urban Area Boundaries*, Policy 5]. Within priority categories established in the Management Plan, applications (~~(will be)~~) are reviewed in the order received.

AMENDATORY SECTION

350-40-050. Submission and Acceptance of Application. (1) (~~(Applications to revise the boundaries of an Urban Area shall be submitted directly to the office of the Commission by a county government.)~~) A county government shall submit an application to revise the boundary of an Urban Area to the Commission office. (~~(An original and)~~)Fifteen copies of each application are required after the Executive Director determines the application is complete. Only two copies of the large scale maps are required.

(2) Within ten (10) working days of receiving an application, the Director shall review the application for completeness and adequacy and notify the applicant in writing of any deficiencies. (~~(No application shall be accepted as complete until all omissions and deficiencies noted by the Director have been corrected by the applicant.)~~)

(3) The Executive Director shall not accept an application as complete until all omissions and deficiencies noted by the Executive Director are corrected.

AMENDATORY SECTION

350-40-060. Notice of Application. (1) ~~((Public notice of the completed application will be posted at Commission and U.S. Forest Service offices and shall be made available for posting at the applicable county or city planning office(s).))~~ Once the application is deemed complete, the Executive Director shall send public notice of the completed application to the U.S. Forest Service-National Scenic Area Office, States of Oregon and Washington, all four Indian tribal governments, the six Gorge county planning offices, appropriate city planning offices, and interested parties who have requested notice.

(2) ~~((Copies of the complete application will be available for inspection at the Commission office during normal office hours.))~~ The Executive Director shall publish notice of the application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.

(3) The Executive Director shall make copies of the complete application available for inspection at the Commission office during normal office hours.

~~((3))~~ Interested persons shall have twenty (20) working days from the date the notice was posted to submit written comments to the Director. Written comments should address whether the proposed Urban Area boundary revision would be consistent with the criteria in the Scenic Area Act.

NEW SECTION

350-40-065. Public Comment. (1) Interested persons shall have twenty (20) working days from the date the notice is posted to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

AMENDATORY SECTION

350-40-070. Report of the Executive Director. ~~((The Executive Director will prepare a report, which may include recommendations, within thirty (30) working days of the date an application has been accepted as complete.))~~ Within thirty (30) working days following the end of the public comment period, the Executive Director will prepare a report, which may include recommendations. Upon application of the Executive Director, the Commission may extend the time for submission of the report. The report will analyze the proposed Urban Area boundary revision based on the ((purposes and standards of the Scenic Area Act and the criterion in Section 6(h) of the Scenic Area Act)) criteria ((in)) of the Scenic Area Act and this rule ((350-20-004)).

AMENDATORY SECTION

350-40-080. Hearings. (1) The Commission will conduct a hearing((s)) on every application accepted as complete by the Director.

(2) ~~((A general hearing on all current applications for the year, to consider public testimony and opinion on applications, may be set by the Commission. Any person may comment on the applications within time limits set by the Commission.))~~ The Commission shall provide 30 days notice of the hearing to interested parties and members of the public.

(3) ~~((A separate hearing will be conducted on the merits of each application. This hearing will be quasi-judicial in nature and will allow the parties, including intervenors, to present the application in a format that follows the contested case rules of the Commission [see Chapter 350, Division 16]. Any person who submitted comments on an Urban Area boundary revision application pursuant to 350-40-007(3) may participate in the Urban Area boundary revision hearing by filing a Notice of Intervention with the Director within 20 working days of the date the Director's report is prepared, pursuant to 350-40-008. The Notice of Intervention shall also be served by mail upon the applicable county. The Notice of Intervention shall show that the person filing the Notice has submitted comments on the proposed boundary revision. The applicant shall be afforded an opportunity for rebuttal argument. The length of the hearing will vary depending on the complexity of the application.))~~ The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues:

(a) The applicant is required to proceed first in the hearing and shall present the basis for the urban area boundary revision.

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

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

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

(e) After all presentations are complete, the Chair shall invite the Commission to deliberate on the proposed urban area boundary revisions.

(f) If the Commission makes no changes to the boundary revision proposal, the Commission may proceed to vote on the proposal.

(g) If the only changes to the boundary revision proposal are for the purposes of clarification, the Commission may proceed to vote on whether to adopt the boundary revision after providing an opportunity for public comment during the hearing on any change.

(h) If substantive changes, i.e. those not covered by subparagraph (g) immediately above, to the boundary revision are approved by the Commission during the hearing, the Commission shall:

(i) provide an opportunity for additional public comment during the hearing on the proposed changes, and then proceed to vote on whether to approve the boundary revision; or

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

~~((4) The Commission may seek additional information from any applicant before and during the hearing.))~~

NEW SECTION

350-40-090. Consultation. In considering amendments to urban area boundaries, the Gorge Commission shall consult with the Forest Service, both states, the six Gorge counties, all four Indian tribal governments and agencies or organizations that have a specific interest.

AMENDATORY SECTION

350-50-010. Purpose. This division specifies the process ~~((that will be used by))~~ of the Columbia River Gorge Commission (Commission) ((when it considers)) for considering amendments to the Management Plan.

AMENDATORY SECTION

350-50-020. Authority. ~~((Amendments to the Management Plan must comply with the requirements of the Scenic Area Act. These requirements are included in Section 6(h) of the Scenic Area Act:~~

~~(1) If the Commission determines at any time that conditions within the Scenic Area have significantly changed, it may amend the Management Plan.~~

~~(2) The Commission shall submit amendments to the Management Plan to the Secretary of Agriculture for review, in accordance with the provisions of the Scenic Area Act for adoption of the Management Plan.~~

~~(3) The Commission shall adopt an amendment to the Management Plan by a majority vote of the members appointed, including at least three members from each state.~~

~~(4) An amendment to the Management Plan must be consistent with the standards established in Section 6 and the purposes of the Scenic Area Act.))~~

(1) The Commission shall adopt an amendment to the Management Plan only if it is consistent with the purposes and standards of the Scenic Area Act, the provisions in section 6(h) of the Act, and this rule.

(2) The Act only allows the Commission to adopt a plan amendment:

(a) If the Commission determines at any time that conditions within the Scenic Area have significantly changed; and

(b) If the Commission approves the plan amendment by a majority vote of the members appointed, including approval by at least three members from each state. In the event of recusal, the doctrine of necessity shall apply.

AMENDATORY SECTION

350-50-030. Criteria for Plan Amendment Approval. The Commission must find ~~((that))~~ the following ~~((three))~~ criteria are satisfied before it approves an amendment ~~((of))~~ to the Management Plan:

- (1) Conditions in the Scenic Area have significantly changed. This means:
 - (a) physical changes that have widespread or major impacts to the landforms, resources, or land use patterns in the Scenic Area;
 - (b) new information or inventory data regarding land uses or resources that could result in a change of a plan designation, classification, or other plan provision; or
 - (c) changes in legal, social, or economic conditions, including those that affect public health, safety, or welfare, not anticipated in the Management Plan;
- (2) No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists; and
- (3) The proposed amendment ~~((would be))~~ is consistent with the purposes and standards ~~((and purposes))~~ of the Scenic Area Act.

AMENDATORY SECTION

350-50-040. Origin of Applications. Applications to amend the Management Plan may originate from the Commission, Commission staff, or interested persons, including state and local governments, all four Indian governments, public interest groups, or affected landowners.

AMENDATORY SECTION

350-50-050. Application for Plan Amendment. Applications to amend the plan shall contain a statement from the sponsor ~~((that explains why the proposed plan amendment is needed. The statement shall demonstrate that the proposed amendment complies with the purposes and standards of the Scenic Area Act and the criterion in Section 6(h) of the Scenic Area Act.))~~ The statement shall:

- (a) explain why the proposed plan amendment is necessary; and
- (b) demonstrate why the proposed plan amendment complies with the purposes and standards of the Act, the provisions in Section 6(h), and this rule.

AMENDATORY SECTION

350-50-060. Processing of Application. Each application for a plan amendment ~~((will be))~~ is reviewed according to the provisions in the Management Plan [Part IV, Chapter 1, section *Amendment of the Management Plan*, Policy 2] and this rule.

AMENDATORY SECTION

350-50-070. Submittal and Acceptance of Application. (1) ~~((Applications for plan amendments shall be submitted to the Commission office by a sponsor.))~~ The sponsor of the plan amendment shall submit an application to the Commission office. ((An original and f))Fifteen copies of each application are required after an application is accepted as complete by the Executive Director.

(2) Within ten (10) working days of receiving an application, the Executive Director shall review the application for completeness and adequacy and notify the applicant in writing of any deficiencies. ((No application shall be accepted as complete until all omissions and deficiencies noted by the Executive Director have been corrected by the applicant.))

(3) The Executive Director will not accept an application as complete until all omissions and deficiencies noted by the Executive Director are corrected.

NEW SECTION

350-50-075. Preliminary Review and Commencement of Review Process. (1) Once the application is determined complete, the Executive Director shall notify the applicants and shall bring the matter to the Commission for preliminary review.

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

(3) The purpose of preliminary review is to allow the Commission to:
(a) ask questions of Commission staff and of applicants regarding the plan amendment; and
(b) provide an opportunity to applicants, if they so choose, to revise the application to address issues raised in the preliminary review, provided that such changes are made within 15 working days of the preliminary review.

(4) Following the preliminary review, the Commission shall either commence or postpone the process for all complete applications. The Commission may postpone the process after evaluating the resources, including financial and personnel, required to process the proposed plan amendment and determining its priority relative to existing or anticipated work. A majority vote of the Commission at a regularly scheduled meeting is required to commence the process for a proposed plan amendment; the process is postponed for proposals that fail to receive the majority vote needed to commence.

(5) The Commission may reconsider a postponed plan amendment at any subsequent regularly scheduled meeting, and may commence the review process by a majority vote.

AMENDATORY SECTION

350-50-080. Notice of Application. (1) Once the application is deemed complete and 15 working days have expired after the Commission has voted to commence the process, the Executive Director shall send ((P))public notice of the completed application, including any revisions, ((with

~~be sent)) to the U.S. Forest Service - National Scenic Area Office, States of Oregon and Washington, all four Indian tribal governments, ~~((and))~~ the six Gorge county planning offices, and interested parties who have requested notice.~~

~~(2) ((Notice shall be published))~~ The Executive Director shall publish notice of the application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.

~~(3) The Executive Director shall make ((€))~~copies of the complete application ((will be)) available for inspection at the Commission office during normal office hours.

~~((4) Interested persons shall have twenty (20) working days from the date the notice is posted to submit written comments to the Executive Director. Written comments should address whether the proposed amendment would be consistent with the purposes and standards of the Scenic Area Act, and the criterion in Section 6(h) of the Scenic Area Act.))~~

NEW SECTION

350-50-085. Public Comment. (1) Interested persons shall have twenty (20) working days from the date the notice is posted to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

AMENDATORY SECTION

350-50-090. Report of the Executive Director. ~~((The Executive Director will prepare a report, which may include recommendations, within thirty (30) working days of the date an application has been accepted as complete.))~~ Within thirty (30) working days following the end of the public comment period, the Executive Director will prepare a report, which may include recommendations. Upon application of the Executive Director, the Commission may extend the time for submission of the report. The report will analyze the proposed amendment based on the ~~((purposes and standards of the Scenic Area Act and the criterion in Section 6(h) of the Scenic Area Act))~~ criteria of the Scenic Area Act and Rule 350-50-030.

AMENDATORY SECTION

350-50-100. Hearings. (1) The Commission ~~((with))~~ shall conduct a hearing on every application ~~((that))~~ the Commission has decided to review pursuant to ~~((350-50-070(3)))~~ 350-50-075(4).

~~(2) ((A hearing will be conducted on the merits of each application. This hearing will be quasi-judicial in nature and will allow the parties, including intervenors, to present the plan amendment in a format that follows the contested case rules of the Commission [see Chapter 350, Division 16]. Any person who submitted comments on a plan amendment application pursuant to 350-50-080(3) may participate in the hearing by filing a Notice of Intervention with the Director~~

~~within twenty (20) working days of the date the Executive Director's report is prepared, pursuant to 350-50-090. The Notice of Intervention shall also be served by mail upon the applicable sponsor. The Notice of Intervention shall show that the person filing the Notice has submitted comments on the proposed plan amendment. The sponsor shall be afforded an opportunity for rebuttal argument.~~) The Commission shall provide 30 days notice of the hearing to interested parties and members of the public.

~~(3) ((The Commission may seek additional information from any applicant before and during the hearing.))~~ The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues:

(a) The applicant is required to proceed first in the hearing and shall present the basis for the plan amendment.

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

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

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

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

(f) If the Commission makes no changes to the original amendment, the Commission may proceed to vote on the proposal.

(g) If the only changes to the amendment are for the purposes of clarification, the Commission may proceed to vote on whether to adopt the amendment after providing an opportunity for public comment during the hearing on any change.

(h) If substantive changes, i.e. those not covered by subparagraph (g) immediately above, to the amendment are approved by the Commission during the hearing, the Commission shall:

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

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

AMENDATORY SECTION

350-50-120. Review by the Secretary of Agriculture. ~~((According to))~~ In accord with Sections 6(f) and 6(h) of the Scenic Area Act, an amendment to the Management Plan adopted by the Commission ((with)) shall be submitted to the Secretary of Agriculture. The Secretary of Agriculture will review the amendment and determine if it is consistent with the purposes and standards of the Scenic Area Act. The Secretary has 90 days from the day the Commission submits an amendment to complete ((his/her)) review and make a determination of concurrence or non-concurrence.