

**WSR 24-15-079
PROPOSED RULES
COLUMBIA RIVER
GORGE COMMISSION**

[Filed July 18, 2024, 9:42 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Repeal former land use ordinance; add omitted requirements to new land use ordinance.

Hearing Location(s): On September 10, 2024, at 8:30 a.m., via Zoom. The registration link for the Columbia River Gorge Commission's (commission) meeting is <https://us02web.zoom.us/j/86488011558?pwd=RGdaBxInbgzn9xqyRdCP89ko0AFPdI.1>. Interested persons may contact the commission directly at 509-493-3323 if they need assistance registering for the meeting. The start time is for the commission meeting. The precise time of the hearing will be set approximately one week prior to the meeting.

Date of Intended Adoption: September 10, 2024.

Submit Written Comments to: Krystyna Wolniakowskii, 57 N.E. Wauna Avenue, P.O. Box 730, White Salmon, WA 98672, email info@gorgecommission.org, beginning August 1, 2024, 8:00 a.m., by September 2, 2024, 5:00 p.m. The commission will accept oral and written comments at the hearing. Written comments provided by the date above will be provided to the members of the commission in advance of the hearing.

Assistance for Persons with Disabilities: Contact Connie Acker, finance and administration manager, phone 509-493-3323, email info@gorgecommission.org, by September 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The first purpose of this proposal is to repeal Commission Rule 350-81 in its entirety. Commission Rule 350-81 was the commission's land use ordinance that implemented the first revised management plan for the Columbia River Gorge National Scenic Area, which was in effect between 2004 and 2020. In 2020, the commission enacted the second revised management plan, and in 2022, the commission adopted a new land use ordinance (Commission Rule 350-082) to implement the second revised plan. The commission maintained Commission Rule 350-81 for approximately one year after adopting the new land use ordinance to use for the land use applications that were in process when the commission adopted the new land use ordinance. At this time, there are no more pending land use applications and all appeal periods have passed, so Commission Rule 350-81 is not needed. There is no effect to repealing the ordinance. The second purpose of this proposal is to add the management plan requirements for grading plans for certain new structural development to Commission Rule 350-082. The commission's initial adoption of Commission Rule 350-082 in April 2022 inadvertently omitted these requirements. The commission staff has been applying the requirements using the management plan directly, so there is no anticipated effect of this correction.

Reasons Supporting Proposal: Commission Rule 350-81 must be repealed because it is no longer consistent with the management plan for the Columbia River Gorge National Scenic Area and the commission has adopted a new land use ordinance. Commission Rule 350-81 is out-of-date and by the terms of the Columbia River Gorge National Scenic Area Act, cannot be used. This addition to Commission Rule 350-082 is nec-

essary to make the new land use ordinance consistent with the management plan as required by the National Scenic Area Act.

Statutory Authority for Adoption: RCW 43.97.015; Or. Rev. Stat. § 196.150; 16 U.S.C. § 544e(c); 16 U.S.C. § 544f(1).

Statute Being Implemented: RCW 43.97.015; Or. Rev. Stat. § 196.150; 16 U.S.C. § 544e(c); 16 U.S.C. § 544f(1).

Rule is necessary because of federal law, 16 U.S.C. § 544e(c); 16 U.S.C. § 544f(1).

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Krystyna Wolniakowski, White Salmon, Washington, 509-493-3323.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal only repeals rules and incorporates requirements already adopted by the commission in the management plan; this proposal does not add new substantive regulations.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences of the state if the rule is not adopted: RCW 43.97.015; Or. Rev. Stat. § 196.150; 16 U.S.C. § 544e(c); 16 U.S.C. § 544f(1). If the commission does not repeal this rule, then it will be out of compliance with the requirement in the Columbia River Gorge National Scenic Area Act to maintain a land use ordinance that is consistent with the management plan for the Columbia River Gorge National Scenic Area. Although the commission has already adopted a new land use ordinance, it cannot maintain a second inconsistent ordinance.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: 16 U.S.C. §§ 544e and 544f dictate that the land use ordinance must be consistent with the previously adopted management plan. This proposal is to repeal the former land use ordinance that is not consistent with current second revised management plan.

Scope of exemption for rule proposal:

Is fully exempt.

July 18, 2024

C. L. Acker

Finance and Administration Manager

AMENDATORY SECTION

350-082-0080. Application for Review and Approval Required

(1) The application form required for National Scenic Area review is available at the Gorge Commission Office and on the Gorge Commission's website.

(2) All proposed developments and land uses shall be reviewed according to the standards in effect on the date the applicant submits a complete application for National Scenic Area review.

(3) A complete application is one that the Executive Director determines meets the requirements in this land use ordinance for a complete application form, a complete site plan showing the proposed site (site plans with alternative sites or building envelopes are not sufficient), all applicable information specified in the various sections of this land use ordinance, and other information that the Executive Director requires to make findings based on substantial evidence in the whole record and conclusions for compliance with the guidelines in this land use ordinance.

(4) The Executive Director will not accept an incomplete application for review.

(5) Prior to accepting an application or at any time during review of an application, the Executive Director may require the applicant to amend an application or withdraw an application and file a new application to resolve violations of applicable National Scenic Area standards or a prior Executive Director decision at the same time as the current application.

(6) The Executive Director shall accept and review the application pursuant to the procedures and requirements in 350-082-0080 through 350-082-0170 for consistency with the appropriate guidelines of this land use ordinance.

(7) The Executive Director may charge a fee for review of applications. The Gorge Commission shall set the fee after a public hearing.

(8) Applications for National Scenic Area review of a proposed use or development shall provide the following information.

(a) The applicant's name, mailing address, telephone number, and email address;

(b) The name, mailing address, telephone number, and email address of the landowner and all other persons or entities that hold easements or other partial interests that give a right to use or refuse use of land, as determined by the Executive Director;

(c) The county in which the proposed use or development would be located;

(d) The section, quarter section, township and range in which the proposed development would be located;

(e) The street address of the proposed use or development;

(f) The tax lot number(s) and size in acres of the parcel(s) involved;

(g) A description of the current land use for the parcel(s) involved and adjoining lands;

(h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures;

(i) A list of Key Viewing Areas from which the proposed use would be visible;

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Executive Director to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of one inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel; rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:

(A) North arrow;

(B) Map scale;

- (C) Boundaries, dimensions, and size of the subject parcel;
- (D) Significant terrain features or landforms (e.g., cliffs, rock faces, slopes, stands of trees);
- (E) Groupings and species of trees or other vegetation on the parcel;
- (F) Location and species of vegetation that would be removed or planted;
- (G) Bodies of water and watercourses, including intermittent and ephemeral streams;
- (H) Location and width of existing and proposed roads, driveways, and trails;
- (I) Location, dimensions, height, and size (in square feet) of existing and proposed structures;
- (J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting; and
- (K) Location and depth of all proposed grading and ditching
- (k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale and include sizes and dimensions of windows, doors, and covered openings;
- (l) The following applications for structural development shall include a grading plan:
 - (A) Applications involving more than 100 cubic yards of grading with slopes greater than 10 percent, except applications for trails in the SMAs.
 - (B) Applications involving more than 200 cubic yards of grading on sites visible from key viewing areas.
 - (C) Grading plans shall include the following:
 - (i) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:
 - (I) Existing and proposed final grades;
 - (II) Location of all areas to be graded, with cut banks and fill slopes delineated; and
 - (III) Estimated dimensions of graded areas.
 - (ii) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:
 - (I) Its purpose;
 - (II) An estimate of the total volume of material to be moved;
 - (III) The height of all cut banks and fill slopes;
 - (IV) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended);
 - (V) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings; and
 - (VI) A description of any other interim or permanent erosion control measures to be used.
 - (lm) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-082-0110 Table 1 - Notice Requirements;

(mn) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans; and

(no) The signature of the applicant, and the signature or other statement of the landowner and other persons or entities that hold easements or other partial interests that give a right to use or refuse use of land, as determined by the Executive Director indicating that they are aware of the application and that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application and to conduct inspections during construction of an approved development or land use, and a final inspection when construction is completed.

(9) The Executive Director may require additional information necessary to demonstrate compliance with this land use ordinance, including but not limited to, a professional land survey and staking of proposed structure and building locations that are close to a property or buffer boundary, a professionally drawn site and landscaping plan, and copies of or other proof of prior building permits and land use permits.

(10) The Executive Director shall provide Firewise information to applicants with application forms and encourage and assist applicants to incorporate Firewise standards in their proposals as appropriate and as consistent with the resource protection provisions in the Management Plan.

(11) Requirements for applications for Emergency/Disaster Response Actions are contained in 350-082-0230.

(12) Completed application forms shall be submitted directly to the Gorge Commission office.

REPEALER

The following sections of the Columbia River Gorge Commission's rules are repealed:

350-81-010.	Purposes and Applicability
350-81-012.	Affected Area
350-81-014.	Maps
350-81-016.	Review and Approval Required
350-81-018.	Uniform Application of Management Plan
350-81-020.	Definitions
350-81-030.	Standards for Applications
350-81-032.	Application for Review and Approval
350-81-034.	Pre-Application Conference
350-81-036.	Acceptance of Application
350-81-038.	Notice of Development Review
350-81-040.	Comment Period
350-81-042.	Decision of the Executive Director
350-81-044.	Expiration of Approvals
350-81-046.	Changes or Alterations to an Approved Action
350-81-050.	Development Eligible for Expedited Review
350-81-052.	Resource and Treaty Rights Protections Guidelines
350-81-054.	Procedures for Expedited Review Process
350-81-060.	Emergency/Disaster Response Actions
350-81-070.	Exempt Land Uses and Activities
350-81-072.	Prohibited Land Uses and Activities

- 350-81-074. Uses Allowed Outright
- 350-81-076. Agricultural Buffer Zones in the General Management Area
- 350-81-078. Variances
- 350-81-080. Applying New Less-Stringent Regulations to Development Approved Under Prior Scenic Area Regulations
- 350-81-082. Existing Uses and Discontinued Uses
- 350-81-084. Indian Tribal Treaty Rights and Consultation
- 350-81-086. Buffers from Existing Recreation Sites
- 350-81-090. Agricultural Buildings
- 350-81-092. Temporary Use—Hardship Dwelling
- 350-81-094. Sewer and Water Services
- 350-81-096. Docks and Boathouses
- 350-81-098. Home Occupations and Cottage Industries
- 350-81-100. Bed and Breakfast Inns
- 350-81-102. Small-Scale Fishing Support and Fish Processing Operations
- 350-81-104. Resource Enhancement Projects
- 350-81-106. Disposal Sites for Spoil Materials from Public Road Maintenance Activities
- 350-81-108. Commercial Events
- 350-81-110. Columbia River Bridge Replacement
- 350-81-112. Signs
- 350-81-114. Special Uses in Historic Buildings
- 350-81-120. Consolidation of Lots
- 350-81-124. Land Divisions and Cluster Development
- 350-81-126. Lot Line Adjustments
- 350-81-170. Agricultural Land Designations
- 350-81-180. Uses Allowed Outright—Agricultural Land
- 350-81-182. Uses Allowed through the Expedited Development Review Process—Agricultural Land
- 350-81-190. Review Uses—Agricultural Land
- 350-81-200. Review Uses with Additional Approval Criteria—Large-Scale or Small-Scale Agriculture
- 350-81-210. Approval Criteria for Life Estates—Large-Scale or Small-Scale Agriculture Designations
- 350-81-220. Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture
- 350-81-230. Uses Allowed Outright for Lands Designated Agriculture—Special
- 350-81-231. Uses Allowed through the Expedited Development Review Process—Agriculture—Special
- 350-81-232. Review Uses for Lands Designated Agriculture—Special
- 350-81-234. Approval Criteria for Review Uses on Lands Designated Agriculture—Special
- 350-81-236. Uses Prohibited on Lands Designated Agriculture—Special
- 350-81-240. Range Conservation Plans
- 350-81-250. Forest Land Designations
- 350-81-260. Uses Allowed Outright—Forest Land
- 350-81-262. Uses Allowed through the Expedited Development Review Process—Forest Land
- 350-81-270. Review Uses—Forest Land
- 350-81-280. Review Uses with Additional Approval Criteria—Commercial Forest Land, or Large or Small Woodland Designations
- 350-81-290. Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land or Large or Small Woodland
- 350-81-300. Approval Criteria for Fire Protection in GMA Forest Designations
- 350-81-310. Approval Criteria for Siting of Dwellings on Forest Land in the GMA
- 350-81-320. Approval Criteria for Life Estates in Commercial Forest Land or Small or Large Woodland
- 350-81-330. Open Space Designations

- 350-81-335. Uses Allowed Outright—Open Space
- 350-81-338. Uses Allowed through the Expedited Development Review Process—Open Space
- 350-81-340. Review Uses—Open Space
- 350-81-350. Residential Land Designations
- 350-81-360. Uses Allowed Outright—Residential Land
- 350-81-365. Uses Allowed through the Expedited Development Review Process— Residential Land
- 350-81-370. Review Uses—Residential Land
- 350-81-380. Review Uses with Additional Approval Criteria—Residential Land
- 350-81-390. Approval Criteria for Specified Review Uses on Lands Designated Residential
- 350-81-400. Rural Center
- 350-81-410. Uses Allowed Outright—Rural Center
- 350-81-415. Uses Allowed through the Expedited Development Review Process—Rural Center
- 350-81-420. Review Uses—Rural Center
- 350-81-430. Commercial Land
- 350-81-440. Uses Allowed Outright—Commercial Designations
- 350-81-445. Uses Allowed through the Expedited Development Review Process—Commercial Designations
- 350-81-450. Review Uses—Commercial Designations
- 350-81-460. Approval Criteria for Review Uses on Lands Designated on Lands Designated Commercial
- 350-81-470. Recreation
- 350-81-480. Uses Allowed Outright—Public Recreation and Commercial Recreation
- 350-81-485. Uses Allowed through the Expedited Development Review Process—Public Recreation and Commercial Recreation
- 350-81-490. Review Uses—Public Recreation and Commercial Recreation
- 350-81-500. Approval Criteria for Non-Recreation Uses in GMA-Public Recreation Designations
- 350-81-510. Approval Criteria for Non-Recreation Uses in GMA-Commercial Recreation Designations.
- 350-81-520. General Management Area Scenic Review Criteria
- 350-81-530. Special Management Area Scenic Review Criteria
- 350-81-540. General Management Area Cultural Resource Review Criteria
- 350-81-550. Special Management Area Cultural Resource Review Criteria.
- 350-81-560. General Management Area Wetland Review Criteria
- 350-81-570. General Management Area Stream, Pond, Lake and Riparian Area Review Criteria
- 350-81-580. General Management Area Sensitive Wildlife Review Criteria
- 350-81-590. General Management Areas Rare Plant Review Criteria
- 350-81-600. Special Management Areas Natural Resource Review Criteria
- 350-81-610. General Management Areas Recreation Resource Review Criteria
- 350-81-620. Special Management Area Recreation Resource Review Criteria
- 350-81-630. Notice of Application Requirements