



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Columbia River Gorge Commission	<input checked="" type="checkbox"/> Permanent Rule
(1) Date of adoption: October 8, 2002	<input type="checkbox"/> Emergency Rule
	<input type="checkbox"/> Expedited Rule Making

(2) Purpose: The amendments bring the rule into compliance with the more restrictive statutory provisions of the states of Washington or Oregon.

(3) Citation of existing rules affected by this order:
 Repealed:
 Amended: 350-14
 Suspended:

(4) Statutory authority for adoption: RCW 43.97.015
 Other Authority: U.S.C. 544c; ORS 197.150

PERMANENT RULE ONLY (Including Expedited Rule Making)
 Adopted under notice filed as WSR 02-17-076 on August 19, 2002
 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:

(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	Emergency Rules
<input checked="" type="checkbox"/> 31 days after filing	<input type="checkbox"/> Immediately
<input type="checkbox"/> Other (specify) _____*	<input type="checkbox"/> Later (specify) _____

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

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON

OCT 17 2002

1229

Time _____

WSR _____ 0221074 (PM)

Name (Type or Print) Robert K. McIntyre	
Signature 	
Title Rules Coordinator	Date October 15, 2002

**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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____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	6	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____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

New		Amended	6	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New		Amended	6	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New		Amended	6	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION

Columbia River Gorge Commission

~~Division Chapter 350~~

~~Chapter Division 14~~

~~Conflict of Interest, Ex Parte Contact, Appearance of Fairness~~

Amended July 21, 1998

Amendments effective November 24, 1998

AMENDATORY SECTION

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

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

(1) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person. "Assist" does not include referring another person to other persons or sources of advice and information.

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

(32) "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 employee, 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.

(43) "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.

(54) "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.

(65) "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, speeches or other services rendered in connection with an event at which the public official appears in an official capacity.

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

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

(98) "Member of household" means the spouse of the public official and any children of either who reside with the public official.

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

(11)(a) "Transaction involving the Commission" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other

similar matter that a current or former public official, as defined in this division, believes, or has reason to believe:

- (i) Is, or will be, the subject of Commission action; or
- (ii) Is one to which the Commission is or will be a party; or
- (iii) Is one in which the Commission has a direct and substantial proprietary interest.

(b) "Transaction involving the Commission" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the Commission that is the basis for the claim, case, or lawsuit.

AMENDATORY SECTION

350-14-002. Application.

Nothing in these rules is intended to affect:

- (1) Any other statute or rule requiring disclosure of economic interest by ~~an~~ a public official or public employee.
- (2) Any statute or rule prohibiting or authorizing specific conduct on the part of any public official or public employee.

AMENDATORY SECTION

350-14-003. Code of Ethics.

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

- (1) No public official shall use official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses, or for any member of the household of the public official, or for any business with which the public official or a member of the household of the public official is associated.
- (2) No public official or candidate for office or a member of the household of the public official or candidate shall solicit or receive, whether directly or indirectly,

during any calendar year, any gift or gifts from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has any official position or over which the official exercises any authority.

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

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

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

(6)(a) Except in the course of official duties or incident to official duties, a public official, as defined in this division, may not assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the Commission:

(1) In which the public official has at any time participated; or

(2) If the transaction involving the Commission is or has been under the official responsibility of the public official within a period of two years preceding such assistance.

(b) No public official may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (a) or (c) of this section.

(c) A business entity of which a public official is a partner, managing officer, or employee shall not assist another person in a transaction involving the Commission if the public official is prohibited from doing so by subsection (a) of this section.

(d) This chapter does not prevent a public official from assisting, in a transaction involving the Commission:

(1) The public official's parent, spouse, or child, or a child thereof for whom the public official is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the public official did not participate in the transaction; or

- (2) Another employee involved in disciplinary or other personnel administration proceedings.

RCW 42.52.040

AMENDATORY 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.

— (3) — 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 (2). 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.

“Ex parte contact” is different than a “conflict of interest.” Conflicts of interest are applicable for all business of the Commission. Ex parte contacts are only applicable for quasi-judicial matters (also called contested cases). This section is also repetitive of 350-16-009(9) (proposed for deletion) and 350-16-016. This section need only appear in the Commission’s rules governing quasi-judicial matters.

AMENDATORY 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.

The appearance of fairness doctrine is only applicable for quasi-judicial matters (also called contested cases). This section should appear in the Commission’s rules governing quasi-judicial matters.