

CERTIFICATE AND ORDER

FOR FILING

TEMPORARY

ADMINISTRATIVE RULES WITH THE OFFICE OF THE CODE REVISER

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of TEMPORARY rule(s) adopted on November 15, 1988 by the Columbia River Gorge Commission to become effective immediately through February 13, 1989.

The within matter having come before the Columbia River Gorge Commission after all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises.

NOW THEREFORE, IT IS HEREBY ORDERED that the following action be taken:

Adopted: 350-16-019

as Administrative Rules of the Columbia River Gorge Commission

DATED this 16th day of November, 1988.

By: Richard P. Benner

Title: Richard P. Benner, Executive Director

Statutory Authority: Chapter 499, Washington Laws 1987.

For Further Information Contact: Richard P. Benner, Executive Director, (509) 493-3323.

STATE OF WASHINGTON  
FILED  
NOV 18 1988  
CODE REVISER'S OFFICE  
WSR 88-23-074

# COLUMBIA RIVER GORGE COMMISSION

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Richard P. Benner, Executive Director

## MEMORANDUM

TO: Columbia River Gorge Commission

FROM: Richard P. Benner, Executive Director

DATE: November 14, 1988

SUBJECT: Adoption of Temporary Rule: Authorization of Executive Director to Represent Commission in Contested Case Proceedings

Attached to this memorandum is the version of the temporary rule I recommend you adopt. Because it is a temporary rule, the Commission must find that a failure to adopt it would result in serious prejudice to the public interest. This finding should be based on the following:

Failure to authorize an employee to prosecute appeals before the Commission will

1. require the Commission to rely upon the Attorney General offices or outside counsel at substantial cost to the public;
2. require additional staff time to prepare counsel to prosecute appeals; and
3. require overhaul of Commission rules on development review and enforcement.

The Commission must act promptly because appeals are pending and others are sure to be filed in the months ahead. Delays in hearing appeals will prejudice appellants and the general public. The Commission should adopt these findings when it adopts the temporary rule.

RPB:jmb

## TEMPORARY RULE

### 350-16-019. Authorization for Executive Director to Represent Commission

(1) The Commission authorizes the Executive Director, with the Attorney General's written consent, to appear and participate on behalf of the Commission in the following types of hearings:

- (a) Appeal to the Commission of decisions of the Executive Director on a development review under 350-20-011 to 350-20-020;
- (b) Hearings on the possible imposition of a civil penalty under 350-30-005 to 350-30-050;
- (c) Hearings on a proposed revision of the boundary of an urban area under 16 USC 544b(f).

(2) Neither the Executive Director nor any other official or employee of the Commission may make legal argument on behalf of the Commission in a contested case proceeding.

(3) "Legal argument" as used in this rule includes argument on:

- (a) The jurisdiction of the agency to hear the contest case;
- (b) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and
- (c) The application of court precedent to the facts of the particular contested case proceeding.

(4) "Legal argument" as used in this rule does not include presentation of evidence, examination or cross-examination of witnesses, factual argument or argument on:

- (a) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;
- (b) Comparison of prior actions of the agency in handling similar situations;
- (c) The literal meaning of the statute or rules directly applicable to the issues in the contested case; or
- (d) The admissibility of evidence or the correctness of procedures being followed.

(5) This section applies to those appeals described in subsection (1) of this section filed after November 15, 1988 or pending before the Commission on that date.