

**CERTIFICATE AND ORDER**

**FOR FILING**

**PERMANENT**

**ADMINISTRATIVE RULES WITH THE OFFICE OF THE CODE REVISER**

**I HEREBY CERTIFY** that the attached copy is a true, full and correct copy of **PERMANENT** rule(s) adopted on April 28, 1992, by the Columbia River Gorge Commission to become effective upon filing.

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.

Notice of Intended Action in Code Revisers Register

No \_\_\_\_\_ Yes       X      

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

Adopted: 350-40

Amended: 350-20-004

as Administrative Rules of the Columbia River Gorge Commission

**DATED** this 5th day of May, 1992.

By: Allen Bell

Title: Allen Bell, Acting Executive Director

Statutory Authority: RCW 43.97.015 to 43.97.035, Chapter 499, Washington Laws 1987

For Further Information Contact: Jan Brending, Rules Coordinator, (509) 493-3323.

CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

MAY 08 1992

TIME: 4:45 AM  
WSR 92-11-006

# COLUMBIA RIVER GORGE COMMISSION

350-40

## SUMMARY

The rule sets out the procedures a county must follow in order to prepare an application for an urban area revision.

## STATEMENT OF NEED

1. The process for submitting an application for an urban area revision is not described in the National Scenic Area Act.
2. Each county that is affected needs guidance as soon as possible to prepare the requisite applications.

## Authority:

16 U.S.C. § 544 et seq., ORS 196.150 to ORS 196.165, and RCW 43.97.015 to 43.97.035.

## Documents Relied Upon:

The Columbia River Gorge National Scenic Area Final Draft Management Plan and Gorge Commission deliberations on November 19, 1991, December 17, 1991, and January 14 and 28, 1992.

## FISCAL IMPACT

The rule should expedite the urban area revision process and therefore, reduce costs.

350-40.STM, DIR.7

# **COLUMBIA RIVER GORGE COMMISSION**

## **RULE AMENDMENT**

**350-20-004**

### **SUMMARY**

The rule would allow a modification to a structure from its pre-modification appearance. The rule would allow a modification to an existing structure which already protrudes above a cliff, bluff or skyline upon showing that no alternative modification would avoid the protrusion, that the additional protrusion would not increase more than 50 percent, and that mitigation measures would reduce the contrast of the finished structure below that of the pre-modification structure.

### **STATEMENT OF NEED and JUSTIFICATION**

Failure to amend the rule as proposed will deprive the Commission of an opportunity to enhance the scenic resources of the Gorge by reducing the contrast of existing development otherwise exempt from regulation under Commission rule. Failure to amend the rule will also result in serious prejudice to owners of some properties who could not otherwise make additions to residences built before passage of the Scenic Area Act and who have no alternative way to modify them which will not protrude above a cliff, bluff or skyline.

#### **Authority:**

16 USC § 544 et seq., ORS 196.150 to ORS 196.165, and RCW 43.97.015 to 49.97.035.

#### **Documents Relied Upon:**

Columbia River Gorge National Scenic Area Act (P.L. 99-663) and Final Interim Guidelines. The proposed amendment to the rule is based upon three years of experience applying the existing rule.

### **FISCAL IMPACT**

The rule will allow certain applications for additions to be approved, that would otherwise have to be denied. This will reduce appeals to the Commission, and therefore reduce costs to the Commission and applicants.

350-20.STM, DIR.7

# COLUMBIA RIVER GORGE COMMISSION

## Chapter 350 Division 40

### Revision of Urban Area Boundaries

#### **350-40-000. Purpose.**

This division specifies the process that will be used by the Columbia River Gorge Commission (Commission) when it considers minor revisions to the boundaries of any Urban Area.

#### **350-40-010. Definitions.**

The definitions in Chapter 350, Division 20, Section 002 shall apply to this division.

#### **350-40-020. Authority.**

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.

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

- (1) Requests to revise an Urban Area boundary must be submitted to the Commission by a county government;
- (2) The Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and
- (3) Two-thirds of the Commission members, including a majority of the members appointed from each state, must approve any revision of an Urban Area boundary. In the event of recusal, the doctrine of necessity shall apply.

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:

- (1) A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;
- (2) Revision of Urban Area boundaries would be consistent with the standards established in Section 6 and the purposes of the Scenic Area Act;
- (3) Revision of Urban Area boundaries would result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

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

**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.

(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 demonstrates how the proposed revision complies with the criteria in the Scenic Area Act.

(4) A map of the area that would be added 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).

**350-40-040. Processing of Application.**

Each application to revise the boundaries of an Urban Area will be 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 reviewed in the order received.

**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. An original and fifteen copies of each application are required. 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. No application shall be accepted as complete until all omissions and deficiencies noted by the Director have been corrected by the applicant.

**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).

(2) Copies of the complete application will be 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.

**350-40-070. Report of the Director.**

The Director will prepare a report, which may include recommendations, within thirty (30) working days of the date an application has been accepted as complete. Upon application of the 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 criteria in 350-20-004.

**350-40-080. Hearings.**

(1) The Commission will conduct hearings 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.

(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.

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

350-40, DIR.7

## COLUMBIA RIVER GORGE COMMISSION

350-20

### 350-20-004.      **Review Standards and Guidelines.**

(1) The Columbia River Gorge National Scenic Area Final Interim Guidelines, published by the Forest Service and dated June 30, 1987, are adopted by reference as amended in paragraph (2) below and declared to be a part of this rule. In reviewing major development actions and new residential development for consistency with the standards of section 6 and the purposes of P.L. 99-663, Chapter 3 of the Final Interim Guidelines, as amended in paragraph (2) below, shall be utilized.

(2) The Final Interim Guidelines identified in paragraph (1) above are amended as follows:

(a) The definition of agricultural lands shall be revised to read as follows: "Agricultural lands are those lands which are primarily used or are suitable for the production of crops, fruits or Christmas trees or the pasturing, grazing or feeding of livestock. Lands designated as open space by the Commission shall not be considered agricultural lands."

(b) The definition of forest lands shall be revised to read as follows: "Forest lands are those lands which are used for growing forest products or capable of producing in excess of twenty (20) cubic feet per acre per year of Douglas fir, Ponderosa pine or other merchantable tree species. Lands designated as open space by the Commission shall not be considered forest lands."

(c) The guidelines for existing uses shall be revised as follows: "When a structure is destroyed or partially destroyed, it will be considered an existing use when replaced in kind and in the same location within one year. The exterior color and reflectivity of the replacement structures must be consistent with the scenic guidelines in Chapter III. Replacement of a structure or use that differs in size or location from the original shall be subject to a consistency determination. Replacement of a mobile home in a special management area with a modular or site-built home, to be used in the same manner and for the same purposes, shall be considered the continuation of an existing use except that it shall be subject to review for consistency with the guidelines on scenic resources in section B(1).

(d) An alteration to a structure which was built prior to November 17, 1986, and which already protrudes above the line of a bluff, cliff or skyline, may itself protrude above the line provided that:

1. the alteration does not increase the protrusion more than 50 percent as viewed from the key viewing area from which the structure is most prominently seen;



2. the altered structure, through a combination of color, landscaping and other mitigation measures, contrasts less with its setting than before the alteration; and
3. there is no practicable alternative way to alter the structure without increasing the protrusion.

350-20.004, DIR.7