

**WSR 21-20-120
PROPOSED RULES
COLUMBIA RIVER
GORGE COMMISSION**

[Filed October 5, 2021, 10:48 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: Chapter 350, Division 082, Land use ordinance.

Hearing Location(s): On December 14, 2021, at 9:00 a.m., remote via Zoom webinar. Persons who want to attend the rule-making hearing and give oral testimony on the proposed rule must register for the webinar at https://us02web.zoom.us/webinar/register/WN_MwpLr_dWTV2kW8St9c-9rw. A registration link will also be available on the commission's website approximately one week prior to the commission's meeting.

Date of Intended Adoption: December 14, 2021.

Submit Written Comments to: Krystyna Wolniakowski, Executive Director, Columbia River Gorge Commission, 57 N.E. Wauna Avenue, P.O. Box 730, White Salmon, WA 98672, email

PublicComment@gorgecommission.org, by December 1, 2021.

Assistance for Persons with Disabilities: Contact Connie Acker, phone 509-493-3323 ext. 0, email connie.acker@gorgecommission.org, by December 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule adopts a land use ordinance for the Columbia River Gorge National Scenic Area as required by RCW 43.97.015, ORS 196.150, 16 U.S.C. §§ 544e(c) and 544f(l), incorporating the guidelines from the revised management plan for the Columbia River Gorge National Scenic Area, adopted by the Columbia River Gorge Commission on October 13, 2020, and concurred on by the United States Secretary of Agriculture on February 19, 2021.

On September 14, 2021, the Gorge Commission reviewed the differences in the application and decision process in this new land use ordinance compared to the current land use ordinance (division 350-81) and clarifications to provisions of the management plan. A copy of the staff report detailing those differences and clarifications is available on the Gorge Commission website at <http://www.gorgecommission.org/meeting/september-2021-monthly-crgc-meeting>. Since that September 14 meeting, the following additional clarifications were added to the draft rule:

350-082-0070(62) changed the definition of "dwelling unit" to use the term "sleeping area(s)" instead of "bedrooms" because some dwellings have lofts or other areas that are not technically bedrooms and to remove the word "full" when referring to bathrooms to recognize that bathrooms may not be considered "full" if they have only a stall shower and other variations on bathroom fixtures.

350-082-0070(183) clarified that committed to other uses means committed "by development." This is the phrase used in the forest land policies and ensures consistency with the standards in 16 USC § 544d(d) that require the plan to allow conversion of agricultural land to forest use and forest land to agricultural use. Without the term "by development," this definition could suggest that forest land is committed to another use and could not be suitable for agriculture.

350-082-0220 (2) (a) (B); 350-082-0600 (2) (k) changed "square area" to "area in square feet." This fixes a term that is not commonly used to a common term that needs no further interpretation.

350-082-0350 (3) (b); 350-082-0520 (3) (a); 350-082-0700 (3) (D) (E) (i) changed several instances of "shall be allowed" to "may be allowed" consistent with the same change made in other sections of the draft ordinance. In these instances, the use allowed is conditional upon meeting other required criteria.

350-082-0290 and 350-082-0300 were moved into 350-082-0270 (5) and (6) because the provisions in these sections apply only in the Growth Management Act and did not need separate rule numbers. All subsequent rules were renumbered and all cross-references were updated.

350-082-0410 (6) and (7) were added to include policies from the management plan that contain mandatory standards.

350-082-0430 (6) (b) and (c) were added. These provisions in the management plan were inadvertently left out of the draft presented to the Gorge Commission for its September 14, 2021, meeting. Subsection (b) was clarified relative to the management plan to reflect current practice, use consistent terms with 350-10, and for clarity. Subsection (c) was revised to use the same terms as subsection (b).

350-082-0650 (1) (a) added a new cross-reference to the Priority Habitat Table in 350-082-0690.

350-082-0660 (1) (b) added a new reference to the Endemic Plant Species Table in 350-082-0690 and noted that endemic plants are considered rare plants.

350-082-0690 added an introductory sentence necessary specifying that the tables in that section apply in the general and special management areas. This introductory sentence is necessary to comply with Oregon's rule drafting requirements, which do not permit a rule with only tables.

Reasons Supporting Proposal: This rule is required by federal law (16 U.S.C. §§ 544e(c) and 544f(1)) because Klickitat County does not adopt a National Scenic Area land use ordinance. The rule could also be used in any county that does not adopt revisions to its National Scenic Area land use ordinance or that repeals its ordinance in the future.

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

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

Rule is necessary because of federal law, RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(1).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Comments received by December 1, 2021, will be incorporated into a staff report to the commission. Staff will address comments received after December 1, 2021, at the hearing by oral report.

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 rule is exempt pursuant to RCW 34.05.328 (5) (b) (iii) and (v).

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 to the state if the rule is not adopted: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(1). If this rule is not adopted, the state will be in violation of the Columbia River Gorge Compact and federal Columbia River Gorge National Scenic Area Act and no land use development within the National Scenic Area portion of Klickitat County will be permitted.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

October 5, 2021
Connie L. Acker
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [21-22](#) issue of the Register.