

COLUMBIA RIVER GORGE COMMISSION

Chapter 350 Division 50

Plan Amendment Process

As amended through May 1, 2009

350-50-010. Purpose.

This division specifies the process of the Columbia River Gorge Commission (Commission) for considering amendments to the Management Plan.

350-50-020. Authority.

(1) Consideration of amendments to the Management Plan is a discretionary action authorized by section 6(h) of the Act. The Act does not entitle any person or entity to have the Commission review an application to amend the Management Plan. The Commission may adopt an amendment to the Management Plan only if it is consistent with the purposes and standards of the Scenic Area Act, the provisions in section 6(h) of the Act, and this rule.

(2) The Act only allows the Commission to adopt a plan amendment:

- (a) If the Commission determines at any time that conditions within the Scenic Area have significantly changed; and
- (b) If the Commission approves the plan amendment by a majority vote of the members appointed, including approval by at least three members from each state. In the event of recusal, the doctrine of necessity shall apply.

350-50-030. Criteria for Plan Amendment Approval.

The Commission must find the following criteria are satisfied before it approves an amendment to the Management Plan:

- (1) Conditions in the Scenic Area have significantly changed. This means:
 - (a) physical changes that have widespread or major impacts to the landforms, resources, or land use patterns in the Scenic Area;
 - (b) new information or inventory data regarding land uses or resources that could result in a change of a plan designation, classification, or other plan provision;
 - (c) changes in legal, social, or economic conditions, including those that affect public health, safety, or welfare, not anticipated in the Management Plan; or

(d) a demonstrable mistake in the Management Plan that has resulted in significant impacts or that involves significant issues, such as, but not limited to, a land use guideline that is less protective of Gorge resources than the policies the guideline was intended to implement; a land use designation that does not conform to the corresponding designation policies; or two or more guidelines that cannot be reasonably reconciled.

(2) The proposed amendment is consistent with the purposes and standards of the Scenic Area Act; and,

(3) No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists.

350-50-035. Matters Not Constituting a Plan Amendment.

(1) The Executive Director and Area Manager may jointly correct any typographical, grammatical, cross-reference or other similar error contained in the Management Plan that does not change the substantive provisions of the Management Plan.

(2) The Executive Director and Area Manager shall report such changes to the Commission at a regularly noticed meeting. The meeting agenda shall include notice of a report under this section. For such changes, the Commission shall not be required to amend the Management Plan as provided in this division of the Commission's rules, nor seek concurrence by the Secretary of Agriculture.

(3) A correction shall be considered a final action for the purpose of judicial review at the time the Executive Director and Area Manager report the correction to the Commission.

350-50-040. Origin of Applications.

(1) Any person may request that the Commission initiate a legislative amendment to the Management Plan.

(2) Any person may submit an application for a quasi-judicial amendment to the Management Plan. All owners of parcels to which the proposal applies shall give written consent to the application.

(3) For the purpose of this division of the Commission Rules, a quasi-judicial amendment shall be one that proposes to change the land use designation, recreation intensity class or landscape setting on one or any clearly identifiable set of parcels that share a similar set of facts, and the change does not establish new policies. All other amendments shall be considered a legislative amendment.

(4) The Executive Director shall determine whether the proposal is for a legislative or a quasi-judicial amendment. The Executive Director may make this determination prior to or at the pre-application conference.

350-50-045. Pre-Application Conference.

(1) Prior to submitting any application for an amendment to the Management Plan, an applicant shall attend a pre-application conference with the Executive Director.

(2) The applicant shall submit a statement of the proposed change to the land use designation, landscape setting, or recreation intensity class and the purpose for which the changes are sought. Proposals for quasi-judicial amendments shall include a list of all parcels to which the proposal applies and the names and addresses of the owners of the parcels. The Executive Director may request the applicant submit additional information about the proposal prior to scheduling a pre-application conference.

(3) The Executive Director shall hold a pre-application conference within 30 days after an applicant requests a pre-application conference. The Executive Director shall notify the following persons of the pre-application conference:

- (a) The applicant;
- (b) For quasi-judicial amendments, the owners of all parcels to which the proposal applies;
- (c) Representatives of the USDA Forest Service, the county or counties where the subject parcel or parcels are located, the four Indian Tribes with treaty rights in the National Scenic Area, and appropriate state agencies;
- (d) Any other person the Executive Director believes may have an interest in the proposal or requests notice of the pre-application conference; and,
- (e) For legislative amendments, the person who submitted the original request.

(4) The Commission may charge a fee for holding a pre-application conference. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for pre-application conferences.

(5) The purpose of the pre-application conference is to assist the applicant to complete the Plan Amendment process successfully and expeditiously, determine the nature of the proposal as quasi-judicial or legislative, identify possible practicable alternatives, identify issues that concern the Commission and other agencies and interested persons, determine what information will be necessary for the Executive Director to review the application, give an estimated schedule for considering the application, and identify possible conditions of approval.

(6) Within 14 days after a pre-application conference, the Executive Director shall issue a pre-application conference report, which shall summarize the discussion at the conference and shall contain a preliminary list of information necessary to review the application. The list of necessary information shall be as comprehensive as reasonably possible, but shall not be exclusive.

(7) The Executive Director may require an applicant to attend a new pre-application conference if the application submitted is materially different than the proposal discussed at the pre-application conference, or conditions in the Scenic Area have materially changed.

350-50-050. Application for Quasi-Judicial Plan Amendments.

(1) Applications for quasi-judicial plan amendments shall contain the following:

- (a) The land use designation, landscape setting, or recreation intensity class the applicant proposes for the subject parcels;
- (b) A statement of the applicant's ultimate development proposal;
- (c) An explanation why the proposed change to the land use designation, landscape setting, or recreation intensity class is more appropriate for the parcels than the existing designation, and why the proposed change is necessary to accomplish the applicant's ultimate development proposal;
- (d) Information identified at the pre-application conference necessary to demonstrate that the proposed plan amendment complies with the purposes and standards of the Act, the provisions in Section 6(h), and this rule;
- (e) The names and addresses of all landowners for parcels that are within 200 feet of the boundaries of all parcels to which the proposal applies;
- (f) Other information not identified at the pre-application conference, based on content of information already submitted or changes to the proposal; and,
- (g) The signature of all owners of the parcels to which the proposal applies, or the owners' representatives.

(2) The Commission may charge a fee for review of quasi-judicial plan amendment applications. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for review of quasi-judicial plan amendment applications.

350-50-060. Processing of Application.

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of quasi-judicial applications it will process during the

biennium and may set its limit at zero. Applications shall be reviewed pursuant to sections 070 through 120 of this division.

(2) The Executive Director shall maintain requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.

(3) For legislative amendments, the Executive Director shall hold a pre-application conference as provided in 350-50-045. Following the pre-application conference, the Executive Director shall process a legislative amendment pursuant to sections 080 through 120 of this division.

350-50-070. Acceptance of Application for Quasi-Judicial Plan Amendment Application.

(1) Within 14 days of receiving an application, the Executive Director shall review the application for completeness and notify the applicant in writing of any deficiencies, and any additional information that is required as provided in 350-50-050(1)(f).

(2) The Executive Director shall not accept an application as complete until the applicant corrects all deficiencies and submits all additional information noted by the Executive Director.

(3) The applicant shall submit 15 copies of the application after the Executive Director determines the application is complete.

350-50-080. Notice of Application.

(1) The Executive Director shall send public notice of the completed application to the U.S. Forest Service - National Scenic Area Office, appropriate state agencies, all four Indian tribal governments, the six Gorge county planning offices, interested parties who have requested notice, and for quasi-judicial applications, all landowners within 200 feet of the boundaries of all parcels to which the proposal applies.

(2) The Executive Director shall publish notice of a quasi-judicial plan amendment application in a newspaper serving the community where the parcels to which the proposal would apply are located.

(3) The Executive Director shall publish notice of a legislative plan amendment application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.

(4) The Executive Director shall make copies of the complete application available for inspection at the Commission office during normal office hours.

350-50-085. Public Comment.

(1) Interested persons shall have 30 days from the date the notice is posted to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

(2) The Commission shall provide copies of the written comments submitted during the comment period to the applicant prior to or with the staff report to enable the applicant to address the comments at the hearing.

350-50-090. Report of the Executive Director.

(1) Unless otherwise specified in the pre-application conference, Within 60 days following the end of the public comment period, the Executive Director shall prepare a staff report, which may include recommendations. The report will analyze the proposed amendment based on the criteria of the Scenic Area Act and Rule 350-50-030.

(2) For legislative amendments, the Executive Director shall include recommended plan amendment language in the staff report.

350-50-100. Hearings.

(1) The Commission shall conduct a hearing on every plan amendment application.

(2) The Commission shall provide 20 days notice of the hearing to all persons who received the notice of application, and any other person who submitted comment on the application. The notice of the application may include the notice of hearing.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues.

(a) The Executive Director shall present the staff report. The Commission may ask questions concerning the staff report.

(b) The applicant shall present the proposed plan amendment.

(c) Interested persons present oral or written comments.

- (d) Following testimony from interested persons, the applicant shall have the opportunity to respond to the comments presented.
- (e) After all presentations are complete, the Chair shall close the public hearing, and the Commission shall deliberate on the proposed plan amendment.
- (f) For quasi-judicial plan amendment applications, the Commission may proceed to vote on the application as submitted or attach conditions of approval necessary to ensure the proposal complies with the criteria for approval. The Commission shall allow the applicant to comment on proposed conditions of approval prior to voting on the application. If the Commission proposes a condition different than recommended by the applicant or by the staff, or discussed during the hearing, the Commission shall allow the applicant to comment on the proposed condition of approval prior to voting on the application. The Commission shall deny the proposed plan amendment if any of the criteria in 350-50-030 are not satisfied by the application as submitted and cannot be satisfied through imposing reasonable conditions of approval.
- (g) For legislative amendments, the Commission may modify the recommended language in any manner.
 - (i) If the Commission makes clarifying changes to the recommended language, then it may proceed to vote on whether to adopt the recommended language, as clarified, after providing an opportunity for public comment during the hearing.
 - (ii) If the Commission makes substantive changes, i.e. those not covered by subparagraph (i) immediately above, to the recommended language, the Commission shall:
 - (A) provide an opportunity for additional public comment during the hearing on the new language, and then proceed to vote on whether to adopt the amendment; or
 - (B) continue the hearing to a new date to allow for adequate public notice of the content of the language and for further consideration of the issues. When the hearing is resumed, the Commission shall provide a reasonable opportunity for the applicant and members of the public to respond to the proposed language, and then proceed to vote on whether to adopt the amendment.
- (h) The Commission shall determine if the amendment as approved is mandatory for counties to adopt into their land use ordinances. Unless otherwise specified by the Commission, amendments to county land use ordinances shall follow the procedures established in Sections 7 and 8 of the Scenic Area Act (16 U.S.C. §§ 544e and 544f).

350-50-120. Review by the Secretary of Agriculture.

In accord with Sections 6(f) and 6(h) of the Scenic Area Act, an amendment to the Management Plan adopted by the Commission shall be submitted to the Secretary of Agriculture. The Secretary of Agriculture will review the amendment and determine if it is consistent with the purposes and standards of the Scenic Area Act. The Secretary has 90 days from the day the Commission submits an amendment to complete review and make a determination of concurrence or non-concurrence.