



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 05, 2021

TIME: 10:48 AM

WSR 21-20-120

Agency: Columbia River Gorge Commission

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR _____ ; or

Expedited Rule Making--Proposed notice was filed as WSR _____ ; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 350 Division 082 Land Use Ordinance.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 14, 2021	9:00 am	Remote via Zoom Webinar	Persons who want to attend the rulemaking 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 1 week prior to the Commission's meeting.

Date of intended adoption: December 14, 2021 (Note: This is NOT the effective date)

Submit written comments to:

Name: Krystyna Wolniakowski, Executive Director, Columbia River Gorge Commission

Address: 57 NE Wauna Ave., P.O. Box 730, White Salmon, WA 98672

Email: PublicComment@gorgecommission.org

Fax: none

Other: none

By (date) December 1, 2021

Assistance for persons with disabilities:

Contact Connie Acker

Phone: (509) 493-3323 x0

Fax: none

TTY: none

Email: connie.acker@gorgecommission.org

Other: none

By (date) 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 16 U.S.C § 544f(f), 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 U.S. 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); 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); 0520(3)(a); 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 0300 were moved into 350-082-0270(5) and (6) because the provisions in these sections apply only in the GMA and did not need separate rule numbers. All subsequent rules were renumbered and all cross-references were updated.

350-082-0410(6) & (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(l)) 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(l).

Statute being implemented: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(l).

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(l)

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: (person or organization) Columbia River Gorge Commission Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Krystyna Wolniakowski	White Salmon, WA	(509) 493-3323
Implementation:	Krystyna Wolniakowski	White Salmon, WA	(509) 493-3323
Enforcement:	Krystyna Wolniakowski	White Salmon, WA	(509) 493-3323

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: This rule is exempt pursuant to RCW 34.05.328(5)(b)(iii) and (v).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of 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. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(l). 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.

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: October 5, 2021

Name: Connie Acker

Title: Rules Coordinator

Signature:

