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**Columbia River Gorge Commission Rules Committee
Meeting Summary
February 21, 2025, 1:00 pm via Zoom**

Attendance: Commissioners Elaine Albrich, Valerie Fowler, Pah-tu Pitt
Absent: Commissioners Laura Brennan-Bissell, Robert Liberty

Staff Present: Jeff Litwak, Counsel

Public Attendees: Lynn Burditt, Keith Cleveland, Kelly Howsley Glover, Steve McCoy

Approving the Summary of December 16, 2024 Rules Committee Meeting

Jeff reported that he made the changes that Commissioner Fowler suggested to the meeting summary of the December 16, 2024, Rules Committee meeting. The Rules Committee approved the summary.

Confirming the Scope of the Rules Committee

Jeff showed the final scope of the Rules Committee (**Attachment A**). The Commission's motion in creating the Rules Committee was for this committee to make a recommendation about its scope to the full Commission. The Rules Committee discussed this scope at the last meeting and suggested revisions. Jeff worked those in and sent the final draft to the committee members in December. Commissioner Fowler had one comment about punctuation. Jeff did not receive any additional comments. The Rules Committee approved the scope. Jeff will share it with the full Commission at the March Gorge Commission meeting.

Discussion of the Rules Committee's manner of discussing draft rule changes to divisions 11, 12, 14, and 16 of the Gorge Commission's rules

At the last meeting, the Rules Committee asked staff to present the draft rules by type of change (the reasons for the changes or what is driving the rule changes). Jeff drafted a set of tables and sent them to the Rules Committee for suggestions. Jeff did not receive any suggestions.

Jeff explained that the tables reflect three categories for discussion. The tables are not complete because staff wanted to make sure this organization works for the Rules Committee before filling it in. Jeff noted that the Rules Committee can move items around while reviewing the rules if it discovers something that it wants to discuss, or the public says that it wants to hear more about. The three tables (**Attachment B**) are:

(1) High level principles. This table lists the basic principles that staff applied to the draft rule changes and directs readers to discussions in the prior staff memo to the Commission and to the draft report in support of the rules, both of which give the reasons for the principles. Staff separated these so the Rules Committee can discuss these principles first if it has questions about them. All the Commission's rules should fit within these principles.

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(2) The most significant differences between Oregon and Washington laws. There are a lot of differences between Oregon and Washington law—some are just different approaches to addressing the same issue, and those are not in this table. This table lists the three differences where the laws conflict such that blending the laws is not possible to develop a single rule that is consistent with the more restrictive of the states’ laws. Staff asked the attorneys general about these conflicts in the draft rule changes. The attorneys general recommended that staff educate the Commission about the conflicts and the differences in the states’ law and consider a risk assessment of choosing one approach over another.

(3) Factors or considerations that staff applied to specific rules changes. This table lists several of the factors and considerations that staff applied to specific rules changes and the main places where staff applied these factors. This table does not list all factors and considerations that staff applied; for example, this table does not list the obvious places where one state law was more restrictive than the other. The report in support of the rules discusses these and other factors and considerations where staff believed it would be helpful context.

Commissioner Albrich recommended using one division and running it through this framework. Commissioners Fowler and Pitt agreed. After discussing which division might be the most straightforward, the Rules Committee recommended starting with division 14. For the next Rules Committee meeting, Jeff will fill out the tables for division 14 and provide the tables with the meeting notice.

Discussion of how to review the comments from the states’ attorneys general.

Jeff asked the Rules Committee how it would like to review the comments from the states’ attorneys general, which are attorney-client privileged. Jeff noted that he has reviewed the comments and that none are surprising. One approach is for Jeff to mention where the attorneys general commented as the Rules Committee reviews the drafts and whether the attorneys general made any recommendation.

Jeff also noted that Wasco County has asked for a copy of the attorneys general’s comments. The full Commission is the client and must be the one to decide to waive the attorney-client privilege. Jeff mentioned one approach would be for the Rules Committee to go over the comments in context, and then make a recommendation to the full Commission whether to waive the privilege and provide the comments.

Commissioners Albrich and Fowler stated that they believe the Commission should waive privilege now for the sake of transparency. Pah-tu recommended bringing the full Commission into the conversation. The Rules Committee agreed that Jeff will ask for an executive session at the March Commission meeting to discuss the attorneys general’s comments and whether to waive the attorney-client privilege and release the comments to the public.

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Other Business

Jeff mentioned that one person asked for the summary of the last committee meeting and that staff did not provide it because the committee had not yet approved it. For future requests, Jeff asked whether the committee would like staff to do the same or provide a draft of the meeting summary. The committee recommended allowing the committee to review and approve meeting summaries before giving them to the public.

The Rules Committee tentatively set the next committee meeting for March 14 at 1:00 pm. At that meeting, the Rules Committee will start by scheduling the next two or three committee meeting dates and then begin discussing the draft rule changes to division 14.

ATTACHMENT A

Columbia River Gorge Commission Rules Committee Scope (February 2025)

Reviews, discusses, and makes recommendations relating to the legal authorities of the Gorge Commission after reviewing current legal authorities, staff input, and public comment. Meets as needed with staff to:

- Review changes in state laws and judicial decisions that would require the Gorge Commission to amend its rules;
- Preview potential rule change or legislative concepts prior to staff presenting concepts to the full Commission, sharing rule change concepts with the states' attorneys general, and seeking public engagement;
- Discuss and assist staff in preparing amendments to the Gorge Commission's rules and bylaws; and
- Review and make recommendations on state and federal bills that could intersect with the Gorge Commission's work.

The Rules Committee does not review or make recommendations for amendments to the Management Plan or the decennial Plan Review process unless directed by the Gorge Commission.

ATTACHMENT B

**Columbia River Gorge Commission
Rules Committee
Sec. 5(b) Rules Update Discussion**

High-Level Principles	Review Discussion at:
The states’ laws on the subject in sec. 5(b) of the National Scenic Area Act do not directly apply to the Gorge Commission.	Oct. 8, 2024, Staff Report at page 3 Report in Support of Rules at page 3 (Wash. AGO letter); pages 3–4
Principled bases to determine whether one state’s statutory provisions are more restrictive than the other state’s statutory provisions.	Oct. 8, 2024, Staff Report at page 3 Report in Support of Rules at page 3 (Wash. AGO letter); pages 6–7 (draft interpretation of “more restrictive)
Rules “for the conduct of [the Gorge Commission’s] business.”	Oct. 8, 2024, Staff Report at page 3 Report in Support of Rules at page 4 (<i>Handy</i> case); page 5 (Or. DOJ letter)
The states’ enforcement provisions in its laws conflict with the enforcement provisions of the National Scenic Area Act and thus are not included in the rules.	Oct. 8, 2024, Staff Report at page 3 Report in Support of Rules at page 7 (discussion of state enforcement provisions)

Most significant differences between Oregon and Washington laws	Rule Sections			
	Open Meetings 350-011-	Public Records 350-012-	Conflicts of Interest 350-014-	Admin. Procedure 350-016-
Form of meetings: Oregon law permits remote-only meetings but Washington law does not.	0070(3)			

ATTACHMENT B

<p>Orgon law requires in-person meetings must also be hybrid; Washington does not.</p> <p>We currently use Oregon law. We are not funded to use Washington law. If we use Washington law, then we would have fewer meetings and not hybrid meetings.</p>				
<p>Executive Session topics and Public Record exemptions (Should we hold executive sessions and exempt records from disclosure when either state allows or only when both states allow)</p>	0060(1)(h)	0070(1)(i) 0070(2)(k)		
<p>Ex parte communication: Oregon’s prohibition attaches only during the pendency of a proceeding. Washington law differs depending on whether you apply the APA (34.05.455 suggests ex parte disclosure applies for pre-proceeding communications) or the Appearance of Fairness doctrine (RCW 42.36.060 (during pendency of the proceeding)</p>			0140	0140(4)

Factors for Rule Changes	Rule Sections			
	Open Meetings 350-011-	Public Records 350-012-	Conflicts of Interest 350-014-	Admin. Procedure 350-016-
Rules “for the conduct of [the Gorge Commission’s] business”				
Conflict with the National Scenic Area Act				

ATTACHMENT B

Choice between Oregon and Washington law where one is not more restrictive than the other			0100	
Adapting state law to apply to the Gorge Commission	0030(2)(c)			
Choice to use state law requirements that are not required				
Using both states' laws rather than adapting one state's law		0020(1)		0040(1)
Using a statute in one state or silence in the other state		0060(5)		
Where one state's law permits but the other state's law prohibits				
Best practice from reference materials, not from statutes		0060(2)		0010(4) 0100(2) 0120(6)

Other Discussion	Rule Sections			
	Open Meetings	Public Records	Conflicts of Interest	Admin. Procedure
	350-011-	350-012-	350-014-	350-016-