

# Columbia River Gorge Commission

## Chapter 350 Division 011

### Open Meetings

As Amended through April 1, 2008 [DATE]

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#### Rules

## 350-011-0010. Definitions for Commission Rule 350-011

### ~~350-11-001. Definitions for 350-11-001 to 350-11-010.~~

- (1) “Action” means the transaction of the official business of the Gorge Commission including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, or decisions.
- (2) “Convening” means:
  - (a) Gathering in a physical location;
  - (b) Using electronic, video or telephonic technology to be able to communicate contemporaneously among participants;
  - (c) Using serial electronic written communication among participants; or
  - (d) Using an intermediary to communicate among participants.
- (3) ~~(1)~~—“Decision” means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance rule, or measure on which a vote of the Gorge eCommission is required at any meeting at which a quorum is present.
- (4) “Deliberation” means discussion or communication that is part of the decision-making process.
- (5) ~~(2)~~—“Executive session” means any meeting or part of a meeting of the Gorge eCommission which is closed to certain persons for deliberation on certain matters.
- (6) ~~(3)~~—“Gorge Commission” means the Columbia River Gorge Commission or any Gorge Commission committee established and ratified in accordance with the Commission’s bylaws, which consists of two or more members, with the authority to conduct hearings, take testimony, or make decisions for or recommendations to the Gorge eCommission on policy or administration.
- (7) ~~(4)~~—“Meeting” or “meet” means the convening of the Gorge eCommission for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter take action. “Meeting” or meet does not include any onsite inspection of any project or program. “Meeting” or meet also does not include the attendance of members of the Gorge eCommission at any national, regional, or state association to which the Gorge eCommission or members of the Gorge eCommission belong or for a majority of the members of the Gorge Commission to travel together or gather for purposes other than a meeting, provided that they do not take action.

## 350-011-0020. Policy

### ~~350-11-002. Policy.~~

- (1) The Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544c(b) and Columbia River Gorge Compact (ORS 196.150 and RCW 43.97.015) require the Gorge Commission adopt open meetings regulations consistent with the more restrictive statutory provisions of Oregon and Washington. This division is the Gorge Commission’s open meetings regulations. The Oregon Public Meetings Laws

(generally ORS 192.610 - 192.695) and the Washington Open Public Meetings Act (generally Chapter 42.30 RCW) do not directly apply to the Gorge Commission.

- (2) The Oregon and Washington forms of government Columbia River Gorge National Scenic Area Act and Columbia River Gorge Compact require an informed public aware of the deliberations and decisions of the Gorge eCommission and the information upon which such decisions were made. It is the intent of this division that decisions of the Gorge Commission be arrived at openly.

**350-011-0030. Meetings of Gorge Commission to be Open to Public; Location of Meetings; Accommodation for Person with Disability; Interpreters**

**350-11-003. Meetings of commission to be open to public; location of meetings.**

- (1) All meetings of the Gorge eCommission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ~~350-11-001 to 350-11-010~~ this division.
- (2) A member of the public shall not be required, as a condition of attending a meeting, to give his or her name, other information, complete a questionnaire, or fulfill any other condition precedent. This section does not prohibit any generally applicable conditions that the Gorge Commission determines to be reasonably necessary to protect the public health or safety, or to protect against interruption of the meeting, including a meeting held electronically.
- (3) ~~(2) — No quorum of~~ The Gorge eCommission shall not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by 350-11-001 to 350-11-010 this division.
- (4) ~~(3) —~~ The Gorge eCommission shall not hold a meeting at any place where discrimination on the basis of race, color, creed, color, sex, age, sexual orientation, gender identity, or national origin, age, or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by the Gorge eCommission if use of a the place by a restricted membership organization is not the primary purpose of the place or its predominate use.
- (5) ~~(4) —~~ Location of meetings
- (a) Meetings of the Gorge eCommission shall be held:
- (A) within the geographic boundaries over which the Gorge eCommission has jurisdiction; ~~or~~
- (B) at the administrative headquarters of the Gorge eCommission; ~~or~~
- (C) at ~~the other nearest~~ another practical location within one of the National Scenic Area counties;
- (D) within Indian country (as that term is used in 18 U.S.C. § 1151) of one of the four Columbia River Treaty Tribes specified in 16 U.S.C. § 544(g); or

- (E) by means of telephone, electronic, or internet communication, or other means of remote access as provided by this division.
- (b) Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved.
- (c) A joint meeting of two or more governing bodies between the Gorge Commission and another entity subject to an open public meeting law or one or more of the four Columbia River Treaty Tribes shall be held within the geographical boundaries over which one of the participating public bodies entities has jurisdiction, or within Indian country or at the nearest another practical location.
- (d) Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.
- ~~(5) — Notwithstanding the requirements of section (4) above, committee meetings may be held in any location where the committee deems it useful.~~
- ~~(6) — Meetings of the Gorge Commission shall be held in locations that are accessible to the disabled.~~
- ~~(7) — Upon request of a person who is deaf or hard of hearing, the Commission shall make a good faith effort to have an interpreter for persons who are deaf or heard of hearing provided at a regularly scheduled meeting. The person requesting the interpreter shall provide the Commission at least 48 hours' notice of the request, shall provide the name of the requester, sign language preference and any other relevant information the Commission may require. As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission, the Washington Aging and Adult Services Administration, or other state or local government or community service agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.~~
- (6) ~~(8) — It shall be considered discrimination on the basis of disability for the Gorge eCommission to meet in a place inaccessible to persons with disabilities, or upon request of a person who is deaf or hard of hearing an individual with a disability or a non-English-speaking person, to fail to make a good faith effort to have an interpreter for ~~persons~~ the individual with a disability or a non-English-speaking person provided at a regularly scheduled meeting. ~~The sole remedy for discrimination on the basis of disability shall be as provided in Commission Rule 350-11-008.~~~~
- (a) The person requesting the interpreter shall provide the Gorge Commission at least 48 hours' notice of the request, shall provide the name of the requester, language or sign language preference and any other relevant information the Gorge eCommission may require.

- (b) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.
  - (c) As used in this subsection, "good faith effort" includes, ~~but is not limited to,~~ contacting the Oregon Disabilities Commission, the Washington Aging and ~~Adult Services-Long Term Support Administration,~~ state or federal court with jurisdiction in the National Scenic Area, or other state or local government or community service agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.
- (7) ~~(9)~~—Voting by the Gorge eCommission shall take place in public and each member's vote shall be recorded as it is cast. The Gorge Commission shall not vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, ~~and shall be considered an "action" under this chapter.~~

**350-011-0040. Public Notice Required; Special Notice for Executive Sessions, Special or Emergency Meetings**

~~**350-11-004. Public notice required; special notice for executive sessions, special or emergency meetings.**~~

- (1) The Gorge eCommission shall provide the time for holding regular meetings by ~~ordinance, resolution, rule or bylaws, or by whatever other rule is required for the conduct of business by the Gorge Commission.~~
- (2) Notices in the Washington State Register and on the Oregon Transparency Website
  - (a) The Gorge Commission shall file with the ~~Secretary of State in Oregon and the Code Reviser in Washington~~ a schedule of the time and place of ~~such regular meetings as provided by rule or bylaw~~ on or before January of each year for publication in the ~~states' registers~~ Washington State Register.
  - (b) The Gorge Commission shall post notice of its regular meetings as provided by rule or bylaw annually on the Oregon Transparency website, provided that the State of Oregon maintains the website and authorizes the Gorge Commission to post notices on it.
  - (c) The Gorge Commission's notices in this subsection shall direct persons to the Gorge Commission's website for changes to the date, starting time, and location of regular meetings, for agendas and meeting materials, and for notices of cancellation of regular meetings.

~~Notice of any change from such meeting schedule shall be published in the states' registers for distribution at least twenty days prior to the rescheduled meeting date. For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.~~

- (3) The Gorge eCommission shall ~~provide for and~~ give public notice, reasonably calculated to give actual notice to interested persons, including news media which

have requested notice, of the time and place for holding regular meetings. The notice shall also include an agenda containing a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of the Gorge eCommission to consider additional subjects or remove listed subjects from consideration.

- (a) The Gorge Commission shall make the agenda of each regular meeting available on its website no later than 24 hours in advance of the published start time of the meeting.
  - (b) Nothing in this section modifies notice requirements or shall be construed as establishing that the Gorge Commission's posting of an agenda as required by this section is sufficient notice to satisfy public notice requirements established under other laws.
  - (c) Failure to post an agenda in accordance with this section shall not provide a basis for enforcement under 350-011-0080.
- (4) If an executive session only will be held, the notice shall be given to the members of the Gorge eCommission, the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.
- ~~(5) — Special Meetings. No special meeting shall be held without at least 24 hours' notice to the members of the Gorge Commission, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. The call and notice of the meeting shall specify the time and place of the meeting and the business to be transacted. Notice of a special meeting may be given by delivering written notice personally, by mail, by fax, or by electronic mail. Final disposition shall not be taken on any other matter at a special meeting of the Gorge Commission.~~
- (5) ~~(6)~~—The Gorge eCommission shall not adopt any ordinance, resolution, rule, regulation, order, or directive except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this ~~chapter~~ division. Any action taken at meetings failing to comply with the provisions of this ~~subsection~~ shall be null and void.
  - (6) ~~(7)~~—The Gorge eCommission may adjourn or continue a meeting to a time and place specified in an order of adjournment or continuance. Written notice of the adjournment or continuance shall be provided in accordance with ~~subsection (3) of this rule.~~ above. A copy of the order of adjournment or continuance shall be conspicuously posted immediately after adjournment or continuance on the door where the meeting was held.

### **350-011-0045. Special and Emergency Meetings**

- (1) A special meeting may be called at any time by the Chair of the Gorge Commission or by a majority of the members of the Gorge Commission by delivering written notice personally, by mail, or by electronic communication to each member of the Gorge Commission and to the Executive Director of the Gorge Commission. Written notice shall be deemed waived in the following circumstances:
  - (a) A member submits a written waiver of notice with the Executive Director of the Gorge Commission at or prior to the time the meeting convenes. A written waiver may be given by any means, including electronic communication; or
  - (b) A member is actually present at the time the meeting convenes.
- (2) Notice of a special meeting called under section (1) of this rule shall be:
  - (a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the Gorge Commission a written request to be notified of such special meeting or of all special meetings;
  - (b) Posted on the Gorge Commission's website;
  - (c) Prominently displayed at the main entrance of the Gorge Commission's office; and
  - (d) Delivered or posted, as applicable, at least 24 hours before the time of such meeting as specified in the notice.
- (3) The call and notices required under sections (1) and (2) of this rule shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at a special meeting of the Gorge Commission.
- (4) Emergency Meetings. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage, or when the required notice cannot be posted or displayed with reasonable safety, including but not limited to declared emergencies in which travel to physically post notice is barred or advised against. The minutes for an emergency meetings shall describe the emergency justifying less than 24 hours notice.

### **350-011-0050. Written Minutes and Recording Required and Made Available; Content; Content of Minutes for Executive Sessions**

#### **350-11-005. —Written minutes required; content; content of minutes for executive sessions.**

- (1) The Gorge Commission shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but tThe written minutes must give a true reflection

of the ~~mattes~~ matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- (a) All members of the Gorge Commission present;
  - (b) All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
  - (c) The results of all votes and, ~~except for public bodies consisting of more than 25 members unless requested by a member of the body,~~ the vote of each member by name;
  - (d) The substance of any discussion on any matter; ~~and~~
  - (e) Subject to Commission Rule chapter 350, division 12-001 to 350-12-006 relating to public records, a reference to any document discussed at the meeting but such reference shall not affect the status of the document under Commission Rule chapter 350, division 12-001 to 350-12-006; and
  - (f) The announced purpose(s) and authorization(s) for any executive session.
- (2) The Gorge Commission shall provide for a sound, video, or digital recording of all its meetings.
- (a) The Gorge Commission shall promptly make the recordings available online on a publicly accessible website or hosting service for a minimum of six months so that members of the public may without charge:
    - (A) Observe a recording of the meeting if the meeting was conducted through videoconferencing technology; or
    - (B) Listen to a recording of the meeting if the meeting was conducted through teleconferencing technology that did not include video capabilities.
  - (b) The requirement that a meeting be published under this section does not apply to that portion of a Gorge Commission meeting that was lawfully held in executive session under 350-011-0060.
- (3) ~~(2)~~—Minutes of executive sessions shall be kept in accordance with ~~subsection (1) of this section rule.~~ Instead of written minutes, a record of any executive sessions may be kept in the form of a sound, video, ~~tape or digital~~ recording, which need not be transcribed unless otherwise provided by law. However, excluded materials are authorized to be examined by a court in any legal action and the court shall determine their admissibility.

**350-011-0060. Executive Sessions Permitted on Certain Matters; Procedures; News Media Representatives' Attendance; Limits**

~~**350-11-006. Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.**~~

- (1) The Gorge eCommission can hold executive session during a regular, special, or emergency meeting, after ~~the presiding officer has identified~~ announcing the authorization for the holding of such executive session. Executive session may be held:
- (a) To ~~evaluate the qualifications of an applicant for~~ consider the employment of ~~as a public officer, employee, staff member or individual agent.~~ The exception contained in this ~~paragraph subsection~~ does not apply to:
- ~~(A) The filing of a vacancy in an elective office;~~
  - ~~(B) The filling of a vacancy on any public committee, commission or other advisory group;~~
  - (A) ~~(C)~~—The consideration of general employment policies, including salaries, wages, and other conditions of employment to be generally applied within the Gorge Commission;
  - (B) ~~(D)~~—The employment of the chief executive officer, other public officers, executive director, employees and staff members of any public body unless the vacancy in that office has been advertised, regularized procedures for hiring have been adopted by the public body and there has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring chief executive officers shall be adopted by the Gorge Commission in meetings open to the public in which there has been opportunity for public comment.
    - (i) the Gorge Commission has advertised the vacancy;
    - (ii) the Gorge Commission has adopted regular hiring procedures;
    - (iii) in the case of the executive director, the Gorge Commission has adopted hiring standards, criteria, and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria, and policy directives;
  - (C) The final action of the Gorge Commission hiring an individual employee.
- (b) To review the performance of a public employee or t~~To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual agent, unless such public officer, employee, staff member or individual agent who does not~~ requests an open hearing. The Gorge Commission shall not use An executive session for purposes of evaluating the executive director, employee or staff member to conduct a general evaluation of any agency goal, objective, or operation or any directive to personnel concerning agency goals, objectives, operations, or programs. When the Gorge Commission elects to take final

action hiring or setting the salary of an individual employee or class of employees, that action shall be taken in a meeting open to the public. When the Gorge Commission elects to take final action discharging or disciplining an employee, that action shall be taken in a meeting open to the public.

- (c) To conduct deliberations with persons designated by the Gorge eCommission to carry on labor negotiations;
- (d) To conduct deliberations with persons designated by the Gorge eCommission to negotiate real property transactions or to consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price.
- (e) To consider information or records that are exempt by law from public inspection;
- (f) ~~To consider preliminary negotiations involving matters of trade or commerce in which the Gorge Commission is in competition with governing bodies in other states or nations;~~ Consultation with legal counsel:
  - (A) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the Gorge Commission, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency;
  - (B) This subsection does not permit the Gorge Commission to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection, "potential litigation" means matters protected by Oregon or Washington's rules and laws governing an attorney's duty of confidentiality concerning:
    - (i) Litigation that has been specifically threatened to which the Gorge Commission or a member of the Gorge Commission or staff acting in an official capacity is, or is likely to become, a party;
    - (ii) Litigation that the Gorge Commission reasonably believes may be commenced by or against the Gorge Commission or a member of the Gorge Commission or staff acting in an official capacity; or
    - (iii) Litigation or legal risks of a proposed action or current practice that the Gorge Commission has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the Gorge Commission.

- (g) ~~To consult with counsel concerning the legal rights and duties of the Gorge Commission with regard to current litigation or litigation likely to be filed; To consider matters relating to the safety of the governing body and of public body staff and volunteers and the security of public body facilities and meeting spaces.~~
- (h) ~~To review and evaluate, pursuant to standards, criteria and policy directives adopted by the Commission, the employment-related performance of the chief executive officer of the Commission, a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers shall be adopted by the Commission in meetings open to comment. An executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member shall not include a general evaluation of any agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs. For any other purpose authorized by either the laws of Oregon or the laws of Washington not listed above.~~
  - (i) ~~—To carry on negotiations with private persons or business regarding proposed acquisition, exchange or liquidation of public investments.~~
  - (j) ~~—To discuss information about the review or approval of programs relating to the security of any of the following:~~
    - (A) ~~A nuclear powered thermal power plant or nuclear installation.~~
    - (B) ~~Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.~~
    - (C) ~~Generation, storage or conveyance of:~~
      - (iv) ~~Electricity;~~
      - (v) ~~Gas in liquefied or gaseous form;~~
      - (vi) ~~Hazardous substances as defined by Oregon or Washington state law;~~
      - (vii) ~~Petroleum products;~~
      - (viii) ~~Sewage; or~~
      - (ix) ~~Water;~~
    - (D) ~~Telecommunications systems, including cellular, wireless or radio systems.~~
    - (E) ~~Data transmissions by whatever means provided.~~

~~(2) — Labor negotiations may be conducted in executive session if either side of the negotiators requests closed meetings. Subsequent sessions of the negotiations may continue without further public notice.~~

- (2) ~~(3) —~~ Representatives of the news media shall be allowed to attend executive sessions other than those held under ~~paragraph (c) of subsection (1)(c)~~ of this ~~section~~ rule relating to labor negotiations but no information that is the subject of the executive session shall be disclosed. When the Gorge Commission convenes an executive session under subsection (1)(f) of this rule, the Gorge Commission shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.
- (3) ~~(4) —~~ No executive session may be held for the purpose of taking any final action or making any final decision.

**350-011-0070. Meetings by Means of Telephone, ~~or Electronic, or Internet~~ Communication, or Other Means of Remote Access**

~~350-11-007. Meetings by means of telephonic or electronic communication.~~

- (1) Any meetings, including an executive session, of the Gorge eCommission which is held through the use of telephone, ~~or other electronic, or internet~~ communication, or other means of remote access shall be conducted in accordance with ~~350-11-001 to 350-11-010~~ this division.
- (2) When telephone, ~~or other electronic, or internet~~ means of communication, or other means of remote access is used and the meeting is not an executive session, the Gorge eCommission shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the Gorge eCommission is present.
- (3) All meetings held by the Gorge Commission, excluding executive sessions, must provide to members of the general public, to the extent reasonably possible, an opportunity to:
- (a) Access and attend the meeting by telephone, video, or other electronic or virtual means;
  - (b) If in-person oral testimony is allowed, submit during the meeting oral testimony by telephone, video, or other electronic or virtual means; and
  - (c) If in-person written testimony is allowed, submit written testimony, including by electronic mail or other electronic means, so that the Gorge Commission is able to consider the submitted testimony in a timely manner.
- (4) The provisions of section (3) of this rule apply to hearings under Commission Rule division 350, chapters 60 and 70.

**350-11-008.— Enforcement of 350-011-0001 to 350-001-0007; effect of violation on validity of decision of the Commission, liability of members.**

- (1) — Any person affected by a decision of the commission may commence a suit in the circuit court or superior court of the county in which the commission ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of 350-11-001 to 350-11-007, by members of the commission, or to determine the applicability of 350-11-001 to 350-11-007 to matters or decisions of the commission. The court may order such equitable relief as it deems appropriate in the circumstances. A decision made in violation of 350-11-001 to 350-11-007 is voidable.
- (2) — If the court makes a finding that a violation of 350-11-001 to 350-11-007 has occurred under subsection (1) of this section and that the violation is the result of wilful misconduct by any member or members of the commission, that member or members shall be jointly and severally liable to the commission for the amount paid by the commission under subsection (1) of this section.
- (3) — Each member of the commission who attends a meeting of the commission where action is taken in violation of any provision of this division, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the circuit court or superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.
- (4) — Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. If the commission prevails in an action in the courts for a violation of this chapter, it may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.
- (5) — The provisions of this section shall be the exclusive remedy for an alleged violation of 350-11-001 to 350-11-007.

**350-11-009.— Prima facie evidence of violation required of plaintiff.**

In any suit commenced under 350-11-008(1), the plaintiff shall be required to present prima facie evidence of a violation of 350-011-0001 to 350-11-007 before the commission shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meeting law, the burden to prove that the provisions of 350-11-001 to 350-11-007 were complied with shall be on the commission.

**350-11-010.— Smoking in public meetings prohibited.**

- (1) — No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting

notice indicates the meeting is to commence regardless of the time it actually commences.

- (2) ~~As used in this section, “smoking instrument” means any cigar, cigarette, pipe or other smoking equipment.~~

### **350-011-0080. Interruptions**

In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the Gorge Commission may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section prohibits the Gorge Commission from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting. Nothing in this section prohibits the Gorge Commission from stopping people from speaking to the Gorge Commission when not recognized by the Gorge Commission to speak.

### **350-011-0090. Regular Meeting to Include Time for Public Comment**

#### **350-11-011. ~~Regular meetings to include time for public comment.~~**

- (1) At all regular meetings of the Gorge Commission, the Gorge Commission shall provide time for oral public comment for issues not on the Gorge Commission’s agenda, and an opportunity for Tribal Nations to address the Gorge Commission.
- (2) At all regular meetings of the Gorge Commission, the Gorge Commission shall provide an opportunity for written public comment. Written comments shall be distributed to the members of the Gorge Commission. The Gorge Commission may set a reasonable deadline for the submission of written comment before the meeting.
- (3) Upon the request of any individual who will have difficulty attending a meeting of the Gorge Commission by reason of disability, limited mobility, or for any other reason that makes physical attendance at a meeting difficult, the Gorge Commission shall, when feasible, provide an opportunity for that individual to provide oral comment at the meeting remotely if oral comment from other members of the public will be accepted at the meeting.
- (4) ~~(2)——The Gorge Commission may limit the number of speakers or the time for oral public comment and opportunity for Tribal Nations to address the Gorge Commission in a manner that limits time equally for each speaker, ~~or the number of speakers.~~~~
- (5) ~~(3)——The Gorge Commission may exclude oral or written comment that concerns matters currently before or likely to come before the Gorge Commission in a hearing~~

where the Gorge Commission must disclose ex parte communications and comply with the Washington Appearance of Fairness doctrine. ~~The presiding officer may exclude other comment that is inappropriate.~~

- (6) Nothing in this section diminishes the authority of the Gorge Commission to deal with interruptions as provided in this division or requires the Gorge Commission to accept public comment that renders orderly conduct of the meeting unfeasible.

# Columbia River Gorge Commission

## Chapter 350 Division 012

### Public Records

As Amended through April 1, 2008 [DATE]

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#### Rules

**350-012-0010. Definitions for Commission Rule 350-012**

~~350-12-001. Definitions for 350-12-001 to 350-12-008.~~

- (1) “Business day” means weekdays, except when the Gorge Commission office is closed for an entire day. The Gorge Commission office closes for holidays, inclement weather, emergencies, and as decided by the executive director. The Gorge Commission strives to place office closure dates on its website.
- (2) “Gorge Commission” means the Columbia River Gorge Commission.

- (3) ~~(1)~~—“Person” includes any natural person, corporation, partnership, firm, or association.
- (4) ~~(2)~~—“Public record” includes any writing containing information relating to the conduct of ~~the public's business~~ government or the performance of any governmental or proprietary function, prepared, owned, used, or retained by the Gorge Commission regardless of physical form or characteristics. “Public record” does not include:
- (a) Any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer; or
  - (b) Records that are not otherwise required to be retained by the agency and are held by volunteers who:
    - (A) Do not serve in an administrative capacity;
    - (B) Have not been appointed by the agency to an agency board, commission, or internship; and
    - (C) Do not have a supervisory role or delegated agency authority.
- (5) ~~(3)~~—“Writing” means handwriting, typewriting, printing, photostating, photographing and every means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, or and other documents including existing data compilations from which information may be obtained or translated.

### **350-012-0020. Right to Inspect Public Records; Personal Privacy Interests**

#### **350-12-002. ~~Right to inspect public records.~~**

- (1) Every person has a right to inspect any public record of the Gorge Commission, except as otherwise expressly provided by this division.~~350-12-008.~~
- (2) The Gorge Commission shall furnish proper and reasonable opportunities for inspection and examination of non-exempt records during the usual business hours, to all persons requesting inspection and examination.
- (3) To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this division or an Oregon, Washington, or federal statute or regulation that prohibits disclosure of specific information or records, the Gorge Commission shall delete identifying details in a manner consistent with such requirement when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing. Personal privacy interests are considered invaded if disclosure of information about the person would be highly offensive to a reasonable person and is not of legitimate concern to the public.

- (4) For informational purposes, the Gorge Commission shall publish and maintain a current list containing every law, other than those listed in this chapter, that the Gorge Commission believes exempts or prohibits disclosure of specific information or records of the Gorge Commission. The Gorge Commission's failure to list an exemption shall not affect the efficacy of any exemption.

### **350-012-0030. Index of Certain Records**

#### **350-12-003. ~~Index of certain records.~~**

- (1) The Gorge Ceommission shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated.
- (a) Final opinions, ~~including concurring and dissenting opinions,~~ as well as orders, made in the adjudication of cases;
  - (b) ~~These s~~Statements of policy and interpretations of policy, statutes, and regulations, ~~and the Constitution which~~ that have been adopted by the Gorge Ceommission;
  - (c) Administrative staff manuals and instructions to staff that affect a member of the public;
  - (d) Planning policies and goals, and interim and final planning decisions;
  - (e) Factual staff reports, and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others;
  - (f) Correspondence and materials referred to therein, by and with the agency Gorge Commission relating to any regulatory, supervisory, or enforcement responsibilities of the agency Gorge Commission, whereby the agency Gorge Commission determines, or opines upon, or is asked to determine or opine upon, the rights of the Gorge Commission, a state, the public, a subdivision of state government, or of any private party.
- (2) The Gorge Ceommission need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:
- (a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and
  - (b) Make available for public inspection and copying all indexes maintained for agency use.

### **350-012-0040. Agency Description; Contact Information**

#### **350-12-004. ~~Times for inspection and copying.~~**

(1) ~~Public records shall be available for inspection and copying during the customary office hours of the commission. Provided, that if the commission does not have the customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the person making the request and the commission or its representative agree on a different time.~~

- (1) Agency Description. The Gorge Commission is a regional agency created by Oregon and Washington through an interstate compact (codified at ORS 196.150 and RCW 43.97.015) with the consent of the U.S. Congress (16 U.S.C. § 544c(a)(1)). The members of the Gorge Commission are appointed as provided in 16 U.S.C. § 544c(a)(1)(C) and Article II of the compact. The members of the Gorge Commission appoint the executive director as the administrative head of the Gorge Commission.
- (2) Contact Information. The Gorge Commission has one office located at 57 N.E. Wauna Ave., White Salmon, WA 98672, and its mailing address is P.O. Box 730, White Salmon, WA 98672. The general email address for the Gorge Commission is info@gorgecommission.org. The website for the Gorge Commission is www.gorgecommission.org. The Gorge Commission does not have a facsimile number.

### **350-012-0050. Procedure for Requesting Public Records**

- (1) All requests to inspect, copy, or receive public records shall be in writing and sent to the Gorge Commission office using the contact information in 350-012-0040(2). One request is sufficient; there is no need to send a request by both U.S. Postal Service and by email. A request shall include the following information:
  - (a) The requestor's name, email address or mailing address, and telephone number; and
  - (b) A request for identifiable public records. An identifiable public record is one for which the requestor has given a reasonable description enabling the Gorge Commission to locate the requested record(s). A request for all or substantially all records prepared, owned, used, or retained by the Gorge Commission is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.
- (2) If a requestor is a party or a representative or agent of a party to an administrative proceeding before the Gorge Commission, a party or representative of a party to a civil judicial proceeding to which the Gorge Commission or any member of the Gorge Commission is a party, or has filed a notice under 16 U.S.C. § 544m(b)(3) asks to inspect or to receive a copy of a public record that the person knows relates to the proceeding or notice, the requestor must submit the request to the Gorge Commission office and the attorney for the Gorge Commission.

### 350-012-0060. Response to Public Record Requests

- (1) The Gorge Commission will respond to a request for public records within five business days by:
  - (a) Providing the records if the records are of a nature permitting copying, or a reasonable opportunity to inspect or copy the record;
  - (b) Providing an internet address and link to the records on the Gorge Commission's website; except that if the requester notifies the Gorge Commission that they cannot access the records through the internet, then the Gorge Commission must provide copies of the record or allow the requester to view copies using an agency computer;
  - (c) Acknowledging that the Gorge Commission has received the request and providing a reasonable estimate of the time the Gorge Commission will require to respond to the request;
  - (d) Acknowledging that the Gorge Commission has received the request, asking the requestor to provide clarification for a request that is unclear, and providing to the greatest extent possible, a reasonable estimate of the time the Gorge Commission will require to respond to the request once clarified. If the requestor fails to clarify the request within ten business days, the Gorge Commission need not respond to it and will close the request; or
  - (e) Denying the public record request.
- (2) The Gorge Commission may, in its sole discretion, propose a search and disclosure plan specifying search terms, record locations, form of the records, clarifications to the initial request, and other material information. The Gorge Commission will share the search and disclosure plan with the requestor to confirm that the plan responds to the initial or clarified request.
- (3) Additional time required to respond to a request may be based upon the need to further clarify the request, locate and assemble the information requested, minimize interference with or disruption to other essential Gorge Commission functions, notify third persons or agencies affected by the request, or determine whether any of the information requested is exempt and that a redaction or denial should be made as to all or part of the request.
- (4) The Gorge Commission will process requests in the order in which they are received. The Gorge Commission may modify this approach as necessary to ensure that requests that seek larger volumes of records, require closer review, or are otherwise more time consuming, do not unreasonably delay simpler, more routine requests.
- (5) When it appears that the number of records responsive to a request may be large, that the process of locating, assembling, or reviewing the records may be lengthy, or that it is otherwise appropriate, the Gorge Commission may choose to provide records on a partial or installment basis. The Gorge Commission need not locate and

assemble records responsive to a subsequent installment until the previous installment is claimed or inspected. If an installment is not claimed or inspected within ten business days of notice of availability, the Gorge Commission need not respond further and will close the request.

(6) When electronic records are requested.

(a) The Gorge Commission will provide copies of electronic records in the form requested, if available. If the public record is not available in the form requested, the Gorge Commission will provide the record in the form in which it is maintained or, at Gorge Commission's discretion, in a format that is reasonably translatable from the format in which the Gorge Commission keeps the records.

(b) When metadata is requested, the Gorge Commission will provide the records in a native file format that preserves metadata where technically feasible. Metadata may be unavailable for records that require conversion to a nonnative format in order to provide or to apply exemptions.

(c) If the Gorge Commission translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute the creation of a new public record for purposes of this chapter. Scanning paper records to make electronic copies of such records is a method of copying paper records and does not constitute the creation of a new public record.

(d) The Gorge Commission may use reasonable procedures and technology necessary for the protection of electronic records and to prevent interference with the regular discharge of duties of the Gorge Commission.

(7) The Gorge Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

(8) If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the Gorge Commission shall retain possession of the record and may not destroy or erase the record until the request is resolved.

(9) Costs of Providing Public Records

(a) The Gorge Commission does not charge a fee for the inspection of public records or locating public documents and making them available for copying.

(b) The Gorge Commission may charge a reasonable fee for providing copies of public records. The Gorge Commission declares for the following reasons that it would be unduly burdensome to calculate the actual costs it charges for providing copies of public records: Funds are not allocated for performing an initial study to calculate such actual costs and periodic updates to such a study, and the Gorge Commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions. The Gorge

Commission may charge fees for production of copies of public records, which includes shipping, consistent with the fee schedule as published on the Gorge Commission's website at [www.gorgecommission.org](http://www.gorgecommission.org).

- (c) The Gorge Commission will charge the actual amount charged by an external vendor for records copied or scanned by that vendor, including records in nonstandard sizes or formats. The Gorge Commission will also charge the actual amount of shipping records to and from the vendor and actual travel expenses, including mileage, tolls, and parking fees. The Gorge Commission will provide an estimate of the amount charged by the external vendor and shipping and travel costs.
- (d) Before copying public records, the Gorge Commission may require a deposit of up to ten percent of the estimated costs of copying all of the records. The Gorge Commission may also require payment of the remainder of the copying costs before providing all of the records, or the payment of costs of copying an installment before providing the installment.
- (e) At the Gorge Commission's sole discretion, the Gorge Commission may provide customized electronic access to public records if the Gorge Commission estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the Gorge Commission for other agency purposes. The Gorge Commission will charge the actual costs, including staff time, necessary to reimburse the agency for providing customized electronic access services.
- (f) The Gorge Commission will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.
- (g) The Gorge Commission may waive any charges for providing public records at the discretion of the Executive Director of the Gorge Commission. This determination will be made on a case-by-case basis at the Executive Director's sole discretion.
- (10) Denial of public records request. When the Gorge Commission denies a request for inspection of a public record in whole or part, it must provide a statement of the specific exemption from this division or other law authorizing the denial.
- (11) Review of the Gorge Commission's production of public records.
  - (a) A requestor who believes the Gorge Commission did not provide all responsive documents may petition the Executive Director to review the Gorge Commission's production of public records. The written request must specify what records the requestor believes were omitted, if known, and the basis for the requestor's belief that the Gorge Commission did not produce all responsive records.

- (b) A requestor who objects to the denial of a request for a public record may petition the Executive Director to review the denial. The written request must identify the documents that were not produced, include the written statement which accompanied the denial and explain why the requestor believes the denial was in error.
- (c) Requestors shall file a petition in accordance with subsections (a) or (b) of this section within 14 days after the date the requestor inspects the requested records at the Gorge Commission's office, the date the Gorge Commission sends the records to the requestor, or the date of the denial of a request. Petitions pursuant to subsections (a) and (b) of this section shall be sent to the Executive Director of the Gorge Commission at the mailing or email address in 350-012-0040(2).
- (d) The Executive Director shall immediately consider the petition and either affirm or reverse the denial. Within five business days following receipt of the requestor's petition for review, the Executive Director will notify the requestor of the decision or notify the requestor if more time is required to consider the petition.

(12) Protection of public records.

- (a) Requestors may not remove any public record from the Gorge Commission's office. Requestors may remove copies of records that the Gorge Commission specifically provides to the requestor to take away from the Gorge Commission's office.
- (b) Requestors must have a designated Gorge Commission employee present while inspecting a public record.
- (c) Requestors may not mark or deface a public record in any manner during inspection.
- (d) Requestors may not dismantle or change the order of public records that are stapled, paper-clipped, or maintained in a notebook, file, or jacket, or in chronological or other filing order.
- (e) Access to file cabinets, shelves, vaults, or other storage areas is restricted to Gorge Commission personnel unless other arrangements are made with the Executive Director.
- (f) The right to inspect original public records does not require the Gorge Commission to allow inspection of an original record that contains some information exempt from disclosure. In such case, the Gorge Commission will provide a copy of the original with the exempt material redacted.

~~350-12-005. Forms of public records.~~

- (1) ~~The custodian of any public record which a person has a right to inspect shall give the person, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.~~

- (2) If a public record is maintained in a machine readable or electronic form, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.

**~~350-12-006. Fees.~~**

- (1) ~~The Gorge Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media, and for routine notices and agendas. This applies to both regular and certified copies of records.~~
- (2) ~~If the Gorge Commission makes a request available on a partial or installment basis, the Gorge Commission may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the Gorge Commission is not obligated to fulfill the balance of the request.~~

**~~350-12-007. Fulfilling requests.~~**

- (1) ~~The Gorge Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Gorge Commission shall respond by (1) providing the record; (2) acknowledging that the Gorge Commission has received the request and providing a reasonable estimate of the time the Gorge Commission will require to respond and an estimate of the fees that the requester must pay as a condition of receiving the public records; or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Gorge Commission may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the Gorge Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.~~
- (2) ~~The Gorge Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or make ready for inspection or disclosure.~~
- (3) ~~The Gorge Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.~~

**350-012-0070. Public Records Exempt from Disclosure**

**~~350-12-008. Public records exempt from disclosure.~~**

- (1) ~~The following public records are exempt from disclosure under this division 350-12-001 to 350-12-008 unless the public interest requires disclosure in the particular instance:~~

- (a) Records of the Gorge Ceommission pertaining to litigation to which the Gorge Ceommission is a party if the complaint has been filed, or if the compliant has not been filed, if the Gorge Ceommission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;
- (b) Trade secrets. "Trade secrets," as used in this subsection, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;
- ~~(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:~~
  - ~~(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;~~
  - ~~(B) The offense with which the arrested person is charged;~~
  - ~~(C) The conditions of release;~~
  - ~~(D) The identity of and biographical information concerning both complaining party and victim;~~
  - ~~(E) The identity of the investigation and arresting agency and the length of the investigation;~~
  - ~~(F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;~~
  - ~~(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.~~
- ~~(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;~~

- (c) ~~(e)~~—Information relating to the appraisal of real estate prior to its acquisition;
- ~~(f)~~—~~The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;~~
- (d) ~~(g)~~—Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complaint is resolved, or a final administrative determination is made;
- ~~(h)~~—~~Investigatory information relating to any complaint filed relating to unfair labor practices;~~
- ~~(i)~~—~~Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and~~
- (e) ~~(j)~~—A personnel discipline action, or materials or documents supporting that action.
- (f) ~~(k)~~—Sensitive fish, wildlife, and plant data. Sensitive fish, wildlife, and plant data may be released to the following entities and their agents for fish, wildlife, plant, and land management purposes, or scientific research needs: Governments agencies, public utilities, and accredited colleges and universities. Sensitive fish, wildlife, and plant data may be released to tribal governments. Sensitive fish, wildlife, and plant data may also be released to the owner, lessee, or right-of-way or easement holder of private land to which the data pertains. The release of sensitive fish, wildlife, and plant data may be subject to a confidentiality agreement, except upon release of sensitive fish, wildlife, and plant data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish, wildlife, and plant data does not include data related to reports of predatory wildlife posted on the Washington Department of Fish of Wildlife's internet web site. Sensitive fish, wildlife, and plant data must meet at least one of the following criteria as applied by the Gorge Commission:
  - (A) ~~(1)~~—The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;
  - (B) ~~(2)~~—Radio frequencies used in or locational data generated by telemetry studies;

- (C) ~~(3)~~—Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:
  - (i) ~~(A)~~—The species has a known commercial or black market value;
  - (ii) ~~(B)~~—There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;
  - (iii) ~~(C)~~—There is a known demand to visit, take, or disturb the species; or
  - (iv) ~~(D)~~—The species has an extremely limited distribution and concentration.
- (g) ~~(1)~~—Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:
  - (A) ~~(1)~~—An individual;
  - (B) ~~(2)~~—Buildings or other property; or
  - (C) ~~(3)~~—Information processing, communication or telecommunication systems, including the information contained in the systems.
- (h) Lists of individuals requested for commercial purposes.
- (i) Any other record that is conditionally exempt from disclosure as specified in ORS 192.345.
- (2) The following public records are exempt from disclosure under this division: 350-12-001 to 350-12-008:
  - (a) Communications within ~~a public body~~ the Gorge Commission or between the Gorge Commission and another public bodyies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the Gorge Commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the Gorge Commission clearly outweighs the public interest in disclosure. ■
  - (b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy. ■

- (c) Information submitted to the Gorge Commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the Gorge Commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.
- (d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations, including location of archaeological sites or objects pursuant to 16 U.S.C. § 544d(a)(1)(A), traditional cultural practices, enjoyment of treaty reserved rights, the locations of traditional sites, structures, lands, and places of cultural and spiritual significance that a tribe holds sacred, and similar sensitive information. This exemption does not apply when the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities.
- (e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged.
- (f) Public records or information described in this section, furnished by the ~~public body originally compiling, preparing or receiving them~~ Gorge Commission to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.
- (g) Information about review or approval of programs relating to the security of:
  - (A) ~~(1)~~—Generation, storage or conveyance of:
    - (i) ~~(A)~~—Electricity;
    - (ii) ~~(B)~~—Gas in liquefied or gaseous form;
    - (iii) ~~(C)~~—Hazardous substances as defined by Oregon or Washington state law;
    - (iv) ~~(D)~~—Petroleum products;
    - (v) ~~(E)~~—Sewage; or
    - (vi) ~~(F)~~—Water;
  - (B) ~~(2)~~—Telecommunications systems, including cellular, wireless or radio systems.
  - (C) ~~(3)~~—Data transmissions by whatever means provided.
- (h) Records of mediation communications that are privileged under the Uniform Mediation Act.

- (i) Information gathered for the purpose of preparing a small business impact statement or an analysis of significant rules as required by the states' rulemaking requirements that can be identified to a particular business.
  - (j) Records in violation of a user agreement or license that prohibits the Gorge Commission from disclosing such records. The Gorge Commission shall refer persons to the creator of the record if the Gorge Commission has obtained the records through agreement or license, or for which the Gorge Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.
  - (k) Except as provided in 350-012-0050(1)(j), any record that is exempt from disclosure by any Oregon or Washington law.
- (3) If any public record contains material ~~which that~~ is not exempt under subsection (1) or (2) of this ~~section~~ rule, as well as material ~~which that~~ is exempt from disclosure, the Gorge Commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.
- (4) An individual may submit a written request to ~~a public body~~ the Gorge Commission not to disclose a specified public record indicating the home address or personal telephone number of the individual. ~~A public body~~ The Gorge Commission shall not disclose the specified public record if the individual demonstrates to the satisfaction of the ~~public body~~ Gorge Commission that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.
- (a) A request described in ~~subsection (14) of this section~~ shall remain effective until the ~~public body~~ Gorge Commission receives a written request for termination but no later than five years after the date that ~~a public body~~ the Gorge Commission receives the request.
  - (b) ~~A public body~~ The Gorge Commission may disclose a home address or personal telephone number of an individual exempt from disclosure under ~~subsection (14) of this section~~ upon court order, on request from any law enforcement agency or with the consent of the individual.
  - (c) ~~A public body~~ The Gorge Commission shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.
- (5) Notwithstanding the exemptions in ~~350-012-0080050(1) and (2)~~ sections (1) and (2) of this rule, public records that are more than 25 years old shall be available for inspection, except for records the disclosure of which is prohibited by federal or state law or regulations.

- (6) ~~Notwithstanding 350-12-001 through 350-12-008, the commission shall not disclose records in violation of a user agreement or license that prohibits the commission from disclosing such records. The commission shall refer persons to the creator of the record if the commission has obtained the records through agreement or license, or for which the commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.~~
- (7) ~~Disclosure of information in violation of Rule 350-12-006 (2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.~~

### **350-012-0080. Public Records Officer**

#### **350-12-009. ~~Public records officer.~~**

The Gorge Commission's Executive Director or their appointee shall serve as the Gorge Commission's public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the Gorge Commission's compliance with the public records disclosure requirement of this division.

# Columbia River Gorge Commission

## Chapter 350 Division 014

### Conflict of Interest

As Amended through December 2, 2002 [DATE]

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#### Rules

## 350-014-0010. Definitions for Commission Rule 350-014

### ~~350-14-001. Definitions for 350-14-001 to 350-14-005.~~

As used in these rules, unless the context requires otherwise:

- (1) “Action” means any action on the part of the Gorge Commission, including:
  - (a) A decision, determination, finding, ruling or order; and
  - (b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.
- (2) ~~(1)~~—“Assist” means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person. “Assist” does not include referring another person to other persons or sources of advice and information, and other non-substantive advice or assistance.
- (3) “Beneficial interest” has the meaning ascribed to it under Washington or Oregon case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.
- (4) ~~(2)~~—“Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.
- (5) ~~(3)~~—“Business with which the person is associated” means:
  - (a) ~~a~~Any private business or closely held corporation of which the person or a member of the person’s household the person’s relative is a director, officer, owner, or employee, or agent or any private business or closely held corporation in which the person or a member of the person’s household the person’s relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.
  - (b) Any publicly held corporation in which the person or the person’s relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
  - (c) Any publicly held corporation of which the person or the person’s relative is a director or officer; or

- (d) For members of the Gorge Commission required to file a statement of economic interest under ORS 244.050 or RCW 42.17A.705, any business listed as a source of income as required under ORS 244.060(3) or RCW 42.17A.710(1)(f) or 42.17A.710(1)(g).
- (6) “Compensation” means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.
- (7) “Gorge Commission” means the Columbia River Gorge Commission.
- ~~(4) “Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or a member of the person’s household, unless the pecuniary benefit or detriment arises out of the following:~~
- ~~(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.~~
- ~~(b) Any action in the person’s official capacity which would affect to the same degree a class consisting of all inhabitants of a state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or a member of the person’s household or business with which the person is associated, is a member or is engaged.~~
- (8) ~~(5)~~—“Gift” means:
- (a) ~~s~~Something of economic value given to a public official or a relative or member of the public official’s household:
- (A) ~~w~~Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials on the same terms and conditions; and or
- (B) ~~something of economic value given to a public official or member of the official’s household f~~For valuable consideration less than that required from others who are not public officials. However,
- (b) “gGift” does not mean:
- ~~(a)~~—~~Campaign contributions.~~
- (A) ~~(b)~~—Gifts from relatives of the public official, members of the household of the public official, or friends where it is clear beyond a

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<sup>1</sup> RCW 42.17A.705 will be recodified as RCW 29B.55.020 effective January 1, 2026.

reasonable doubt that the gift was not made as part of any design to gain or maintain influence the Gorge Commission.

- (B) ~~(c)~~ — The giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity. An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be \$50 or less.
- (C) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.
- (D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.
- (E) Admission provided to or the cost of food or beverage consumed by a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents the Gorge Commission. "Reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event
- (F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which the Gorge Commission pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent the Gorge Commission.
- (G) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official may attend to satisfy a professional licensing requirement.
- (H) Expenses provided by one public official to another public official for travel inside Oregon or Washington to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

- (I) Food or beverage consumed by a public official at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.
  - (J) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing the Gorge Commission or that is incidental to the main purpose of another event.
  - (K) Items exchanged among officials and employees or a social event hosted or sponsored by an officer or employee of the Gorge Commission for coworkers.
  - (L) Anything of economic value offered to or solicited or received by a public official or a relative or member of the household of the public official or candidate:
    - (i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and
    - (ii) That bears no relationship to the public official's holding of, or candidacy for, the official position or public office.
- (9) ~~{6}~~—“Honoraria” means money or thing of value offered to a public official for a speech, appearance, article, or similar item or activity in connection with the public official's official duty. a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches other services rendered in connection with an event at which the public official appears in an official capacity.
- (10) ~~{7}~~—“Income” means income of any nature derived from any source, including, ~~but not limited to,~~ any salary, wage, advance, payment, dividend, interest, rent, honorarium, return of capital, forgiveness of indebtedness, or anything of economic value.
- (11) ~~{8}~~—“Legislative or administrative interest” means an economic interest, distinct from that of the general public, in ~~one or more bills, resolutions, regulations, proposals or other~~ any matters subject to the decision or vote of a person the public official acting in the public official's capacity ~~of~~ as a public official.
- (12) ~~{9}~~—“Member of household” means the spouse or domestic partner of the public official, and any dependent children or dependent relatives of either who reside with the public official.

- (13) “Official duty” means those duties within the specific scope of employment or appointment of the public official as defined by the Gorge Commission, a public official of the Gorge Commission, Gorge Commission rule, or other law.
- (14) “Participate” means to participate in action or a proceeding personally and substantially as a public official, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise.
- (15) “Person” means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.
- (16) “Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following:
- (a) An interest or membership in a particular business, industry, occupation, or other class required by law as a prerequisite to the holding by the person of the office or position.
  - (b) Any action in the person’s official capacity which would affect to the same degree a class consisting of all inhabitants of Oregon or Washington or both, or a smaller class consisting of an industry, occupation, or other group including one of which or in which the person, or the person’s relative or business with which the person or person’s relative is associated, is a member or is engaged.
  - (c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.
- (17) ~~(10)~~—“Public official” means any person who is serving in a governmental capacity for the ~~Columbia River~~ Gorge Commission as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.
- (18) “Relative” means:
- (a) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official;
  - (b) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official;
  - (c) Any individual for whom the public official has a legal support obligation;
  - (d) Any individual for whom the public official provides benefits arising from the public official’s public employment or from whom the public official receives benefits arising from that individual’s employment; or
- (19) “Thing of economic value,” in addition to its ordinary meaning, includes:

- (a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;
  - (b) An option, irrespective of the conditions to the exercise of the option; and
  - (c) A promise or undertaking for the present or future delivery or procurement.
- (20) ~~(11)(a)~~——“Transaction involving the Gorge Commission” means:
- (a) ~~A~~ proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that a current or former public official, as defined in this division, believes, or has reason to believe:
    - (A) ~~(i)~~——Is, or will be, the subject of Gorge Commission action; or
    - (B) ~~(ii)~~——Is one to which the Gorge Commission is or will be a party; or
    - (C) ~~(iii)~~——Is one in which the Gorge Commission has a direct and substantial proprietary interest.
  - (b) “Transaction involving the Gorge Commission” does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the Gorge Commission that is the basis for the claim, case, or lawsuit.

### **350-014-0020. Application**

#### **~~350-14-002.~~ Application.**

- (1) Generally, this division applies to current public officials of the Gorge Commission and to relatives and members of a public official’s household as specified in each provision; however, where specified, this division also applies to former public officials.
- (2) Nothing in these rules is intended to affect:
  - (a) ~~(1)~~Any other statute or rule requiring disclosure of economic interest by a public official or public employee.
  - (b) ~~(2)~~Any statute or rule prohibiting or authorizing specific conduct on the part of any public official or public employee.
- (3) This division does not prevent a public official from giving testimony under oath or from making a statement required to be made under penalty of perjury or contempt.
- (4) This division does not include limitations for former public officials of the Gorge Commission, such as limitations on assisting in transactions, having a direct financial benefit in a contract, and employment after public service. Former public

officials of the Gorge Commission are advised to seek legal advice on the applicability of and compliance with Oregon and Washington law concerning limitations after public service.

### **350-014-0030. Activities incompatible with official duties**

- (1) No public official may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the public official's official duties.
- (2) A public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

### **350-014-0040. Financial interests in transactions**

- (1) No public official may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the official, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.
- (2) No public official may participate in a transaction involving the Gorge Commission in his or her official capacity with a person of which the official is an officer, agent, employee, or member, or in which the official owns a beneficial interest.
- (3) No public official may solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.

### **350-014-0050. Assisting in transactions**

- (1) Except in the course of official duties or incident to official duties, a public official, as defined in this division, may not assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the Gorge Commission:
  - (a) In which the public official has at any time participated; or
  - (b) If the transaction involving the Gorge Commission is or has been under the official responsibility of the public official within a period of two years preceding such assistance.

- (2) No public official may share in compensation received by another for assistance that the officer or employee is prohibited from providing under section (1) or (3) of this rule.
- (3) A business entity of which a public official is a partner, managing officer, or employee shall not assist another person in a transaction involving the Gorge Commission if the public official is prohibited from doing so by section (1) of this rule.
- (4) This rule does not prevent a public official from assisting in a transaction involving the Gorge Commission:
  - (a) The public official's parent, spouse, or child, or a child thereof for whom the public official is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the public official did not participate in the transaction; or
  - (b) Another employee involved in disciplinary or other personnel administration proceedings.

### **350-014-0060. Confidential Information – Improperly concealed records**

- (1) No current or former public official may accept employment or engage in any business or professional activity that the official might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official by reason of the official's official position.
- (2) No current or former public official may make a disclosure of confidential information gained by reason of the official's official position or otherwise use the information for their personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the Gorge Commission and (b) the person or persons who have authority to waive the confidentiality of the information.
- (3) No current or former public official may disclose confidential information to any person not entitled or authorized to receive the information.
- (4) No current or former public official may intentionally conceal a record if the official knew the record was required to be released under Commission Rule chapter 350, division 12, was under a personal obligation to release the record, and failed to do so. This section does not apply where the decision to withhold the record was made in good faith.

### **350-014-0070. Compensation for official duties or nonperformance.**

No public official may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: an official compensation package as determined by the Gorge Commission.

### **350-014-0080. Compensation for outside activities.**

- (1) No employee of the Gorge Commission may receive any thing of economic value under any contract or grant outside of their official duties. The prohibition in this section does not apply where each of the following conditions are met:
  - (a) The contract or grant is bona fide and actually performed;
  - (b) The performance or administration of the contract or grant is not within the course of the employee's official duties, or is not under the employee's supervision;
  - (c) The performance of the contract or grant is not prohibited by Commission Rule 350-014-0050 or by applicable laws or rules governing outside employment for the employee;
  - (d) The contract or grant is neither performed for nor compensated by any person from whom such employee would be prohibited by this division from receiving a gift;
  - (e) The contract or grant is not one expressly created or authorized by the employee in their official capacity;
  - (f) The contract or grant would not require unauthorized disclosure of confidential information.
- (2) In addition to satisfying the requirements of section (1) of this rule, an employee may have a beneficial interest in a grant or contract or a series of substantially identical contracts or grants with the Gorge Commission only if:
  - (a) The contract or grant is awarded or issued as a result of an open and competitive bidding process in which more than one bid or grant application was received; or
  - (b) The contract or grant is awarded or issued as a result of an open and competitive bidding or selection process in which the employee's bid or proposal was the only bid or proposal received and the employee has been advised by the executive director of the Gorge Commission, the Gorge Commission's counsel, or appropriate ethics board, before execution of the contract or grant, that the contract or grant would not be in conflict with the proper discharge of the employee's official duties; or
  - (c) The process for awarding the contract or issuing the grant is not open and competitive, but the employee has been advised by the executive director of the Gorge Commission, the Gorge Commission's counsel, or appropriate ethics board that the contract or grant would not be in conflict with the proper discharge of the employee's official duties.
- (3) An employee awarded a contract or issued a grant in compliance with subsection (2) of this section shall file the contract or grant with the Gorge Commission within thirty days after the date of execution; however, if proprietary formulae, designs,

drawings, or research are included in the contract or grant, the proprietary formulae, designs, drawings, or research may be deleted from the contract or grant filed with the Gorge Commission.

- (4) This section does not prevent an employee from receiving compensation contributed from the treasury of the United States, another state, county, or municipality if the compensation is received pursuant to arrangements entered into between such state, county, municipality, or the United States and the Gorge Commission. This section does not prohibit an employee from serving or performing any duties under an employment contract with a governmental entity.

### **350-014-0090. Honoraria.**

- (1) No public official or member of the public official's household may solicit or receive, whether directly or indirectly, honoraria unless specifically authorized by the Gorge Commission.
- (2) The Gorge Commission may not permit honoraria under the following circumstances:
- (a) The person offering the honorarium is seeking or is reasonably expected to seek contractual relations with or a grant from the Gorge Commission, and the public official is in a position to participate in the terms or the award of the contract or grant;
  - (b) The person offering the honorarium is regulated by the Gorge Commission and the public official is in a position to participate in the regulation; or
  - (c) The person offering the honorarium:
    - (A) Is seeking or opposing or is reasonably likely to seek or oppose enactment of legislation or adoption of administrative rules or actions, or policy changes by the Gorge Commission; and
    - (B) The public official may participate in the enactment or adoption of the legislation or administrative rules or policy changes.

### **350-014-0100. Gifts**

- (1) No public official may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.
- (2) No public official may accept gifts, other than those specified in subsections (3) and (6) of this rule, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in

this division whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under this division. The value of gifts given to an official's family member or guest shall be attributed to the official for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

- (3) Except as provided in subsection (5) of this section, the following items are presumed not to influence under section (1) of this rule, and may be accepted without regard to the limit established by section (2) of this rule:
- (a) Unsolicited flowers, plants, and floral arrangements;
  - (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
  - (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
  - (d) Unsolicited items received by a public official for the purpose of evaluation or review, if the official has no personal beneficial interest in the eventual use or acquisition of the item by the Gorge Commission;
  - (e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
  - (f) Food and beverages consumed at hosted receptions where attendance is related to the public official's official duties;
  - (g) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;
  - (h) Unsolicited gifts from dignitaries from a state or a foreign country that are intended to be personal in nature; and
- (4) The presumption in section (3) of this rule is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.
- (5) Notwithstanding sections (3) and (6) of this rule, a public employee that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the Gorge Commission or from a person who seeks to provide goods or services to the Gorge Commission:
- (a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

- (b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (c) Unsolicited items received by a public official for the purpose of evaluation or review, if the official has no personal beneficial interest in the eventual use or acquisition of the item by the Gorge Commission;
- (d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (e) Food and beverages consumed at hosted receptions where attendance is related to the public official's official duties;
- (f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and
- (g) Those items excluded from the definition of gift in this division, except:
  - (A) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;
  - (B) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and
  - (C) Flowers, plants, and floral arrangements.
- (6) A public official may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the official is related to the performance of official duties.

### **350-014-0110. Use of person, money or property for private gain**

- (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.
- (2) This rule does not prohibit the use of public resources to benefit others as part of a public official's official duties or in situations for which the appropriate state ethics board in Washington or Oregon has adopted rules, policies, or an opinion providing for an exception to the use of public resources for occasional use with de minimis cost and value and the activity does not interfere with the proper performance of official duties.

### **350-14-003. — Code of Ethics.**

The following actions are prohibited regardless of whether potential conflicts of interest are announced or disclosed pursuant to 350-14-004:

- (1) ~~No public official shall use official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses, or for any member of the household of the public official, or for any business with which the public official or a member of the household of the public official is associated.~~
- (2) ~~No public official or candidate for office or a member of the household of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has any official position or over which the official exercises any authority.~~
- (3) ~~No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgment would be influenced thereby.~~
- (4) ~~No public official shall further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.~~
- (5) ~~No person shall offer during any calendar year any gifts to any public official or candidate therefore or a member of the household of the public official or candidate if the person has a legislative or administrative interest in a governmental agency in which the official has any official position or over which the official exercises any authority.~~
- (6)
  - (a) ~~Except in the course of official duties or incident to official duties, a public official, as defined in this division, may not assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the Gorge Commission:~~
    - (A) ~~In which the public official has at any time participated; or~~
    - (B) ~~If the transaction involving the Gorge Commission is or has been under the official responsibility of the public official within a period of two years preceding such assistance.~~
  - (b) ~~No public official may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (a) or (c) of this section.~~
  - (c) ~~A business entity of which a public official is a partner, managing officer, or employee shall not assist another person in a transaction involving the Gorge~~

~~Commission if the public official is prohibited from doing so by subsection (a) of this section.~~

~~(d) This chapter does not prevent a public official from assisting, in a transaction involving the Gorge Commission:~~

~~(A) The public official's parent, spouse, or child, or a child thereof for whom the public official is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the public official did not participate in the transaction; or~~

~~(B) Another employee involved in disciplinary or other personnel administration proceedings.~~

### **350-014-0120. Declaration of Potential Conflicts – Methods of Handling Potential Conflicts**

#### ~~350-14-004. Declaration of Potential Conflicts – Methods of handling potential conflicts.~~

~~(1) When met with an actual or potential conflict of interest, a public official member of the Gorge Commission shall:~~

~~(a) If the public official is an appointed public official serving on the commission, When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any official action thereon in the capacity of a public official; or -~~

~~(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and; If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the potential conflict, and request that the appointing authority dispose of the matter giving rise to the potential conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.~~

~~(A) Except as provided in paragraph (B) of this subsection, refrain from participating as a public official in any discussion and debate on the issue out of which the actual conflict arises and from voting on the issue.~~

~~(B) If a member of the Gorge Commission's vote is necessary to satisfy the quorum requirement in 16 U.S.C. § 544c(a)(4), be eligible to vote, but not to participate in any discussion or debate on the issues out of which the actual conflict arises.~~

~~(2) Nothing in subsection (1) of this section rule requires any public official to announce a potential conflict of interest more than once on the occasion which the matter out of which the potential conflict arises is discussed or debated.~~

- (3) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.

### **350-014-0130. Recording of Notice of Conflict**

~~350-14-005.—Recording of notice of potential conflict; effect of failure to disclose conflict.~~

~~(1)—When a public official gives notice of an actual or potential conflict of interest, the Gorge Commission shall record the actual or potential conflict in the official records of the public body Gorge Commission.~~

~~(2)—No decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed shall be voided by any court solely by reason of the failure of the public official to disclose a conflict of interest.~~

### **350-014-0140. Ex Parte Communications, Bias, and Appearance of Fairness**

The Gorge Commission's rules governing ex parte communications, bias, and appearance of fairness are contained in Commission Rule 350-016-0150.

# Columbia River Gorge Commission

## Chapter 350 Division 016

### Administrative Rules Procedure

As Amended through April 1, 2008 [DATE]

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## General Provisions

### 350-016-0010. Application of division; general provisions

~~350-16-001. Commission required to prepare public writings in readable form.~~

- (1) Application of this division
  - (a) The rulemaking provisions of this division apply when the Gorge Commission enacts administrative rules as required by 16 U.S.C. § 544c(b) and other administrative rules that establish mandatory procedures and standards and interpretations of the National Scenic Area Act. The rulemaking provisions do not apply to the adoption of the Management Plan. The procedure for adopting the Management Plan is specified in 16 U.S.C. § 544d.
  - (b) The contested case provisions of this division apply to decisions made pursuant to Gorge Commission rules chapter 350, divisions 30, 40, 50, 60, and 70 except where the rules in those divisions specify a different procedure or standard. The contested case provisions of this division do not apply to decisions made pursuant to the Gorge Commission’s land use ordinance (chapter 350, division 82). The contested case provisions of this division do not apply to rulemaking proceedings.
- (2) The Gorge Commission shall prepare its public writings in language that is as clear and simple as possible. As used in this section, “public writing” means any rule, form, license, or notice prepared by the Gorge Commission.
- (3) Delegation for contested case proceedings
  - (a) The Gorge Commission may delegate authority to enter a final order in a contested case proceeding or class of contested case proceedings to the Executive Director or other employee of the Gorge Commission. A delegation of authority under this section must be made in writing before the issuance of any order pursuant to the delegation and must be retained in the Gorge Commission’s record. A rule authorizing the Executive Director or other employee of the Gorge Commission to issue an order constitutes a delegation of authority pursuant to this subsection.
  - (b) References in this division to the Gorge Commission, a member of the Gorge Commission, or presiding officer include the Executive Director or other employee of the Gorge Commission as specified in a delegation.
  - (c) The Gorge Commission shall not delegate authority to adopt, amend, or repeal a rule.

(4) Representation by an attorney and attorney appearances in contested case proceedings.

- (a) In a contested case, an individual may appear before the Gorge Commission on their own behalf or may be represented by an attorney. A corporation or other organization shall be represented by an attorney.
- (b) The following attorneys may represent an individual, corporation, or other organization and appear before the Gorge Commission regardless of whether the Gorge Commission convenes a matter in Oregon or Washington:
  - (A) Members of the Oregon State Bar;
  - (B) Members of the Washington State Bar Association;
  - (C) Attorneys employed by and representing the federal government (including Assistant U.S. Attorneys and U.S. Forest Service Office of General Counsel attorneys) even if not a member of the Oregon State Bar or Washington State Bar Association; and
  - (D) An attorney who has already appeared pro hac vice on a related matter arising out of the same set of facts, upon filing with the Gorge Commission a copy of the court's order granting pro hac vice in the related matter. Appearance before the Gorge Commission pro hac vice on a matter before the Gorge Commission does not grant pro hac vice status to an attorney to appear before a court on judicial review of a Gorge Commission final order.

### **350-016-0020. Definitions for Commission Rule 350-016**

#### **~~350-16-002. Definitions for 350-16-002 to 350-16-018.~~**

- (1) "Gorge Commission" means the Columbia River Gorge Commission or any officer or delegated person authorized by the Gorge eCommission to make rules or to issue orders as the context may suggest.
- (2) "Contested case" means:
  - (a) A proceeding before the Gorge eCommission:
    - (A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after a hearing at which such specific parties are entitled to appear and to be heard;
    - (B) Where the Gorge eCommission has discretion to suspend or revoke a right or privilege of a person; or
    - (C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing.
  - (b) "Contested case" does not include proceedings in which any a Gorge eCommission decision rests solely on the result of a test.

- (3) ~~“Economic effect” means the costs of compliance with a rule for businesses including but not limited to the costs of equipment, supplies, labor and administration~~
- (3) “Individual with a disability” means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.
- (4) “License” includes the whole or part of any Gorge eCommission permit, certificate, approval, registration, or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.
- (5) “Non-English speaking” person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings.
- (6) ~~(5)~~ “Order” and “Final Order”
- (a) “Order” means any Gorge eCommission action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of the Gorge eCommission. “Order” includes any Gorge eCommission determination or decisions issued in connection with a contested case proceeding.
- (b) “Final order” means final Gorge eCommission action expressed in writing. “Final order” does not include any tentative or preliminary Gorge eCommission declaration or statement that:
- (A) Precedes final Gorge eCommission action; or
- (B) Does not preclude further Gorge eCommission consideration of the subject matter of the statement or declaration.
- (7) ~~(6)~~ “Party” means:
- (a) Each person or agency entitled as of right to a hearing before the Gorge eCommission;
- (b) Each person or agency named by the Gorge eCommission to be a party; or
- (c) Any person requesting to participate before the Gorge eCommission as a party, ~~or in a limited party status~~ which the Gorge eCommission determines either has an interest in the outcome of the Gorge eCommission’s proceeding or represents a public interest in such result.
- (8) ~~(7)~~ “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the Gorge eCommission.
- (9) ~~(8)~~ “Rule” means any Gorge eCommission directive, standard, regulation, or statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Gorge eCommission. The term includes the amendment or repeal of a prior rule, but does not include:

- (a) Unless a hearing is required by statute, internal management directives, regulations, or statements which do not substantially affect the interests of the public:
  - (A) Between agencies, or their officers or their employees; or
  - (B) Within the Gorge eCommission, between its officers or between employees.
- (b) Action by the Gorge eCommission directed to other agencies or other units of government which do not substantially affect the interests of the public.
- (c) Declaratory rulings.
- (d) Intra-agency memoranda.

~~(9) — “Small business” means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses which has 50 or fewer employees.~~

## Rulemaking

### **350-016-0030. Rules coordinator; rulemaking agenda; rulemaking docket**

~~**350-16-003. — Description of organization; rules coordinator; service of order; effect of not putting order in writing.**~~

~~(1) — In addition to other rulemaking requirements imposed by law, the Gorge eCommission shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.~~

(1) ~~(2)~~ — The Gorge eCommission shall appoint a rules coordinator and file a copy of that appointment ~~annually with~~ as required by the Oregon Secretary of State and Washington Code Reviser. The rules coordinator shall:

- (a) Maintain copies of all rules adopted by the agency and be able to provide information to the public about the status of those rules;
- (b) Provide information to the public on all rulemaking proceedings of the agency; and
- (c) Keep and make available the mailing list required by 350-016-0040~~(76)~~.

(2) ~~(3)~~ — ~~An order shall not be effective as to a person or party unless it is served upon him either personally, or by mail or electronic mail as permitted by another Gorge Commission rule. This subsection is not applicable in favor of any person or party who has actual knowledge of the order. The Gorge Commission shall prepare a semiannual agenda for rules under development. The Gorge Commission need not prepare an agenda if no rules are under development or anticipated. The Gorge Commission shall file the agenda with the Oregon Secretary of State and Washington Code Reviser for publication in the Oregon Bulletin and Washington State Register not later than January 31st and July 31st of~~

each year. Not later than three days after filing the notice, the Gorge Commission shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda.

(3) (4) — An order is not final until it is reduced to writing. The Gorge Commission shall maintain a current public rulemaking docket of each pending rulemaking proceeding beginning when the Gorge Commission publishes a notice of proposed rulemaking. The Gorge Commission shall include on its website the complete text of proposed rules, emergency or temporary rules, and permanent rules proposed or adopted within the past twelve months or include a direct links to the same information on the websites containing the Oregon Bulletin and Washington State Register. The rulemaking docket shall contain the following information:

- (a) The name and address of agency personnel responsible for the proposed rule;
- (b) The subject of the proposed rule;
- (c) A citation to all notices relating to the proceeding that have been published in the Oregon Bulletin and Washington State Register;
- (d) The place where written submissions about the proposed rule may be inspected;
- (e) The time during which written submissions will be accepted;
- (f) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, publication, and its effective date.

**350-016-0040. Notice; content; public comment; expedited rule adoption; emergency rule adoption; amendment or repeal; substantial compliance required**

**~~350-16-004. — Notice requirements for rule adoption; temporary rule adoption, or amendment; substantial compliance required.~~**

~~(1) — The commission shall prepare a semiannual agenda for rules under development. The commission shall file the agenda with the Oregon Secretary of State and Washington Code Reviser for publication in the states ' registers not later than January 31st and July 31st of each year. Not later than three days after its publication in the states ' registers, the commission shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda.~~

~~(2) — When applicable under Washington law, the commission shall prepare a statement of inquiry on the form provided by the Washington Code Reviser, that shall be: filed with the Washington Code Reviser for publication in the state 's register at least thirty days before the date the agency files notice of proposed rule making, sent to any party that has requested receipt of the agency 's statements of inquiry, and published on the Commission 's website or other similar means of electronic communication.~~

(1) ~~(3)~~—Prior to the adoption, amendment or repeal of any rule, the Gorge eCommission shall give notice of its intended and final actions. As applicable by each state’s individual notice requirements and time periods, the Gorge Commission shall use each state’s notice forms, submit the information required, and fulfill other requirements for publication of rulemaking actions in the Oregon Bulletin and the Washington State Register.

~~(a) — In the manner established by rule adopted by the commission, which provides a reasonable opportunity for interested persons to be notified of the agency’s proposed action;~~

~~(b) — In the Oregon bulletin and Washington register at least 21 days prior to the commencement of any commission action;~~

~~(c) — At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (9) of this section; and,~~

~~(d) — On its website or other similar means of electronic communication.~~

~~(e) — Notice of an intended action under subsection (1)(a), (c) and (d) of this section may be given by regular mail or by electronic mail.~~

~~(4)(a) The notice required by subsection (3) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person’s interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.~~

~~(b) — The commission shall include with the notice of intended action given under subsection (3) of this section:~~

~~(A) — A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;~~

~~(B) — A statement of the need for the rule and a statement of how the rule is intended to meet the need;~~

~~(C) — A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;~~

~~(D) — A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project~~

~~any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.~~

~~(E) — A statement of the anticipated effects of the proposed rule;~~

~~(F) — A statement whether the rule is necessary as a result of federal law or a court decision;~~

~~(G) — An indication of the person or persons proposing the rule;~~

~~(H) — The date on which the commission intends to adopt the rule; and~~

~~(I) — The commission personnel responsible for implementation and enforcement of the rule, with office location and telephone number.~~

~~(J) — If an advisory committee is not appointed, or an opportunity for interested parties to participate in the rule making process prior to publication of the proposed rule has not been provided, an explanation as to why no advisory committee or participation by interested persons was used to assist the agency in drafting the rule.~~

(2) ~~(5) —~~ When the Gorge eCommission proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views at a public hearing, except when the Gorge Commission uses expedited or emergency rulemaking procedures in subsections (3) and (4) of this section. The Gorge eCommission shall consider fully any written or oral submissions, ~~including all submissions received by facsimile, telephonic communication, or electronic mail.~~

(3) Expedited Rulemaking.

(a) The Gorge Commission may file notice for the expedited adoption of rules meeting any one of the following criteria:

(A) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;

(B) The proposed rules adopt or incorporate by reference without material change federal statutes or regulations, Washington or Oregon state statutes, or rules of other Washington or Oregon state agencies;

(C) The proposed rules only:

(i) Correct typographical errors;

(ii) Correct spelling or grammatical mistakes;

(iii) Make address, phone, other contact information, or name changes;

- (iv) Correct statutory or rule references;
- (v) Change a term or phrase in order to conform with a change prescribed by law; or
- (vi) Clarify language of a rule without changing its effect.
- (D) The content of the proposed rules is explicitly and specifically dictated by statute; or
- (E) The proposed rules have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule.
- (b) The Gorge Commission may file notice for the expedited repeal of rules meeting any one of the following criteria:
  - (A) The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
  - (B) The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
  - (C) The rule is no longer necessary because of changed circumstances; or
  - (D) Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

~~(6) — Upon request of an interested person received within 15 days after commission notice pursuant to subsection (2) of this section, the commission shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude the commission from adopting a temporary rule pursuant to subsection (7) of this section.~~

(4) ~~(7)~~ — Emergency Rulemaking.

- (a) ~~Notwithstanding sections (1) to (64) of this rule, t~~The Gorge eCommission may adopt or amend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the Gorge eCommission prepares:
  - (A) ~~(a)~~ — A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interests of the parties concerned and the specific reasons of its findings of prejudice;

- (B) ~~(b)~~—A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;
  - (C) ~~(c)~~—A statement of the need for the rule and a statement of how the rule is intended to meet the need; and
  - (D) ~~(d)~~—A list of the principal documents, reports or studies, if any, prepared by or relied upon by the Gorge Commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspections.
- (b) ~~(8)~~—A rule adopted or amended under this subsection ~~(7) of this section~~ is temporary and may be effective for a period of not longer than 120 days. The adoption of a rule under this ~~subsection~~ does not preclude the subsequent adoption of an identical rule under ~~subsections (1) to (6)~~ subsections (1) to (6) of this rule ~~section~~.
- (5) ~~(9)~~—Any person may request in writing, including electronic communication, that the Gorge Commission ~~mail or provide electronically~~ to the person copies of its notice of intended action given pursuant to ~~subsection (3)~~ subsection (3) of this rule ~~section~~. Upon receipt of any request the Gorge Commission shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. ~~The commission may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.~~
- (6) ~~(10)~~—This ~~section~~ rule does not apply to public contracts and purchasing.
- (7) ~~(11)~~—A rule is not valid unless adopted in substantial compliance with the provisions of this rule ~~section~~ in effect on the date that the notice required under ~~subsections 3(1) through (4)~~ subsections (1) through (4) of this ~~section~~ rule is delivered to the Oregon Secretary of State and the Washington Code Reviser for the purpose of publication.
- (8) ~~(12)~~—Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by ~~an agency~~ the Gorge Commission need not be based upon or supported by an evidentiary record.
- (9) ~~(13)~~—The Gorge Commission may correct its failure to substantially comply with the requirements of ~~subsections (3)~~ subsections (3) and ~~(7)~~ (7) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. ~~However, this subsection does not authorize correction of a failure to comply with subsection (3)(b)(D) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.~~
- (10) ~~(14)~~—When the Gorge Commission establishes a deadline for comment on a proposed rule ~~under the provisions of subsection (4) of this section~~, the Gorge Commission may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. ~~An agency~~ The Gorge

Commission shall not consider any submission made ~~by another agency~~ after the final deadline has passed.

### **350-016-0050. Incorporation by reference**

#### **~~350-16-005. Procedure for commission adoption of federal rules.~~**

~~The Gorge Commission may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, by an agency of Oregon or Washington, by a political subdivision of Oregon or Washington, or by a generally recognized organization or association if incorporation of the full text in the Gorge Commission's rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Gorge Commission's rules shall fully identify the incorporated matter. The Gorge Commission may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily available to the public. The Gorge Commission shall have, maintain, and make available for public inspection a copy of the incorporated matter. The rule must state where copies of the incorporated matter are available.~~

~~(1) — Notwithstanding 350-16-004, when the commission is required to adopt rules or regulations promulgated by an agency of the Federal Government and the Agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.~~

~~(2) — Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the commission shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation and the subject matter of the rule or regulation in the manner established in 350-16-004.~~

~~(3) — After giving notice the commission may add to the rule or regulation by filing a copy with the Oregon Secretary of State and the Washington Code Reviser. The commission is not required to conduct public hearings concerning the adoption of the rule or regulation.~~

~~(4) — Nothing in this section authorizes the commission to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearings as required by 350-16-004.~~

### **350-016-0060. Filing and taking effect of rules; copies**

#### **~~350-16-006. Filing and taking effect of rules; copies.~~**

~~(1) (a) — The Gorge Commission shall file in the office of the Oregon Secretary of State and Washington Code Reviser a certified copy of each rule adopted by it.~~

~~(b) — Notwithstanding the provisions of paragraph (a) of this subsection, the commission adopting a rule incorporating published standards of reference is not required to file a copy of those standards with the Oregon Secretary of State or the Washington Code Reviser if:~~

~~(A) — The standards adopted are unusually voluminous and costly to reproduce; and~~

~~(B) — The rule identifies the location of the standards to be incorporated and the conditions of their availability to the public.~~

~~(2) Each rule is effective upon the expiration of~~ A rule shall be effective no earlier than 30 days after the date of filing as required by subsection (1) of this section rule, except that:

- (a) If a later effective date is required by constitution, statute, or court order, the later date is the effective date.
- (b) If a different effective date is specified in the rule and the Gorge eCommission finds that action is necessary because of imminent peril to public health, safety or welfare, the specified date is the effective date.
- (c) ~~An emergency temporary~~ rule becomes effective upon filing with the Oregon Secretary of State and Washington Code Reviser, regardless of when the states publish the rule, or at a designated later date, only if the statement required by 350-016-0040(4)(a)(A) is filed with the rule. The Gorge Ceommission shall take appropriate measures to make emergency temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by the Gorge eCommission, the Gorge Ceommission shall file a certified copy of the amendment or notice of repeal with the Oregon Secretary of State and Washington Code Reviser.

(4) ~~No rule of which a certified copy is required to be filed shall be~~ A rule is not valid or effective against any person or party until ~~a certified copy~~ the rule is filed in accordance with this section rule. However, if the Gorge Ceommission, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the Gorge eCommission may rely upon such decision in disposition of later cases.

### **350-016-0070. Petitions requesting adoption of rules**

#### **~~350-16-007. Petitions requesting adoption of rules.~~**

(1) An interested person may petition the Gorge eCommission to requesting the Gorge Commission promulgation, amendment, or repeal of a rule. ~~The commission shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.~~ Not later than 3060 days after the date of submission of a petition, the Gorge eCommission shall:

- (a) ~~d~~Deny the petition in writing stating the reasons for the denial, specifically addressing the concerns raised by the petitioner, and where appropriate the alternative means by which it will address the concerns raised by the petitioner; or
- (b) ~~i~~Initiate rulemaking proceedings. ~~If the commission denies the petition it shall set forth in writing its reasons for doing so~~

(2) In petitioning for repeal or amendment of a rule under this section, a person is encouraged to address one or more of the following considerations:

- (a) Whether the rule is authorized;
- (b) Whether the rule is needed;
- (c) Whether the rule conflicts with or duplicates other federal, state, or local laws;
- (d) Whether alternatives to the rule exist that will serve the same purpose at less cost;
- (e) Whether the rule applies differently to public and private entities;
- (f) Whether the rule serves the purposes for which it was adopted;
- (g) Whether the costs imposed by the rule are unreasonable;
- (h) Whether the rule is clearly and simply stated;
- (i) Whether the rule is different than a state or federal statute or regulation applicable to the same activity or subject matter without adequate justification;
- (j) Whether the rule was adopted according to all applicable provisions of law;
- (k) The nature of complaints or comments received concerning the rule from the public;
- (l) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

(3) A petition to request the Gorge Commission promulgate, amend, or repeal a rule does not apply to the Management Plan required in 16 U.S.C. § 544d or any Gorge Commission ordinance enacted pursuant to 16 U.S.C. §§ 544e(c) or 544f(l).

## Contested Cases

**350-016-0080. Notice to party before hearing of rights and procedure; failure to provide notice**

~~**350-16-008. Notice to party before hearing of rights and procedure; legislative findings; failure to provide notice.**~~

~~(1) Citizens have a right to be informed as to the procedures by which contested cases are heard by the commission, their rights in hearings before the commission, the import and effect of hearings before the commission and their rights and remedies with respect to actions taken by the commission. Accordingly, it is the purpose of subsections (2) to (4) of this section to set forth certain requirements of the commission so that citizens shall be fully informed as to these matters when exercising their rights before the commission.~~

(1) At least 20 days Prior to the commencement of a contested case hearing before the Gorge eCommission, the Gorge eCommission shall inform each party to the hearing of the following matters:

- (a) A statement of the party 's right to hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;
- (b) A statement of the authority and jurisdiction under which the hearing is to be held;
- (c) A short and plain statement of the matters asserted or charged, and identifying the issues to be considered at the hearing;
- (d) A reference to the particular sections of the statutes and rules involved;
- (e) A statement indicating that the party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;
- (f) A statement that the party has the right to respond to all issues properly before the Gorge Commission and present evidence and witnesses on those issues;
- (g) A statement indicating whether discovery is permitted and, if so, how discovery may be requested;
- (h) ~~(a) — If a party is not represented by an attorney, a~~ A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence;
- (i) ~~(b) — Whether a record will be made of the proceedings and T~~the manner of making the record and its availability to the parties;
- (j) ~~(c) — The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the Gorge eCommission;~~
- (k) ~~(d) — Whether an attorney will represent the Gorge eCommission in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney;~~
- (l) ~~(e) — The title and function of the person presiding at the hearing and the~~ members of the Gorge Commission with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, ~~whether the person presiding at the hearing is or is not an employee, officer or other representative of the~~

~~commission~~ and whether that person has the authority to make a final independent determination;:-

- (m) ~~(f)~~—In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party’s rights;:-
- (n) ~~(g)~~—Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the Gorge eCommission and the hearing reopened;:-
- (o) ~~(h)~~—Whether there exists an opportunity after the hearing and prior to the final determination or order of the Gorge eCommission to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing;:-
- (p) ~~(i)~~—A description of the appeal process from the determination or order of the Gorge eCommission; ~~and~~.
- (q) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or Washington State Bar Association, or the Oregon Military Department or the Washington Military Department for more information. The statement must include the telephone numbers for those entities and the internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.

~~(3) The information required to be given to a party to a hearing under subsections (2) and (3) of this section may be given in writing or orally before commencement of the hearing.~~

(2) ~~(4)~~—The failure of the Gorge eCommission to give notice of any item specified in subsections ~~(12) and (3) of this section~~, shall not invalidate any determination or order of the Gorge eCommission unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the Gorge eCommission for a reopening of the hearing and shall direct the Gorge eCommission as to what steps it shall take to remedy the prejudice to the rights of the complaining party.

(3) The notice may be served on a party via electronic distribution with a party’s agreement.

**350-016-0090. Procedure in contested case hearing; informal dispositions; default; record of proceeding**

~~**350-16-009. Notice, hearing and record in contested cases; informal dispositions; hearings officer.**~~

- (1) — In a contested case hearing, all parties shall be afforded an opportunity for hearing after notice of not less than 20 days, served personally or by registered or certified mail.
- (2) — The notice shall include:
- (a) — A statement of the party 's right to hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;
  - (b) — A statement of the authority and jurisdiction under which the hearing is to be held;
  - (c) — A reference to the particular sections of the statutes and rules involved;
  - (d) — A short and plain statement of the matters asserted or charged, and identifying the issues to be considered at the hearing;
  - (e) — A statement indicating whether and under what circumstances an order by default may be entered;
  - (f) — A statement that a party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;
  - (g) — A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues as allowed by the applicable rules under which the hearing is held;
  - (h) — A statement indicating whether discovery is permitted and, if so, how discovery may be requested;
  - (i) — a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence;
  - (j) — Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties;
  - (k) — The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency;
  - (l) — Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney;
  - (m) — The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person 's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination;

~~(n) — In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights;~~

~~(o) — Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened;~~

~~(p) — Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing;~~

~~(q) — A description of the appeal process from the determination or order of the agency;~~

~~(r) — Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;~~

~~(s) — The official file or other reference number and the name of the proceeding;~~

~~(t) — The name, official title, mailing address, and telephone number of the presiding officer, if known; and~~

~~(u) — Any other matters considered desirable by the agency.~~

(1) ~~(3)~~ — Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

~~(4) — The commission may adopt rules of procedure governing participation in contested cases by person appearing as limited parties.~~

(2) Informal disposition

(a) ~~(5)~~ — Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The Gorge Commission shall incorporate that disposition into a final order. An order under this section is not subject to 350-016-0190. The Gorge Commission shall deliver or mail a copy of the order to each party and to the attorney of record if the party is represented. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the Gorge Commission to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

(3) Default

(a) ~~(6)~~—If a party fails to attend or participate in a hearing or other stage of a contested case proceeding, the Gorge Commission may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order. An order adverse to a party may be issued upon default only upon prima facie case made on the record ~~of the commission.~~ The record on a default order shall include all materials submitted by the party. The record on a default order may be made at the time of issuance of the order. If the record on the default order consists solely of an application and other materials submitted by the party, the agency shall so note in the order. ~~When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the commission may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested. The commission shall serve a default order upon the defaulted party or the party's attorney, if any.~~

(b) ~~(7)~~—Within seven days after service of a default order under this subsection ~~(6) of this section,~~ the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. ~~At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.~~

(4) At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(5) ~~(8)~~—Testimony shall be taken upon oath or affirmation of the witness ~~form when received.~~ The officer presiding at the hearing, or their delegate, shall administer oaths or affirmatives to witnesses.

(6) All members of the Gorge Commission participating at the hearing shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to them during the pendency of the proceeding and notify the parties of the communication and of their right to rebut the communication.

(7) ~~(9)~~—The ~~officer presiding at the hearing~~ Gorge Commission shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues property before the ~~presiding officer in the case~~ Gorge Commission and the correct application of law to those facts.

(8) ~~(10)~~—Record of Contested Case

(a) The Gorge Commission shall maintain an official record of each contested case.

- (b) The record in a contested case shall include:
- (A) Notices of all proceedings;
  - (B) Any prehearing order;
  - (C) ~~(a)~~—All pleadings, motions, briefs, petitions, requests, and intermediate rulings;
  - (D) ~~(b)~~—Evidence received or considered;
  - (E) ~~(c)~~—Stipulations;
  - (F) ~~(d)~~—A statement of matters officially noticed;
  - (G) ~~(e)~~—Questions and offers of proof, objections and rulings thereon;
  - (H) ~~(f)~~—A statement of any ex parte communications that must be disclosed under section (6) of this rule. ~~on a fact in issue made to the officer presiding at the hearing;~~
  - (I) Staff memoranda or data submitted to the Gorge Commission and that are not privileged communication.
  - (J) ~~(g)~~—Proposed findings, requested orders, and exceptions;
  - (K) ~~(h)~~—Any proposed, intermediate or final order or order on reconsideration prepared by the Gorge eCommission or a hearings officer;
- (c) ~~(11)~~—A verbatim oral, written, or mechanical record shall be made of all motions, rulings, and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The Gorge eCommission may charge the party requesting transcription, unless the party files an appropriate affidavit of indigency.

### **350-016-0100. Disqualification of member of the Gorge Commission**

#### **350-16-010. Presiding officer – disqualification, substitution.**

(1) Any party may petition for the disqualification of ~~an individual~~ a member of the Gorge Commission promptly after receipt of notice indicating that the ~~individual member~~ will preside participate in the proceeding or, ~~if later,~~ promptly upon discovering facts establishing grounds for disqualification. The party shall file the petition with the Gorge Commission and not any individual member of the Gorge Commission. A party may seek disqualification during the hearing without filing a written petition.

(2) The ~~individual member of the Gorge Commission~~ whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination. A member of the Gorge Commission who is disqualified shall leave the hearing room and shall not participate in the proceeding.

(3) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the commission. If a disqualification results in fewer members of the Gorge Commission than a quorum as specified in 16 U.S.C. § 544c(a)(4), the hearing shall be set over to a later date in which a quorum is present unless good cause exists to proceed. If a hearing must proceed with fewer than a quorum, the rule of necessity shall apply. The presiding officer shall appoint a member of the Gorge Commission to create a quorum, giving consideration for roughly equal representation from both states and from governor and county appointees. A member of the Gorge Commission appointed under the rule of necessity shall vote on the matter but may not ask questions of the parties, participate in the Gorge Commission's deliberations, or make or second any motion.

### **350-016-0110. Interpreter for individuals with a disability and non-English speaking persons in contested case**

#### **~~350-16-016. — Interpreter for handicapped person in contested case.~~**

~~(1) — When a handicapped person is a party to a contested case, the handicapped person is entitled to a qualified interpreter to interpret the proceedings to the handicapped person and to interpret the testimony of the handicapped person to the commission.~~

~~(2) — When the Commission Appoints and Pays~~

~~(a) Except as provided in paragraph (b) of this subsection, the commission shall appoint the qualified interpreter for the handicapped person; and the commission shall fix and pay the fees and expenses of the qualified interpreter if:~~

- ~~(A) The handicapped person makes a verified statement and provides the information in writing under oath showing the inability of the handicapped person to obtain a qualified interpreter, and provides any other information required by the commission concerning the inability of the handicapped person to obtain such an interpreter; and~~
- ~~(B) It appears to the commission that the handicapped person is without means and is unable to obtain a qualified interpreter.~~

~~(b) If the handicapped person knowingly and voluntarily files with the commission a written statement that the handicapped person does not desire a qualified interpreter to be appointed for the handicapped person, the commission shall not appoint such an interpreter for the handicapped person.~~

~~(3) — As used in this section:~~

~~(a) “Handicapped person” means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the handicapped person, or is incapable of presenting or assisting in the presentation of the defense of the handicapped person,~~

~~because the handicapped person is deaf, or because the handicapped person has a physical hearing impairment or physical speaking impairment.~~

- (b) ~~“Qualified interpreter” means a person who is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the commission.~~

(1) When an individual with a disability or a non-English-speaking person is a party or witness in a contested case proceeding, the Gorge Commission shall appoint an interpreter to assist the party or witness throughout the proceeding or provide an assistive communication device. The Gorge Commission shall pay the fees and expenses of the interpreter that the Gorge Commission appoints or the assistive communication device.

(2) Gorge Commission appointment of interpreter.

- (a) The Gorge Commission shall, when possible, appoint a qualified spoken language interpreter who is on the list of certified or qualified interpreters maintained by a state or federal court with jurisdiction in the National Scenic Area.
- (b) The Gorge Commission may make a predetermination that an interpreter is qualified to provide parties with:
- (A) Visual translation or sight translation of forms, notices, proposed exhibits, briefs, and orders, either before or following the hearing; and
- (B) Visual or spoken-language interpretation of oral communication with the Gorge Commission that is not on the record.
- (c) Persons with a conflict of interest with any of the parties or witnesses or relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. The Gorge Commission’s payment to an interpreter does not constitute a conflict of interest.
- (d) The Gorge Commission shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the person in need of the interpreter. This determination shall be based upon the testimony or stated needs of the person in need of the interpreter, the interpreter’s education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter’s understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter’s impartiality. The parties or their representatives may question the interpreter as to their qualifications and impartiality.
- (e) If in the opinion of the person in need of the interpreter, the Gorge Commission, or a qualified observer, the interpreter does not provide accurate and effective communication with the person in need of the

interpreter, or if the interpreter is unable to understand, cannot be understood by, or is unable to work cooperatively with the Gorge Commission, the Gorge Commission shall appoint another interpreter.

(3) If a party or witness is dissatisfied with the interpreter selected by the Gorge Commission, the party or witness may, at their sole expense, use any other interpreter that satisfies the qualifications in section (2) of this rule.

(4) Mode of interpretation.

(a) The Gorge Commission recognizes three spoken language interpreting modes: consecutive, simultaneous, and sight translation. Sight translation means the act of reading a written text out loud.

(b) An interpreters for a non-English-speaking person shall use the simultaneous mode of interpretation where the Gorge Commission and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(c) An interpreters for an individual with a hearing disability shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, the interpreter shall use the mode that the interpreter considers to provide the most accurate and effective communication with the person in need of the interpreter.

(d) When a person in need of the interpreter is a party to a proceeding, the interpreter shall interpret all statements made by other hearing participants. The Gorge Commission shall ensure that sufficient extra time is provided to permit interpretation and the Gorge Commission shall ensure that the interpreter interprets the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as parties not needing interpretation listening to uninterpreted statements would have.

(5) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(6) The Gorge Commission shall explain to the party in need of the interpreter that a written order will be issued in English, and that a visual translation or sight translation of the decision is available at no cost to the party.

(7) The Gorge Commission shall attach to or include in the order a telephone number to request a visual translation or sight translation.

(8) If the party has a right to review of the order, the Gorge Commission shall orally inform the party during the hearing of the right and of the time limits to request review.

### **350-016-0120. Depositions; site visits, subpoenas of material witnesses; other forms of discovery**

#### **~~350-16-012. — Depositions or subpoena of material witness; discovery.~~**

(1) Depositions. On petition of any party to a contested case, the Gorge eCommission may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in Oregon or Washington and is unwilling to appear, the Gorge eCommission may issue a subpoena, requiring his appearance.

(2) Site Visits. On petition of any party to a contested case the Gorge eCommission may order that the party be allowed an opportunity to visit the property that is the subject of a hearing contested case before the Gorge eCommission. The petition shall set forth the name, address and telephone number of the person or persons who will visit the property and a showing of the materiality of the evidence to be obtained from the visit. The applicant, the owner of the property, or a representative shall be entitled to accompany the petitioning party while on the property and shall be given access to any written report or notes from the site visit prepared for the petitioning party that is not subject to protection under the attorney-client privilege, other law, or Gorge Commission rule or order.

#### (3) Subpoenas

(a) The Gorge Commission may issue subpoenas on its own motion in a contested case. In addition, the Gorge Commission may issue subpoenas to any party to a contested case upon request of a party upon a showing of general relevance and reasonable scope of the evidence sought. A party entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the Gorge-Commission, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(b) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the Gorge Commission or the attorney issuing the subpoena may enforce the subpoena as provided in ORS 183.440 or RCW 34.05.588.

(4) Other forms of discovery. On petition of any party to a contested case, the Gorge Commission may allow admissions or other forms of discovery prescribed by law in civil actions for the state where the property at issue is located.

(5) The Gorge eCommission may allow petitions to take depositions, for subpoenas, admissions for site visits, or other forms of discovery as specified in sections (1) through (4) of this rule prescribed by law in civil actions upon a showing of necessity and unavailability by other means. In determining whether to allow the ~~discovery~~ petition the Gorge eCommission shall consider:

- (a) Whether all parties are represented by counsel;
- (b) Whether undue expense or delay in bringing the matter to hearing will result;
- (c) Whether the discovery will promote the orderly and prompt conduct of the proceeding; and
- (d) Whether the interests of justice will be promoted.

(6) The Gorge Commission may issue protective orders limiting public disclosure of information that is confidential or privileged by law or necessary to protect the safety of persons or property. A Tribe's traditional cultural practices, enjoyment of treaty reserved rights, the locations of traditional sites, structures, lands, and places of cultural and spiritual significance that a tribe holds sacred, and similar sensitive information are considered confidential under this section unless the governing body of the Tribe expressly waives confidentiality.

**350-16-013.—~~Subpoenas in contested cases.~~**

(1) ~~The commission shall issue subpoenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. A party, other than the commission, entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the commission, shall receive fees and mileage as prescribed by law for witnesses in civil actions.~~

(2) ~~If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court or superior court of any county, on the application of the commission or of a designated representative of the commission or of the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.~~

**350-016-0130. Evidence in contested cases**

**350-16-014.—~~Evidence in contested cases.~~**

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude Gorge eCommission action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. The Gorge eCommission shall give effect to the rules of privilege

recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and ~~except as provided in subsection (4) of this section~~ rule no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence. ~~Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the commission.~~

(4) The Gorge eCommission may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and the sources of the materials and they shall be afforded an opportunity to contest the facts so noticed. The Gorge eCommission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative, and substantial evidence.

(6) ~~The commission may, at its discretion, be represented at the hearings by the Attorney General of Washington or Oregon.~~

~~**350-16-015. Examination of evidence by agency in contested cases.**~~

~~Whenever in a contested case a majority of the officials of the commission who are to render the final order have not heard the case or considered the record, the order, if adverse to party other than the commission itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision.~~

**350-016-0140. Ex parte communications**

~~**350-16-016. Commission statement of ex parte communications; notice.**~~

(1) A ~~presiding officer~~ member of the Gorge Commission may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

- (a) ~~Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, m~~Members of the

~~body~~ Gorge Commission may communicate with one another regarding the proceeding;

- (b) ~~Any presiding officer~~ Members of the Gorge Commission may receive aid from legal counsel, or from staff assistants who are subject to the ~~presiding officer's~~ Gorge Commission's supervision; and
- (c) ~~Presiding officers~~ Members of the Gorge Commission may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.
- (d) This ~~subsection~~ does not apply to communications required for the disposition of ex parte matters specifically authorized by statute, Gorge Commission rule, or prior order.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute, Gorge Commission rule, or prior order, or unless necessary to procedural aspects of maintaining an orderly process, ~~a presiding officer~~ members of the Gorge Commission may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom ~~a presiding officer~~ members of the Gorge Commission may not communicate under ~~subsections (1) and (2) of this section~~ rule may not communicate with ~~presiding officers~~ members of the Gorge Commission without notice and opportunity for all parties to participate.

(4) If, before serving as ~~presiding officer~~ a decision maker in a contested case ~~an adjudicative proceeding~~, ~~a person~~ member of the Gorge Commission receives an ex parte communication of a type that could not properly be received while serving as a decision maker, ~~the person~~ member of the Gorge Commission, promptly after starting to serve, shall disclose the communication in the manner prescribed in ~~subsection (56) of this section~~ rule.

(5) Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to 350-016-~~0140~~130.

(6) Any ~~commissioner~~ member of the Gorge Commission who receives an ex parte communication during the pendency of a proceeding shall place on the record of the proceeding all written communications received, all written responses to the communications and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the ~~commissioner~~ member of the Gorge Commission received an ex parte communication. ~~The commissioner, or the Chair or presiding officer, shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte~~

communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. The Gorge Commission shall allow the parties an opportunity to respond to the ex parte communication, including rebutting the substance of the communication.

~~(7) — The Chair or presiding officer shall consider the position of the parties and, after review of the matter, make a recommendation to the Commission to ensure fairness and the appearance of fairness is maintained. The member of the Commission who was the subject of the ex parte contact may voluntarily step down from hearing the matter. The Commission may also request the member of the Commission to participate in the appeal or proceedings or the member of the Commission step down from hearing the matter, and the Chair or presiding officer may seal the portions of the record pertaining to the communication by protective order.~~

(7) (8) — The agency Gorge Commission shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

### **350-016-0150. Conflicts of interest; appearance of fairness**

#### **350-16-017. Appearance of fairness.**

(1) Members of the Gorge Commission shall comply with chapter 350, division 14 of the Gorge Commission’s rules regarding conflicts of interest in rulemaking and contested case proceedings.

(2) Appearance of Fairness. Members of the Commission shall comply with Washington’s appearance of fairness doctrine in appeals and proceedings under this rule and under Rules 350-60 et seq. and Rules 350-70 et seq.

- (a) The appearance of fairness doctrine applies where a public hearing is required. The hearing must be procedurally fair and must appear to be conducted by impartial decision makers. The appearance of fairness doctrine is both statutory and court developed in Washington.
  - (A) The statutory appearance of fairness provisions largely prohibit ex parte communications and require disclosure of inadvertent communications. Commission Rule 350-016-0140 contains prohibitions against ex parte communications and requirements for disclosure.
  - (B) The court-developed appearance of fairness doctrine ensures that decision makers are not biased through personal interest, prejudgment of issues, and partiality.
    - (i) Division 14 of the Gorge Commission’s rules address personal interest bias.
    - (ii) The members of the Gorge Commission must reserve judgment of a quasi-judicial matter until after all evidence and argument has been presented. No member of the Gorge Commission shall make a unalterable decision or statement about the merits of a

quasi-judicial matter prior to hearing all evidence and argument.

- (iii) The members of the Gorge Commission must base their decisions on evidence and law and must not evidence a personal bias or personal prejudice signifying an attitude for or against a party. Ideological or policy leanings of a member of the Gorge Commission are distinguishable from partiality.
- (b) No member of the Gorge Commission may be disqualified by the appearance of fairness doctrine for conducting their official duty as defined in division 14 of the Gorge Commission's rules with any constituent on any matter other than a quasi-judicial action then pending before the Gorge Commission.
- (c) No legislative action taken by the Gorge Commission shall be invalidated by an application of the appearance of fairness doctrine.
- (d) Participation by a member of the Gorge Commission in earlier proceedings that result in an advisory recommendation to the Gorge Commission shall not disqualify that person from participating in any subsequent quasi-judicial proceeding.
- (e) Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of the Gorge Commission from participating in a decision must raise the challenge with specific evidence and not speculation as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision.

**350-16-018.— ~~Proposed order by hearings officer; amendment by commission; exemptions.~~**

~~(1) — Except as otherwise provided in subsections (1) to (3) of this section, unless a hearings officer is authorized or required by law or commission rule to issue a final order, the hearings officer shall prepare and serve on the commission and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the commission within that period issues an amended order.~~

~~(2) — The commission may be rule specify a period of time after which a proposed order will become final that is different from that specified in subsection (1) of this section.~~

~~(3) — If the commission determines that additional time will be necessary to allow the commission adequately to review a proposed order in a contested case, the commission may extend the time after which the proposed order will become final by a specified period of time. The commission shall notify the parties to the hearing of the period of extension.~~

**350-016-0160. Orders in contested cases**

**350-16-019.— ~~Orders in contested cases.~~**

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) An order is not final until it is reduced to writing. A final order shall be accompanied by findings of fact and conclusions of law, and the reasons and basis therefore, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction. Any findings based substantially upon credibility of evidence or demeanor of witnesses shall be so identified. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of facts and as to each ultimate fact required to support the Gorge eCommission's order. The Gorge Commission shall not base a finding exclusively on evidence that would be inadmissible in a civil trial unless the Gorge Commission determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the final order.

(3) The Gorge eCommission shall serve in writing any final order within 90 days after the hearing or after the submission of any additional memoranda, briefs or proposed findings. The Gorge eCommission shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and citation of the statutes under which the order may be appealed.

(5) An order shall not be effective as to a person or party unless it is served upon him either personally, or by mail or electronic mail as permitted by another Gorge Commission rule. This section is not applicable in favor of any person or party who has actual knowledge of the order.

~~350-16-020. Commission record of contested case.~~

~~(1) The commission shall maintain an official record of each contested case.~~

~~(2) The commission record shall include:~~

~~(a) Notices of proceedings;~~

~~(b) Any prehearing order;~~

~~(c) Any motions, pleadings, briefs, petitions, requests and intermediate rulings;~~

~~(d) Evidence received or considered;~~

~~(e) A statement of any matters officially noticed;~~

~~(f) Proffers of proof and objections and rulings thereon;~~

~~(g) Proposed findings, requested orders and exceptions;~~

(h) — The recording prepared for the commission at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(i) — Any final order, initial order or order on reconsideration;

(j) — Staff memoranda or data submitted to the commission; and

(k) — Matters placed on the record after an ex parte communication.

**~~350-16-022. Service of process.~~**

~~A petition for judicial review of a final order in a contested case shall be served upon the commission by delivery of a copy of the petition to the office of the executive director or chairperson of the commission at the principal office of the commission.~~

**~~350-16-024. Commission record for review.~~**

~~(1) Within thirty days after service of a petition for judicial review, or within further time allowed by the court, the commission shall transmit to the court the original or a certified copy of the commission record specified in 350-16-020.~~

~~(2) The commission may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay this cost to the commission relieves the commission from the responsibility for preparation of the record and transmittal to the court. For the purposes of this paragraph, a nonindigent person is one whose income is more than 130 percent of the poverty income guidelines published in the Federal Register by the U.S. Department of Health and Human Resources.~~

## Judicial Review of Rule or Order

### **350-016-0170. Judicial review of rule or order**

(1) Judicial determination of the validity of a Gorge Commission rule or order adopted or issued pursuant to Commission Rule chapter 350, division 16, is governed by the judicial review provisions of the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544m, and the applicable court rules, and is not governed by the Oregon or Washington administrative procedures acts, except as provided in the National Scenic Area Act, Columbia River Gorge Compact, ORS chapter 196, or chapter 43.97, RCW.

(2) Notwithstanding section (1) of this rule, the Gorge Commission acknowledges that some judicial decisions from Washington state courts use the standards of review in the Washington Administrative Procedure Act, chapter 34.05 RCW and some judicial decisions use other standards of review.