



NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 350

COLUMBIA RIVER GORGE COMMISSION

FILED: 04/29/2026 7:08 AM

ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: [CORRECTED] Update Open Meeting, Public Records, Conflicts of Interest, Administrative Procedure rules; Land Use Ordinance

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/14/2026 9:00 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT:

Connie Acker

509-493-3323

info@gorgecommission.org

P.O. Box 730

White Salmon, WA 98672

Filed By:

Connie Acker

Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 07/14/2026

TIME: 8:30 AM - 9:30 AM

OFFICER: Carina Miller, Chair

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 509-493-3323

SPECIAL INSTRUCTIONS:

This corrected notice removes the in-person hearing listed in the original notice. The hearing will be remote only. Use the link above to register for the Gorge Commission meeting and receive the meeting link. Use the phone number above if you have difficulty registering for the meeting. The start time for the hearing shown is the beginning of the Gorge Commission meeting and the end time is approximate. The time of the hearing will be shown on the meeting agenda approximately 1 week prior to the meeting. Written comments provided at least 7 days in advance of the hearing will be provided to the members of the Gorge Commission in advance of the hearing.

NEED FOR THE RULE(S):

The Columbia River Gorge National Scenic Area Act requires the Gorge Commission to adopt rules governing several subjects that must be consistent with the more restrictive of the statutory provision of Oregon or Washington (division 11, 12, 14, and 16). These rules are the Gorge Commission's first significant update to its rules in several years. In addition, the Gorge Commission is amending division 82 of the Gorge Commission's rules (the Gorge Commission's land use ordinance for the National Scenic Area) to incorporate an amendment to the Management Plan for the Columbia River Gorge National Scenic Area to assist landowners with recovery after a natural disaster.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

For divisions 11, 12, 14, and 16, the Gorge Commission created a document entitled, "Report in Support of Columbia River Gorge Commission, Administrative Rules, Chapter 350, Divisions 11, 12, 13, 14, 15, & 16" that documents which state laws the Gorge Commission considered and adapted to create its administrative rules. In addition, the Gorge Commission relied on the following sources, which are available at the Gorge Commission office and as noted below):

- Model administrative procedure rules in both states (available in OAR Chapter 137 and WAC Chapter 10, division 8);
- Court decisions from Oregon and Washington state courts and Oregon Land Use Board of Appeals (the court decisions are listed in the report);
- Oregon Land Use Board of Appeals administrative rules (OAR chapter 661, division 10);
- Oregon Attorney General's Administrative Law Manual (available for purchase at <https://www.doj.state.or.us/oregon-department-of-justice/publications-forms/forms-manuals-reports/>);
- Oregon Attorney General Public Records and Open Meetings Manual (available as a free download or for purchase at <https://www.doj.state.or.us/oregon-department-of-justice/publications-forms/forms-manuals-reports/>);
- Washington Department of Ecology administrative rules (OAR Chapter 173, division 3);
- Washington State Bar Association Administrative Law Practice Manual (available at <https://store.lexisnexis.com/en-us/products/washington-administrative-law-practice-manual-grpusku7279.html?srsId=AfmBOoqQ6h-NhCcHlp4t8Ev1qYO9Ksdew1Oi0YjjFq-RP6PjAn9HrFz>);
- Washington State Bar Association Public Records and Open Public Meetings Deskbook (available at <https://store.lexisnexis.com/en-us/publishers/wsba>);
- Washington Municipal Research and Service Center, The Appearance of Fairness Doctrine in Washington State (2011) (available at <https://mrsc.org/getmedia/796a2402-9ad4-4bde-a221-0d6814ef6edc/Public-Records-Act.pdf?ext=.pdf>);
- Washington Municipal Research and Service Center, The Open Public Meetings Act (2024) (available at <https://sao.wa.gov/sites/default/files/2024-08/Open-Public-Meetings-Act.pdf>);
- Washington Municipal Research and Service Center, Public Records Act (2025) (available at <https://mrsc.org/getmedia/796a2402-9ad4-4bde-a221-0d6814ef6edc/Public-Records-Act.pdf?ext=.pdf>).

For division 82, the Gorge Commission is relying on the staff report that it prepared in support of the amendment to the Management Plan for the Columbia River Gorge National Scenic Area. The staff report cites to several additional documents. The staff report is available at the Gorge Commission's office and at <https://gorgecommission.org/meeting/january-2026-monthly-crgc-meeting/>. The supporting documents for the staff report are available at the Gorge Commission office.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

The rules govern Gorge Commission action and make no preferences based on race. The Gorge Commission consulted with tribal counsel offices concerning handling and disclosure of information that is sensitive to tribal governments during contested case proceedings in division 16. The Gorge Commission consulted with tribal governments in developing the amendment to the Management Plan for the proposed rules in division 82.

FISCAL AND ECONOMIC IMPACT:

The Gorge Commission is unable to quantify fiscal cost and economic impact of divisions 11, 12, 14, and 16. The Gorge Commission expects that the fiscal impact to the Gorge Commission will be low because the Gorge Commission is already undertaking the tasks specified in these rules. The Gorge Commission expects a positive economic impact from its amendments to division 82 as explained in the staff report in support of the amendment to the Management Plan.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The National Scenic Area Act specifies that divisions 11, 12, 14, and 16 are applicable to the Gorge Commission (16 U.S.C. § 544c(b)). The rules govern the action of the Gorge Commission. State agencies, local government, the public, and small businesses are not subject to the rules. The rules do not require reporting, recordkeeping, or administrative activities that the Gorge Commission is not already doing. The Gorge Commission expects minimal costs to comply with the amendments to division 82 because the rules are more clear and objective and provide for a permitting process similar to a ministerial action.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

350-011-0001, 350-011-0003, 350-011-0004, 350-011-0006, 350-011-0007, 350-011-0008, 350-011-0009, 350-011-0010, 350-011-0011, 350-011-0020, 350-011-0030, 350-011-0040, 350-011-0050, 350-011-0060, 350-011-0070, 350-011-0080, 350-011-0090, 350-011-0100, 350-011-0110, 350-012-0002, 350-012-0005, 350-012-0006, 350-012-0007, 350-012-0008, 350-012-0009, 350-012-0010, 350-012-0020, 350-012-0030, 350-012-0040, 350-012-0050, 350-012-0060, 350-012-0070, 350-012-0080, 350-012-0090, 350-014-0001, 350-014-0002, 350-014-0003, 350-014-0004, 350-014-0005, 350-014-0006, 350-014-0007, 350-014-0010, 350-014-0020, 350-014-0030, 350-014-0040, 350-014-0050, 350-014-0060, 350-014-0070, 350-014-0080, 350-014-0090, 350-014-0100, 350-014-0110, 350-014-0120, 350-014-0130, 350-016-0001, 350-016-0002, 350-016-0003, 350-016-0004, 350-016-0005, 350-016-0006, 350-016-0007, 350-016-0008, 350-016-0009, 350-016-0010, 350-016-0011, 350-016-0012, 350-016-0013, 350-016-0014, 350-016-0015, 350-016-0016, 350-016-0017, 350-016-0018, 350-016-0020, 350-016-0022, 350-016-0024, 350-016-0025, 350-016-0030, 350-016-0040, 350-016-0050, 350-016-0060, 350-016-0070, 350-016-0080, 350-016-0090, 350-016-0100, 350-016-0110, 350-016-0120, 350-016-0130, 350-016-0140, 350-016-0150, 350-016-0160, 350-016-0170, 350-082-0080, 350-082-0150, 350-082-0200, 350-082-0220

REPEAL: 350-011-0001

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's open meetings rules.

CHANGES TO RULE:

~~350-011-0001~~

~~Definitions for 350-011-0001 to 350-011-0010-~~

~~(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order,~~

ordinance or measure on which a vote of the commission is required at any meeting at which a quorum is present.¶¶

(2) "Executive session" means any meeting or part of a meeting of the commission which is closed to certain persons for deliberation on certain matters.¶¶

(3) "Commission" means the Columbia River Gorge Commission or any Commission committee which consists of two or more members, with the authority to make decisions for or recommendations to the commission on policy or administration.¶¶

(4) "Meeting" means the convening of the commission for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any onsite inspection of any project or program. "Meeting" also does not include the attendance of members of the commission at any national, regional or state association to which the commission or members of the commission belong.

Statutory/Other Authority: ORS 196.160, RCW 43.97.015

Statutes/Other Implemented: ORS 196.160, RCW 43.97.015, 16 U.S.C. 544 et seq.

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's open meetings rules.

CHANGES TO RULE:

~~350-011-0003~~

~~Meetings of Commission to Be Open to Public; Location of Meetings-~~

~~(1) All meetings of the commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by 350-011-0001 to 350-011-0010. 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.¶¶~~

~~(2) No quorum of the commission shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by 350-011-0001 to 350-011-0010.¶¶~~

~~(3) The commission shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, sexual orientation or national origin is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by the commission if use of a place by a restricted membership organization is not the primary purpose of the place or its predominate use.¶¶~~

~~(4) Meetings of the commission shall be held within the geographic boundaries over which the commission has jurisdiction, or at the administrative headquarters of the commission or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographical boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. 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 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 hard 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.¶¶~~

~~(8) It shall be considered discrimination on the basis of disability for commission to meet in a place inaccessible to persons with disabilities, or upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in Commission Rule 350-011-0008.¶¶~~

~~(9) Voting by the commission shall take place in public and each member's vote shall be recorded as it is cast. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.~~

~~Statutory/Other Authority: ORS 196.160, RCW 43.97.015~~

~~Statutes/Other Implemented: ORS 196.160, RCW 43.97.015, 16 U.S.C. 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's open meetings rules.

CHANGES TO RULE:

~~350-011-0004~~

~~Public Notice Required; Special Notice for Executive Sessions, Special or Emergency Meetings~~

~~(1) The commission shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by the commission.¶¶~~

~~(2) The 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 meetings on or before January of each year for publication in the states' registers. 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 commission 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 a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of the commission to consider additional subjects.¶¶~~

~~(4) If an executive session only will be held, the notice shall be given to the members of the commission, the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.¶¶~~

~~(5) No special meeting shall be held without at least 24 hours' notice to the members of the 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 Commission.¶¶~~

~~(6) The commission 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. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.¶¶~~

~~(7) The commission 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) 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.~~

~~Statutory/Other Authority: ORS 196.160, RCW 43.97.015~~

~~Statutes/Other Implemented: ORS 196.160, RCW 43.97.015, 16 U.S.C. 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's open meetings rules.

CHANGES TO RULE:

~~350-011-0006~~

~~Executive Sessions Permitted on Certain Matters; Procedures; News Media Representatives Attendance; Limits-~~

~~(1) The commission can hold executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization for the holding of such executive session. Executive session may be held:¶¶~~

~~(a) To consider the employment of a public officer, employee, staff member or individual agent. The exception contained in this paragraph does not apply to:¶¶~~

~~(A) The filling of a vacancy in an elective office;¶¶~~

~~(B) The filling of a vacancy on any public committee, commission or other advisory group;¶¶~~

~~(C) The consideration of general employment policies;¶¶~~

~~(D) The employment of the chief executive officer, other public officers, 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 commission in meetings open to the public in which there has been opportunity for public comment.¶¶~~

~~(b) 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 requests an open hearing;¶¶~~

~~(c) To conduct deliberations with persons designated by the commission to carry on labor negotiations;¶¶~~

~~(d) To conduct deliberations with persons designated by the commission to negotiate real property transactions;¶¶~~

~~(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 commission is in competition with governing bodies in other states or nations;¶¶~~

~~(g) To consult with counsel concerning the legal rights and duties of the commission with regard to current litigation or litigation likely to be filed;¶¶~~

~~(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;¶¶~~

~~(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 or 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:¶¶~~

~~(i) Electricity;¶¶~~

~~(ii) Gas in liquefied or gaseous form;¶¶~~

~~(iii) Hazardous substances as defined by Oregon or Washington state law;¶¶~~

~~(iv) Petroleum products;¶¶~~

~~(v) Sewage; or¶¶~~

~~(vi) 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.¶¶~~

~~(3) Representatives of the news media shall be allowed to attend executive sessions other than those held under paragraph (c) of subsection (1) of this section relating to labor negotiations but no information that is the subject of the executive session shall be disclosed. The 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.¶~~

~~(4) No executive session may be held for the purpose of taking any final action or making any final decision.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-011-0007

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's open meetings rules.

CHANGES TO RULE:

~~350-011-0007~~

~~Meetings by Means of Telephonic or Electronic Communication~~

~~(1) Any meetings, including an executive session, of the commission which is held through the use of telephone or other electronic communication shall be conducted in accordance with 350-011-0001 to 350-011-0010.¶~~

~~(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the commission 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 commission is present.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-011-0008

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's open meetings rules.

CHANGES TO RULE:

~~350-011-0008~~

~~Enforcement of 350-011-0001 to 350-011-0007; 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 350-011-0001 to 350-011-0007, by members of the commission, or to determine the applicability of 350-011-0001 to 350-011-0007 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 350-011-0001 to 350-011-0007 is voidable.¶¶~~

~~(2) If the court makes a finding that a violation of 350-011-0001 to 350-011-0007 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 350-011-0001 to 350-011-0007.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-011-0009

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's open meetings rules.

CHANGES TO RULE:

~~350-011-0009~~

~~Prima Facie Evidence of Violation Required of Plaintiff~~

~~In any suit commenced under 350-011-0008(1), the plaintiff shall be required to present prima facie evidence of a violation of 350-011-0001 to 350-011-0007 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 350-011-0001 to 350-011-0007 were complied with shall be on the commission.~~

~~Statutory/Other Authority: ORS 196.160, RCW 43.97.015~~

~~Statutes/Other Implemented: ORS 196.160, RCW 43.97.015, 16 U.S.C. 544 et seq.~~

AMEND: 350-011-0010

RULE SUMMARY: This rule provides the definitions for division 11 of the Gorge Commission's rules providing for open public meetings. This rule blends the statutory provisions of Oregon and Washington law as required by 16 U.S.C. 544c(b).

CHANGES TO RULE:

350-011-0010

~~Smoking in Public Meetings Prohibited~~ Definitions for Division 11 of the Gorge Commission's Rules ¶

~~Text available via filing PDF that is stored in ORMS~~ (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) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, rule, or measure on which a vote of the Gorge Commission 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) "Executive session" means any meeting or part of a meeting of the Gorge Commission that is closed to certain persons for deliberation on certain matters.¶

(6) "Gorge Commission" means the Columbia River Gorge Commission or any Gorge Commission committee established and ratified in accordance with the Gorge Commission's bylaws that consists of two or more members with the authority to conduct hearings, take testimony, or make decisions for or recommendations to the Gorge Commission on policy or administration.¶

(7) "Meeting" or "meet" means the convening of the Gorge Commission for which a quorum is required in order to take action. "Meeting" or "meet" does not include any onsite inspection of any project or program. "Meeting" or "meet" also does not include the following, provided the members of the Gorge Commission do not take action:¶

(a) Attendance of members of the Gorge Commission at any national, regional, or state association to which the Gorge Commission or members of the Gorge Commission belong, or¶

(b) For a majority of the members of the Gorge Commission to travel together or gather for purposes other than a meeting.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544 et seq.

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544 et seq.

REPEAL: 350-011-0011

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's open meetings rules.

CHANGES TO RULE:

~~350-011-0011~~

~~Regular Meetings to Include Time for Public Comment~~

~~(1) At all regular meetings of the Commission, the Commission shall provide time for public comment for issues not on the Commission's agenda, and an opportunity for Tribal Nations to address the Commission.¶~~

~~(2) The Commission may limit the time for public comment and opportunity for Tribal Nations to address the Commission in a manner that limits time for each speaker, or the number of speakers.¶~~

~~(3) The Commission may exclude comment that concerns matters likely to come before the Commission in a hearing where the 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.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. Sec. 544c(b)~~

ADOPT: 350-011-0020

RULE SUMMARY: This rule expresses the policy of the Gorge Commission to make decisions in a transparent manner as required by the National Scenic Area Act and Columbia River Gorge Compact.

CHANGES TO RULE:

350-011-0020

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 to 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 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 Commission 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.

(3) Division 11 of the Gorge Commission's rules do not apply to communications between or among members of the Gorge Commission that:

(a) Are related purely to procedural matters and convey no deliberation or decision on the substance of the matter in question;

(b) Except as otherwise provided in this paragraph, are not related to any matter that, at any time, could reasonably be foreseen to come before the governing body for deliberation and decision; or

(c) Are nonsubstantive in nature, such as communication relating to scheduling, leaves of absence and other similar matters.

Statutory/Other Authority: ORS 197.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 197.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies that meetings of the Gorge Commission (which is defined in proposed rule 350-011-0010 and includes committees of the Gorge Commission) are open and must be held within the National Scenic Area or one of the National Scenic Area counties or in Indian Country, and requires meeting in places accessible to persons with disabilities. This rule also provides for interpreters, including how to request an interpreter.

CHANGES TO RULE:

350-011-0030

Meetings of Gorge Commission to be Open to Public; Location of Meetings; Accommodation for Person with Disability; Interpreters

(1) All meetings of the Gorge Commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by 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) The Gorge Commission shall not meet in private except as otherwise provided by this division.¶

(4) The Gorge Commission shall not meet at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, gender identity, 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 Commission if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.¶

(5) Location of meetings¶

(a) Meetings of the Gorge Commission shall be held:¶

(A) Within the geographic boundaries over which the Gorge Commission has jurisdiction:¶

(B) At the administrative headquarters of the Gorge Commission:¶

(C) At 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 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 another practical location.¶

(d) Meetings may be held in locations other than those described in this section in the event of an actual emergency necessitating immediate action.¶

(6) It shall be considered discrimination on the basis of disability for the Gorge Commission to meet in a place inaccessible to persons with disabilities, or upon request of an individual with a disability or a non-English-speaking person, to fail to make a good faith effort to have an interpreter for the individual with a disability or a non-English-speaking person provided at a regularly scheduled meeting.¶

(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 Commission 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 section, "good faith effort" includes contacting the Oregon Disabilities Commission, the Washington Aging and 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) Voting by the Gorge Commission 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.

Statutory/Other Authority: ORS 197.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 197.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-011-0040

RULE SUMMARY: This rule specifies the requirements for public notice of Gorge Commission meetings, including executive sessions.

CHANGES TO RULE:

350-011-0040

Public Notice Required: Special Notice for Executive Sessions

(1) The Gorge Commission shall provide the time for holding regular meetings by rule or bylaw.¶

(2) Notices in the Washington State Register and on Oregon's website for state agency meeting notices:¶

(a) The Gorge Commission shall file with the Code Reviser in Washington a schedule of the time and place of regular meetings as provided by rule or bylaw on or before January of each year for publication in the Washington State Register.¶

(b) The Gorge Commission shall post an annual notice of its regular meetings as provided by rule or bylaw on the Oregon website for state agency meetings notices, provided that the State of Oregon maintains such a website and authorizes the Gorge Commission to post an annual notice.¶

(c) The Gorge Commission's notices in this section 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.¶

(3) The Gorge Commission shall 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 the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of the Gorge Commission 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.¶

(4) If an executive session only will be held, the notice shall be given to the members of the Gorge Commission, the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.¶

(5) The Gorge Commission 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 division.¶

(6) The Gorge Commission 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 section (3) of this rule.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-011-0050

RULE SUMMARY: This rule specifies the manner in which a special or emergency meeting of the Gorge Commission may be called, including notice requirements.

CHANGES TO RULE:

350-011-0050

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 meeting shall describe the emergency justifying less than 24 hours notice.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-011-0060

RULE SUMMARY: This rule specifies the requirement for the Gorge Commission to take minutes at its meetings, including the content of the minutes, and the length of time that the Gorge Commission must make its video or audio recording available on a public website. The rule also specifies the requirement for minutes or recording of executive sessions.

CHANGES TO RULE:

350-011-0060

Written Minutes and Recording Required and Made Available: Content: Content of Minutes for Executive Sessions

(1) The Gorge Commission shall provide for the taking of written minutes of all its meetings. The written minutes must give a true reflection of the 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 the vote of each member by name;¶

(d) The substance of any discussion on any matter;¶

(e) Subject to Commission Rule chapter 350, division 12, 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; 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 350-011-0070.¶

(3) Minutes of executive sessions shall be kept in accordance with section (1) of this rule. Instead of written minutes, a record of any executive sessions may be kept in the form of a sound, video, 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies the matters that the Gorge Commission may hear in an executive session. Members of the news media may attend but not report on executive session matters; and no action or final decision may be made in executive session.

CHANGES TO RULE:

350-011-0070

Executive Sessions Permitted on Certain Matters; Procedures; News Media Representatives Attendance; Limits

(1) The Gorge Commission can hold executive session during a regular, special, or emergency meeting after announcing the authorization for the holding of such executive session. Executive session may be held:

(a) To evaluate the qualifications of an applicant for employment as an employee, staff member, or individual agent. The exception contained in this subsection does not apply to:

(A) The consideration of general employment policies, including salaries, wages, and other conditions of employment to be generally applied within the Gorge Commission;

(B) The employment of the executive director, employees, and staff members unless:

(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 public has had the opportunity to comment on the employment of the officer; and

(iv) 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 an employee, staff member or individual agent or to consider the dismissal or disciplining of, or to hear complaints or charges brought against, an employee, staff member, or individual agent who does not request 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 an 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 Commission to carry on labor negotiations.

(d) To conduct deliberations with persons designated by the Gorge Commission 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. The Gorge Commission may consider whether to consider such information or records in open meeting on a case-by-case basis.

(f) 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 consider matters relating to the safety of the Gorge Commission and of Gorge Commission staff and volunteers and the security of Gorge Commission facilities and meeting spaces.

(h) For any other purpose authorized by either the laws of Oregon or the laws of Washington not listed above.

(2) Representatives of the news media shall be allowed to attend executive sessions other than those held under

subsection (1)(c) of this 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) No executive session may be held for the purpose of taking any final action or making any final decision.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-011-0080

RULE SUMMARY: This rule authorizes in-person, telephone, and other other electronic meetings of the Gorge Commission and adapts Oregon's requirement to hold hybrid meetings whenever holding an in-person meeting.

CHANGES TO RULE:

350-011-0080

Meetings by Means of Telephone, or Electronic, Internet Communication, or Other Means of Remote Access

(1) Any meeting, including an executive session, of the Gorge Commission which is held through the use of telephone or other electronic communication shall be conducted in accordance with this division.¶

(2) When telephone, electronic, or internet communication, or other means of remote access is used and the meeting is not an executive session, the Gorge Commission 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 Commission 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-011-0090

RULE SUMMARY: This rule specifies the manner that the Gorge Commission may handle interruptions at its meetings when an interruption makes the orderly conduct of the meeting unfeasible.

CHANGES TO RULE:

350-011-0090

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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-011-0100

RULE SUMMARY: This rule specifies that the Gorge Commission will accept oral and written public comment and provide the treaty tribes an opportunity to address the Gorge Commission at its regular meetings. This rule also specifies limitations on public comment, including comment relating to matters likely to come before the Gorge Commission where the appearance of fairness doctrine applies.

CHANGES TO RULE:

350-011-0100

Regular Meeting Time 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) 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.¶

(5) 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.¶

(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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-011-0110

RULE SUMMARY: This rule specifies the manner of seeking judicial review of a Gorge Commission action relating to the implementation of the Gorge Commission's open public meetings rules.

CHANGES TO RULE:

350-011-0110

Enforcement

Enforcement of this division is governed by the judicial review provisions of the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544m, and applicable court rules.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b), 16 U.S.C. 544m

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b), 16 U.S.C. 544m

REPEAL: 350-012-0002

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's public records disclosure rules.

CHANGES TO RULE:

~~350-012-0002~~

~~Right to Inspect Public Records~~

~~Every person has a right to inspect any public record of the commission, except as otherwise expressly provided by 350-012-0008.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-012-0005

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's public records disclosure rules.

CHANGES TO RULE:

~~350-012-0005~~

~~Forms of Public Records; Fees~~

~~(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.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-012-0006

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's public records disclosure rules.

CHANGES TO RULE:

~~350-012-0006~~

~~Fees~~

~~(1) The 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 Commission makes a request available on a partial or installment basis, the 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 Commission is not obligated to fulfill the balance of the request.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-012-0007

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's public records disclosure rules.

CHANGES TO RULE:

~~350-012-0007~~

~~Fulfilling Requests-~~

~~(1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the 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 Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the 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 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 Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's public records disclosure rules.

CHANGES TO RULE:

~~350-012-0008~~

~~Public Records Exempt From Disclosure~~

~~(1) The following public records are exempt from disclosure under 350-012-0001 to 350-012-0008 unless the public interest requires disclosure in the particular instance:¶¶~~

~~(a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission 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 section, 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;¶¶~~

~~(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;¶¶~~

~~(g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complain 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¶¶~~

~~(j) A personnel discipline action, or materials or documents supporting that action.¶¶~~

~~(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 and 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) 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) Radio frequencies used in or locational data generated by telemetry studies;¶¶

(C) 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) The species has a known commercial or black market value;¶¶
- (ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;¶¶
- (iii) There is a known demand to visit, take, or disturb the species; or¶¶
- (iv) The species has an extremely limited distribution and concentration.¶¶

(I) 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) An individual;¶¶

(B) Buildings or other property; or¶¶

(C) Information processing, communication or telecommunication systems, including the information contained in the systems.¶¶

(2) The following public records are exempt from disclosure under 350-012-0001 to 350-012-0008:¶¶

- (a) Communications within a public body or between public bodies 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 commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the 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 commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the 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;¶¶
- (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 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) Generation, storage or conveyance of:¶¶
 - (i) Electricity;¶¶
 - (ii) Gas in liquefied or gaseous form;¶¶
 - (iii) Hazardous substances as defined by Oregon or Washington state law;¶¶
 - (iv) Petroleum products;¶¶
 - (v) Sewage; or¶¶
 - (vi) Water;¶¶
 - (B) Telecommunications systems, including cellular, wireless or radio systems.¶¶
 - (C) 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.¶¶

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the 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 not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body 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 (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.¶¶
- (b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or

~~with the consent of the individual.¶¶~~

~~(c) A public body 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 350-012-0008(1) and (2), public records that are more than 25 years old shall be available for inspection.¶¶~~

~~(6) Notwithstanding 350-012-0001 through 350-012-0008, 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 350-012-0006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-012-0009

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's public records disclosure rules.

CHANGES TO RULE:

~~350-012-0009~~

~~Public Records Officer~~

~~The Commission's Executive Director or her appointee shall serve as the 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 Commission's compliance with the public records disclosure requirement of this division.~~

~~Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 USC 544c(b)~~

~~Statutes/Other Implemented: ORS 196.150~~

RULE SUMMARY: This rule contains the definitions for for Division 12 of the Gorge Commission's rules. The National Scenic Area Act requires the Gorge Commission to enact a public records rule to be consistent with the more restrictive of the Oregon or Washington statutes on public records disclosure.

CHANGES TO RULE:

350-012-0010

Definitions for Division 12 of the Gorge Commission's Rules

(1) "Business day" means weekdays, except when the Gorge Commission office is closed for an entire day. The Gorge Commission office closes for 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) "Person" includes any natural person, corporation, partnership, firm, or association.¶

(4) "Public record" includes any writing containing information relating to the conduct of 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) "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, and other documents including existing data compilations from which information may be obtained or translated.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-012-0020

RULE SUMMARY: This rule expresses the right for any person to request to inspect or obtain copies of records of the Gorge Commission except where the Gorge Commission's rules or state law prohibit disclosure of the record.

CHANGES TO RULE:

350-012-0020

Right to Inspect Public Records; Personal Privacy Interests

(1) Every person has a right to inspect any public record of the Gorge Commission, except as otherwise expressly provided by this division.¶

(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 redact 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 division, 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-012-0030

RULE SUMMARY: This rule requires the Gorge Commission to maintain an index of certain records unless doing so would be unduly burdensome.

CHANGES TO RULE:

350-012-0030

Index of Certain Records

(1) The Gorge Commission 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 and orders made in the adjudication of cases;¶

(b) Statements of policy and interpretations of policy, statutes, and regulations that have been adopted by the Gorge Commission;¶

(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 Gorge Commission relating to any regulatory, supervisory, or enforcement responsibilities of the Gorge Commission, whereby the 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 Commission 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-012-0040

RULE SUMMARY: Washington law requires the Gorge Commission to publish a description of the agency and contact information.

CHANGES TO RULE:

350-012-0040

Agency Description: Contact Information

(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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-012-0050

RULE SUMMARY: This rule specifies the procedure for requesting records from the Gorge Commission. The request must be in writing and give the requestors contact information and a reasonable description of documents to enable the Gorge Commission to locate the records. If the requestor is a party in an administrative or judicial proceeding involving the Gorge Commission, the requestor must send a copy to the Gorge Commission's counsel in addition to the Gorge Commission's office.

CHANGES TO RULE:

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. 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies how the Gorge Commission will respond to a public records request. The Gorge Commission must respond within five business days and may propose a search plan. The Gorge Commission will process requests in the order in which they are received, but may process shorter simpler requests prior to making records available for longer requests where lengthy searching or review is required. The Gorge Commission may charge a fee for copying or providing records on electronic media, but not for search time. A person may petition the Executive Director to review a production of public records to consider records that the requestor believes were omitted. A person reviewing records in the Gorge Commission office may not alter the records or their filing order.

CHANGES TO RULE:

350-012-0060

Response to Public Records 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 any 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.¶

(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 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. The Executive Director may delegate consideration of a petition to another member of the Gorge Commission staff.¶

(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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies the exceptions to disclosure of Gorge Commission records that are mostly likely to arise. The rule also specifies that records which are confidential under state or federal law are not disclosable, even if they are not specifically listed in this rule. Note that the rule contains conditional exemptions from disclosure in section (1) and absolute exemptions from disclosure in section (2); this distinction mirrors the distinction in Oregon law.

CHANGES TO RULE:

350-012-0070

Public Records Exempt from Disclosure

(1) The following public records are exempt from disclosure under this division unless the public interest requires disclosure in the particular instance:¶

(a) Records of the Gorge Commission pertaining to litigation to which the Gorge Commission is a party if the complaint has been filed, or if the complaint has not been filed, if the Gorge Commission 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) Information relating to the appraisal of real estate prior to its acquisition:¶

(d) 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:¶

(e) A personnel discipline action, or materials or documents supporting that action:¶

(f) 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 and 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) 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) Radio frequencies used in or locational data generated by telemetry studies:¶

(C) 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) The species has a known commercial or black market value:¶

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable:¶

(iii) There is a known demand to visit, take, or disturb the species; or¶

(iv) The species has an extremely limited distribution and concentration.¶

(g) 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) An individual:¶

(B) Buildings or other property; or¶

(C) 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:¶

(a) Communications within the Gorge Commission or between the Gorge Commission and another public body 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 under Oregon or Washington law.¶

(f) Public records or information described in this section, furnished by the 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) Generation, storage or conveyance of:¶

(i) Electricity:¶

(ii) Gas in liquefied or gaseous form:¶

(iii) Hazardous substances as defined by Oregon or Washington state law:¶

(iv) Petroleum products:¶

(v) Sewage; or¶

(vi) Water:¶

(B) Telecommunications systems, including cellular, wireless or radio systems.¶

(C) 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.¶

(3) If any public record contains material that is not exempt under section (1) or (2) of this rule, as well as material 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 the Gorge Commission not to disclose a specified public record indicating the home address or personal telephone number of the individual. The Gorge Commission shall not disclose the specified public record if the individual demonstrates to the satisfaction of the 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 section (4) shall remain effective until the Gorge Commission receives a written request for termination but no later than five years after the date that the Gorge Commission receives the request.¶

(b) The Gorge Commission may disclose a home address or personal telephone number of an individual exempt from disclosure under section (4) upon court order, on request from any law enforcement agency or with the consent of the individual.¶

(c) 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 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)
Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-012-0080

RULE SUMMARY: This rule specifies the public records officer for the Gorge Commission.

CHANGES TO RULE:

350-012-0080

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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-012-0090

RULE SUMMARY: This rule specifies the manner in which a person can seek to enforce this rule. The states' laws governing enforcement of the states' public records disclosure laws do not apply to the Gorge Commission or enforcement of the Gorge Commission's public records disclosure rules.

CHANGES TO RULE:

350-012-0090

Enforcement

Enforcement of this division is governed by the judicial review provisions of the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544m, and applicable court rules.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b), 16 U.S.C. 544m

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b), 16 U.S.C. 544m

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's conflict of interest rules.

CHANGES TO RULE:

~~350-014-0001~~

~~Definitions for 350-014-0001 to 350-014-0005-~~

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

~~(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.¶¶~~

~~(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain.¶¶~~

~~(3) "Business with which the person is associated" means any business of which the person or a member of the person's household is a director, officer, owner or employee, or any corporation in which the person or a member of the person's household owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.¶¶~~

~~(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.¶¶~~

~~(5) "Gift" means something of economic value given to a public official or member of the official's household 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 something of economic value given to a public official or member of the official's household for valuable consideration less than that required from others who are not public officials. However, "gift" does not mean:¶¶~~

~~(a) Campaign contributions.¶¶~~

~~(b) Gifts from relatives.¶¶~~

~~(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.¶¶~~

~~(6) "Honoraria" means 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 or other services rendered in connection with an event at which the public official appears in an official capacity.¶¶~~

~~(7) "Income" means income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, honoraria, return of capital, forgiveness of indebtedness, or anything of economic value.¶¶~~

~~(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 matters subject to the vote of a person acting in the capacity of a public official.¶¶~~

~~(9) "Member of household" means the spouse of the public official and any children of either who reside with the public official.¶¶~~

~~(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.¶¶~~

~~(11)(a) "Transaction involving the Commission" means 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) Is, or will be, the subject of Commission action; or¶¶~~

~~(B) Is one to which the Commission is or will be a party; or¶¶~~

~~(C) Is one in which the Commission has a direct and substantial proprietary interest.¶¶~~

~~(b) "Transaction involving the 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 Commission that is the basis for the claim, case, or lawsuit.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-014-0002

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's conflict of interest rules.

CHANGES TO RULE:

~~350-014-0002~~

~~Application~~

~~Nothing in these rules is intended to affect:¶~~

~~(1) Any other statute or rule requiring disclosure of economic interest by a public official or public employee.¶~~

~~(2) Any statute or rule prohibiting or authorizing specific conduct on the part of any public official or public employee.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's conflict of interest rules.

CHANGES TO RULE:

~~350-014-0003~~

~~Code of Ethics~~

~~The following actions are prohibited regardless of whether potential conflicts of interest are announced or disclosed pursuant to 350-014-0004:¶¶~~

- ~~(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 Commission:¶¶~~
 - ~~(A) In which the public official has at any time participated; or¶¶~~
 - ~~(B) If the transaction involving the 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 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 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.~~
- ~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~
- ~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-014-0004

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's conflict of interest rules.

CHANGES TO RULE:

~~350-014-0004~~

~~Declaration of Potential Conflicts, Methods of Handling Potential Conflicts-~~

~~(1) When met with a potential conflict of interest, a public official shall:¶~~

~~(a) If the public official is an appointed public official serving on the commission, announce publicly the nature of the potential conflict prior to taking any official action thereon.¶~~

~~(b) 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.¶~~

~~(2) Nothing in subsection (1) of this section 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.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-014-0005

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's conflict of interest rules.

CHANGES TO RULE:

~~350-014-0005~~

~~Recording of Notice of Potential Conflict; Effect of Failure to Disclose Conflict~~

~~(1) When a public official gives notice of potential conflict of interest, the potential conflict shall be record in the official records of the public body.¶~~

~~(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.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-014-0006

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's conflict of interest rules.

CHANGES TO RULE:

~~350-014-0006~~

~~Ex Parte Contact~~

~~(1) Members of the Commission shall not have ex parte contact, i.e. discussion of specific issues regarding a pending land use permit, with applicants or interested parties seeking a land use permit, or opponents to the permit, while the application or appeal thereto is pending under a land use ordinance for the Scenic Area.~~

~~(2) Members of the Commission shall place on the record of the appeal or proceedings under these rules any ex parte contact set forth in subsection (1). The Chair or presiding officer shall notify all parties to the appeal or proceeding. 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 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.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-014-0007

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's conflict of interest rules.

CHANGES TO RULE:

~~350-014-0007~~

~~Appearance of Fairness~~

~~Members of the Commission shall comply with the appearance of fairness in appeals and proceedings under Rules 350-060 et seq. and Rules 350-070 et seq.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

RULE SUMMARY: This rule contains the definitions for division 14 of the Gorge Commission's rules.

CHANGES TO RULE:

350-014-0010

Definitions for Division 14 of the Gorge Commission's Rules

(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) "Appearance" means the act of performing or participating in an event.

(3) "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, without recommending, a person to other persons or sources of advice and information, and other non-substantive advice or assistance, consistent with 350-014-0110.

(4) "Beneficial interest" means a financial interest in a contract, sale, lease, purchase, or grant to which an individual subject to the act is not a party but is an owner of an entity that is a party. An ownership interest of less than 10 percent of an entity is not a beneficial interest. 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.

(5) "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.

(6) "Business with which the person is associated" means:

(a) Any private business or closely held corporation of which the person or 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 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 chapter 29B, any business listed as a source of income as required under ORS 244.060(3) or RCW 29B.55.030(1)(d).

(7) "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.

(8) "Gorge Commission" means the Columbia River Gorge Commission.

(9) "Gift" means:

(a) Something of economic value given to a public official or a relative or member of the public official's household;

(A) 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 or the relatives or members of the household of public officials on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials.

(b) "Gift" does not mean:

(A) Gifts from relatives or members of the household of the public official.

(B) 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 less than \$25.

(C) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(D) 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 at a reception, meal or meeting held by an organization when the public official represents the Gorge

Commission.

(E) 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.

(F) 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.

(G) 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.

(H) 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.

(I) Entertainment provided to a public official or a relative or member of the household of the public official that is incidental to the main purpose of another event.

(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) Food, beverages or both provided to a public official by a public body during meetings or other official events held by the public body or as otherwise required to be provided by law or rule of Oregon or Washington.

(L) Merchandise provided to a public official by a public body if the cost of the merchandise does not exceed \$100 in a calendar year.

(M) 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:

(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 the official position.

(10) "Honorarium" 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.

(11) "Income" means income of any nature derived from any source, including any salary, wage, advance, payment, dividend, interest, rent, honorarium, return of capital, forgiveness of indebtedness, or anything of economic value.

(12) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official.

(13) "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.

(14) "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.

(15) "Official position" means holding an office or having authority.

(16) "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.

(17) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(18) "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.

(19) "Public official" means any person who is serving in a governmental capacity for the Gorge Commission as an

officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.¶

(20) "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¶

(21) "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.¶

(22) "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) Is, or will be, the subject of Gorge Commission action; or¶

(B) Is one to which the Gorge Commission is or will be a party; or¶

(C) 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0020

RULE SUMMARY: This rule specifies that division 14 applies to current members and staff of the Gorge Commission and in some situations relatives and members of a Gorge Commission member's household. This rule also advises former members of the Gorge Commission to seek legal on advice on compliance with ethics rules after completing service on the Gorge Commission.

CHANGES TO RULE:

350-014-0020

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, many of the limitations on current public officials also apply to former public officials, 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 their limitations after public service.¶

(2) Nothing in this division is intended to affect:¶

(a) Any other statute or rule requiring disclosure of economic interest by a public official or public employee.¶

(b) 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0030

RULE SUMMARY: This rule prohibits public officials from having a financial interest or other conflict with their public official duties and prohibits a public official from using their official position to obtain a financial gain or avoid a financial loss.

CHANGES TO RULE:

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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0040

RULE SUMMARY: This rule prohibits a public official from having a beneficial interest in a contract made by or under the supervision of that official, participate in a transaction involving the Gorge Commission, use their official position to secure a special benefit for themselves or family members, or give or receive a promise of future employment.

CHANGES TO RULE:

350-014-0040

Beneficial Interests in Transactions

(1) No public official may have a beneficial interest 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 any compensation, gratuity, or reward from any other person who has a beneficial interest 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) Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.¶

(4) 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0050

RULE SUMMARY: This rule prohibits a public official from assisting another person in a transaction involving the Gorge Commission or receiving compensation received by another person for assisting in a transaction involving the Gorge Commission.

CHANGES TO RULE:

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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0060

RULE SUMMARY: This rule prohibits current and former public officials from disclosing confidential information.

CHANGES TO RULE:

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 them 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0070

RULE SUMMARY: This rule prohibits a public official from asking for or receiving compensation outside of their official compensation package for performing or failing to perform an official duty.

CHANGES TO RULE:

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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule prohibits Gorge Commission employees from receiving any thing of value under a contract or grant outside of their official duties, except in specific circumstances. The rule further only allows an employee to have a beneficial interest in a contract with the Gorge Commission in specific circumstances.

CHANGES TO RULE:

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 the employee has met each of the following conditions:¶

(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 after the contract or grant has been awarded 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0090

RULE SUMMARY: SUMMARY: This rule prohibits an honorarium for a public official unless specifically authorized by the Gorge Commission and cannot receive an honorarium under the circumstances listed in the rule.

CHANGES TO RULE:

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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0100

RULE SUMMARY: This rule prohibits gifts to a public official, relative, or member of the public official's household with an aggregate value of more than \$50 from a single source in a calendar year.

CHANGES TO RULE:

350-014-0100

Gifts

During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0110

RULE SUMMARY: This rule prohibits a public official from using public money or property for private benefit or gain for the public official or another.

CHANGES TO RULE:

350-014-0110

Use of Person, Money or Property for Private Gain

(1) No public officer or 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0120

RULE SUMMARY: This rule specifies the procedure for a member of the Gorge Commission to handle a conflict of interest. This rule uses the distinction in Oregon law between an actual conflict and a potential conflict. Washington law does not make the distinction.

CHANGES TO RULE:

350-014-0120

Declaration of Potential Conflicts - Methods of Handling Potential Conflicts

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

(a) 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:¶

(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 section (1) of this 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 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-014-0130

RULE SUMMARY: This rule refers to division 16 of the Gorge Commission's rules for rules governing ex parte communications and the appearance of fairness standards.

CHANGES TO RULE:

350-014-0130

Ex Parte Communications, Bias, and Appearance of Fairness

The Gorge Commission's rules governing ex parte communications, bias, and appearance of fairness standards are contained in division 16 of the Gorge Commission's rules.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

REPEAL: 350-016-0001

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0001~~

~~Commission Required to Prepare Public Writings in Readable Form~~

~~(1) The commission shall when reasonable prepare its public writings in simple language with short, precise, affirmative, active voice sentences.¶~~

~~(2) As used in this section, "public writing" means any rule, form, license or notice prepared by the commission.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0002~~

~~Definitions for 350-016-0002 to 350-016-0018-~~

~~(1) "Commission" means the Columbia River Gorge Commission or any officer authorized by the commission to make rules or to issue orders.¶¶~~

~~(2)(a) "Contested case" means a proceeding before the commission:¶¶~~

~~(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 commission has discretion to suspend or revoke a right or privilege of a person;¶¶~~

~~(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 commission 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.¶¶~~

~~(4) "License" includes the whole or part of any commission permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.¶¶~~

~~(5)(a) "Order" means any commission action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of the commission. "Order" includes any commission determination or decisions issued in connection with a contested case proceeding.¶¶~~

~~(b) "Final order" means final commission action expressed in writing. "Final order" does not include any tentative or preliminary commission declaration or statement that:¶¶~~

~~(A) Precedes final commission action; or¶¶~~

~~(B) Does not preclude further commission consideration of the subject matter of the statement or declaration.¶¶~~

~~(6) "Party" means:¶¶~~

~~(a) Each person or agency entitled as of right to a hearing before the commission;¶¶~~

~~(b) Each person or agency named by the commission to be a party; or¶¶~~

~~(c) Any person requesting to participate before the commission as a party or in a limited party status which the commission determines either has an interest in the outcome of the commission's proceeding or represents a public interest in such result.¶¶~~

~~(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the commission.¶¶~~

~~(8) "Rule" means any commission 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 commission. 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 commission, between its officers or between employees.¶¶~~

~~(b) Action by commission 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.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

REPEAL: 350-016-0003

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0003~~

~~Description of Organization; Service of Order; Effect of Not Putting Order in Writing~~

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

~~(2) The commission shall appoint a rules coordinator and file a copy of that appointment annually with 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 350-016-0004(7).¶¶~~

~~(3) An order shall not be effective as to a person or party unless it is served upon him either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.¶¶~~

~~(4) An order is not final until it is reduced to writing.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0004~~

~~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.¶¶~~

~~(3) Prior to the adoption, amendment or repeal of any rule, the commission shall give notice of its intended action:¶¶~~

~~(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.¶¶~~

~~(5) When the commission proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views at a public hearing. The commission shall consider fully any written or oral submissions, including all submissions received by facsimile, telephonic communication, or electronic mail.¶¶~~

~~(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.¶¶

(7) Notwithstanding subsections (1) to (6) of this section, the commission may adopt or amend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the commission prepares:¶¶

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

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and¶¶

(d) 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 inspections.¶¶

(8) A rule adopted or amended under 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) of this section.¶¶

(9) Any person may request in writing that the commission mail to the person copies of its notice of intended action given pursuant to subsection (3) of this section. Upon receipt of any request the 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.¶¶

(10) This section does not apply to public contracts and purchasing.¶¶

(11) A rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date that the notice required under subsection 3 of this section is delivered to the Oregon Secretary of State and the Washington Code Reviser for the purpose of publication.¶¶

(12) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.¶¶

(13) The commission may correct its failure to substantially comply with the requirements of subsections (4) and (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.¶¶

(14) When the commission establishes a deadline for comment on a proposed rule under the provisions of subsection (4) of this section, the commission may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

Statutory/Other Authority: ORS 197.150, RCW 43.97

Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.

REPEAL: 350-016-0005

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0005~~

~~Procedure for Commission Adoption of Federal Rules~~

~~(1) Notwithstanding 350-016-0004, 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 350-016-0004(1).¶¶~~

~~(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 350-016-0004.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0006~~

~~Filing and Taking Effect of Rules; Copies~~

~~(1)(a) The 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 30 days after the date of filing as required by subsection (1) of this section, 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 commission finds that action is necessary because of imminent peril to public health, safety or welfare, the specified date is the effective date.¶¶~~

~~(c) A temporary rule becomes effective upon filing with the Oregon Secretary of State and Washington Code Reviser, or at a designated later date, only if the statement required by 350-016-0004(5) is filed with the rule. The commission shall take appropriate measures to make temporary rules known to the persons who may be affected by them.¶¶~~

~~(3) When a rule is amended or repealed by the commission, the commission 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 valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if the commission, 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 commission may rely upon such decision in disposition of later cases.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-016-0007

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0007~~

~~Petitions Requesting Adoption of Rules~~

~~An interested person may petition the commission requesting the 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 30 days after the date of submission of a petition, the commission shall deny the petition in writing or shall initiate the rulemaking proceedings. If the commission denies the petition it shall set forth in writing its reasons for doing so.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

350-016-0008

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.¶¶

(2) Prior to the commencement of a contested case hearing before the commission, the commission shall inform each party to the hearing of the following matters:¶¶

(a) If a party is not represented by an attorney, 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.¶¶

(b) The manner of making the record and its availability to the parties.¶¶

(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 commission.¶¶

(d) Whether an attorney will represent the commission in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.¶¶

(e) 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, 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.¶¶

(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.¶¶

(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 commission and the hearing reopened.¶¶

(h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the commission 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.¶¶

(i) A description of the appeal process from the determination or order of the commission.¶¶

(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.¶¶

(4) The failure of the commission to give notice of any item specified in subsections (2) and (3) of this section, shall not invalidate any determination or order of the commission 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 commission for a reopening of the hearing and shall direct the commission as to what steps it shall take to remedy the prejudice to the rights of the complaining party.

Statutory/Other Authority: ORS 196.150

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0009~~

~~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.¶¶~~

~~(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.¶¶~~

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

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the commission. 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.¶¶

(7) Within seven days after service of a default order under 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.¶¶

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

(9) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of law to those facts.¶¶

(10) The record in a contested case shall include:¶¶

(a) All pleadings, motions and intermediate rulings.¶¶

(b) Evidence received or considered.¶¶

(c) Stipulations.¶¶

(d) A statement of matters officially noticed.¶¶

(e) Questions and offers of proof, objections and rulings thereon.¶¶

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.¶¶

(g) Proposed findings and exceptions.¶¶

(h) Any proposed, intermediate or final order prepared by the commission or a hearings officer.¶¶

(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 commission may charge the party requesting transcription, unless the party files an appropriate affidavit of indigency.

Statutory/Other Authority: ORS 197.150, RCW 43.97

Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.

RULE SUMMARY: This rule contains general provisions that are applicable to contested cases or rulemaking or both, including the types of proceedings in which the rules for rulemaking and contested cases apply, a requirement to use clear language in rules, delegation authority of certain contested cases proceedings, and attorney appearances before the Gorge Commission.

CHANGES TO RULE:

350-016-0010

~~Presiding Officer—Disqualification, Substitution~~ Application of Division: General Provisions ¶

~~(1) Any party may petition for the disqualification 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. ¶

(b) 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. ¶

~~(c) The contested case provisions of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification, this division apply to:~~ ¶

(A) Proceedings 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, and ¶

(B) Proceedings for quasi-judicial decisions required by the National Scenic Area Act for which the Gorge Commission has not enacted rules governing the Gorge Commission decision, such as reviewing a county land use ordinance pursuant to 16 U.S.C. §§ 544e(b) and 544(f)(i). ¶

(d) 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 ¶

~~(2a) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.~~ ¶

(3) 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) 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.~~ (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 by the commission 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. ~~§ 544 et seq.~~ c(b)

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0011~~

~~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)(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.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0012~~

~~Depositions or Subpoena of Material Witness; Discovery~~

~~(1) On petition of any party to a contested case, the commission 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. 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 commission may issue a subpoena, requiring his appearance.¶¶~~

~~(2) On petition of any party to a contested case the commission may order that the party be allowed an opportunity to visit the property that is the subject of a hearing before the commission. 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.¶¶~~

~~(3) The commission may allow petitions to take depositions, for subpoenas, admissions or other forms of discovery prescribed by law in civil actions upon a showing of necessity and unavailability by other means. In determining whether to allow the discovery the commission 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.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

REPEAL: 350-016-0013

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0013~~

~~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.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0014~~

~~Evidence in Contested Cases-~~

~~(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude commission 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 commission 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 an except as provided in subsection (4) of this section 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 commission 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 commission 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.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-016-0015

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0015~~

~~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.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0016~~

~~Commission Statement of Ex Parte Communications; Notice~~

~~(1) A presiding officer 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, members of the body may communicate with one another regarding the proceeding;¶¶~~

~~(b) Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and¶¶~~

~~(c) Presiding officers 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.¶¶~~

~~(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer 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 may not communicate under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.¶¶~~

~~(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.¶¶~~

~~(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 350-016-0014.¶¶~~

~~(6) Any commissioner 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 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.¶¶~~

~~(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.¶¶~~

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

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

REPEAL: 350-016-0017

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0017~~

~~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 by 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.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

REPEAL: 350-016-0018

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0018~~

~~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) 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 commission's order.¶¶~~

~~(3) The commission 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 commission 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 citation of the statutes under which the order may be appealed.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

RULE SUMMARY: This rule contains the definitions for division 16 of the Gorge Commission's rules.

CHANGES TO RULE:

350-016-0020

Commission Record of Contested Case Definitions for Division 16 of the Gorge Commission's Rules

- (1) ~~The "Gorge eCommission shall maintain,"~~ means the Columbia River Gorge Commission or any official record of each ~~er~~ or delegated person authorized by the Gorge Commission as the context may suggest.
- (2) "Contested case," means:
- (2a) ~~The commission record shall include:~~
- (a) ~~No~~ A proceeding before the Gorge Commission:
- (A) ~~In which the individual legal rights, duties, ofr proceedings;~~
- (b) ~~Any prehearing order 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;~~
- (c) ~~Any motions, pleadings, briefs, petitions, requests and intermediate rulings; Where the Gorge Commission 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 a Gorge Commission decision rests solely on the result of a test.
- (d) ~~Evidence received or considered;~~ "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.
- (e) ~~A statement of any matters officially noticed;~~ "License" includes the whole or part of any Gorge Commission permit, certificate, approval, registration, or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.
- (f) ~~Proffers of proof and objections and rulings thereon;~~ "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.
- (g) ~~Proposed findings, requested orders and exceptions;~~ "Order" and "Final Order"
- (a) "Order" means any Gorge Commission action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of the Gorge Commission. "Order" includes any Gorge Commission determination or decisions issued in connection with a contested case proceeding.
- (b) ~~The recording prepared for the commission at the hearing, together with any transcript~~ "Final order" means final Gorge Commission action expressed in writing. "Final order" does not include any tentative or preliminary Gorge Commission declaration or statement that:
- (A) Precedes final Gorge Commission action; or
- (B) Does not preclude further Gorge Commission consideration of the subject matter of the statement or declaration.
- (7) "Party" means:
- (a) Each person ofr all or part of the hearing considered before final disposition of the proceeding; agency entitled as of right to a hearing before the Gorge Commission;
- (b) Each person or agency named by the Gorge Commission to be a party; or
- (c) Any person requesting to participate before the Gorge Commission as a party, which the Gorge Commission determines either has an interest in the outcome of the Gorge Commission's proceeding or represents a public interest in such result.
- (i) ~~A "Person" means any final order, initial order or order on reconsiderat~~ individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the Gorge Commission;
- (j) ~~Staff memoranda or data submitted to the commission; and~~ "Rule" means any Gorge Commission 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 Commission. The term includes the amendment or repeal of a prior rule, but does not include:
- (k) ~~Matters placed on the record after an ex parte communication~~ 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 Commission, between its officers or between employees:¶

(b) Action by the Gorge Commission directed to other agencies or other units of government which do not substantially affect the interests of the public:¶

(c) Declaratory rulings; and¶

(d) Intra-agency memoranda.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. ~~§ 544~~et seq. c(b)

REPEAL: 350-016-0022

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0022~~

~~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.~~

~~Statutory/Other Authority: ORS 196.150 196.165, 390.500 390.515~~

~~Statutes/Other Implemented:~~

REPEAL: 350-016-0024

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0024~~

~~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 350-016-0020.~~

~~(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.~~

~~Statutory/Other Authority: ORS 196.150~~

~~Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544 et seq.~~

REPEAL: 350-016-0025

RULE SUMMARY: The Gorge Commission is repealing this rule and replacing it with a new rule containing updated provisions for the Gorge Commission's administrative procedure rules.

CHANGES TO RULE:

~~350-016-0025~~

~~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 350-060 et seq. and Rules 350-070 et seq.~~

~~Statutory/Other Authority: ORS 197.150, RCW 43.97~~

~~Statutes/Other Implemented: ORS 197.150, RCW 43.97, 16 U.S.C. 544 et seq.~~

ADOPT: 350-016-0030

RULE SUMMARY: This rule requires the Gorge Commission to appoint a rules coordinator, prepare and publish a semi-annual agenda for rules under development, and a docket for each pending rulemaking proceeding.

CHANGES TO RULE:

350-016-0030

Rules Coordinator; Rulemaking Agenda; Rulemaking Docket

(1) The Gorge Commission shall appoint a rules coordinator and file a copy of that appointment 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(6).

(2) 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) 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 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; and

(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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies the procedures for the Gorge Commission's rulemaking proceedings, including using Oregon and Washington forms for notices for rulemaking; the process and criteria for using expedited rulemaking; the process and criteria for using emergency rulemaking; requiring substantial compliance with the rules; and allowing the Gorge Commission to correct noncompliance with the rules by an amended filing so long as no person was prejudiced by the noncompliance.

CHANGES TO RULE:

350-016-0040

Notice; Content; Public Comment; Expedited Rule Adoption; Emergency Rule Adoption; Amendment or Repeal; Substantial Compliance Required

(1) Prior to the adoption, amendment or repeal of any rule, the Gorge Commission 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.¶

(2) When the Gorge Commission 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 Commission shall consider fully any written or oral submissions.¶

(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.¶

(4) Emergency Rulemaking.¶

(a) The Gorge Commission 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 Commission prepares:¶

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

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and¶

(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) A rule adopted or amended under this section is temporary and may be effective for a period of not longer than

120 days. The adoption of a rule under this section does not preclude the subsequent adoption of an identical rule under sections (1) to (3) of this rule.¶

(5) 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 section (1) of this rule. 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.¶

(6) This rule does not apply to public contracts and purchasing.¶

(7) A rule is not valid unless adopted in substantial compliance with the provisions of this rule in effect on the date that the notice required under sections (1) to (4) of this rule is delivered to the Oregon Secretary of State and the Washington Code Reviser for the purpose of publication.¶

(8) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by the Gorge Commission need not be based upon or supported by an evidentiary record.¶

(9) The Gorge Commission may correct its failure to substantially comply with the requirements of sections (1) and (4) 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.¶

(10) When the Gorge Commission establishes a deadline for comment on a proposed rule, the Gorge Commission may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. The Gorge Commission shall not consider any submission made after the final deadline has passed.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-016-0050

RULE SUMMARY: This rule specifies that the Gorge Commission may incorporate a code, standard or regulation of a federal, Oregon, or Washington agency, political subdivision of the states, or a recognized organization or association if the incorporated material is readily available to the public.

CHANGES TO RULE:

350-016-0050

Incorporation by Reference

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, other government entity, 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-016-0060

RULE SUMMARY: This rule requires the Gorge Commission to file its adopted rules with the Oregon Secretary of State and the Washington Code Reviser and that the rules are not effective against a person unless the rules are first filed. Section (3) of this rule also allows the Gorge Commission to apply a general policy announced in a case to the disposition of a latter, like case.

CHANGES TO RULE:

350-016-0060

Filing and Taking Effect of Rules: Copies

(1) 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.¶

(2) A rule shall be effective no earlier than 30 days after the date of filing as required by section (1) of this 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 Commission 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 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 Commission shall take appropriate measures to make emergency rules known to the persons who may be affected by them.¶

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

(4) A rule is not valid or effective against any person or party until the rule is filed in accordance with this rule. However, if the Gorge Commission, 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 Commission may rely upon such decision in disposition of later cases.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule authorizes a person to file a petition with the Gorge Commission to adopt, amend, or repeal a rule. This rule provides the criteria that the Gorge Commission will use to decide the petition and the information that the Gorge Commission encourages persons to include in their petition.

CHANGES TO RULE:

350-016-0070

Petitions Requesting Adoption of Rules

(1) An interested person may petition the Gorge Commission to request the Gorge Commission promulgate, amend, or repeal a rule. Not later than 60 days after the date of submission of a petition, the Gorge Commission shall:

(a) 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) Initiate rulemaking proceedings.

(2) A petition requesting the Gorge Commission to promulgate a new rule or amend a rule shall contain the proposed text of the rule.

(3) The Gorge Commission shall invite public comment on the petition, and shall specifically request public comment on alternatives to the petition for achieving the need expressed in the petition.

(4) In reviewing a petition subject to section (1) of this rule, the Gorge Commission shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for the rule.

(5) 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.

(6) 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).

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule contains the requirement for a notice of a contested case proceeding.

CHANGES TO RULE:

350-016-0080

Notice to Party Before Hearing of Rights and Procedure: Failure to Provide Notice

(1) At least 20 days prior to the commencement of a contested case hearing before the Gorge Commission, the Gorge Commission 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 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) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties;¶

(j) 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 Commission;¶

(k) Whether an attorney will represent the Gorge Commission in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney;¶

(l) 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 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, and whether that person has the authority to make a final independent determination;¶

(m) 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) 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 Commission and the hearing reopened;¶

(o) Whether there exists an opportunity after the hearing and prior to the final determination or order of the Gorge Commission 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) A description of the appeal process from the determination or order of the Gorge Commission; 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.¶

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

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies the procedure for contested case proceedings, including representation by an attorney, informal disposition (settlement), default when a party does not attend or participate in a hearing; and ensuring a fair hearing. The rule also requires the Gorge Commission to create a record of the proceeding and specifies the requires for the record.

CHANGES TO RULE:

350-016-0090

Procedure in Contested Case Hearing: Informal Dispositions: Default: Record of Proceeding

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

(2) Informal disposition¶

(a) 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) 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. 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.¶

(b) Within seven days after service of a default order under 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.¶

(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) Testimony shall be taken upon oath or affirmation of the witness. 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) The 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 properly before the Gorge Commission and the correct application of law to those facts.¶

(8) 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) All pleadings, motions, briefs, petitions, requests, and intermediate rulings;¶

(D) Evidence received or considered;¶

(E) Stipulations;¶

(F) A statement of matters officially noticed;¶

(G) Questions and offers of proof, objections and rulings thereon;¶

(H) A statement of any ex parte communications that must be disclosed under section (6) of this rule;¶

(I) Staff memoranda or data submitted to the Gorge Commission and that are not privileged communication;¶

(J) Proposed findings, requested orders, and exceptions;¶

(K) Any final order or order on reconsideration prepared by the Gorge Commission:¶

(c) 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 Commission may charge the party requesting transcription, unless the party files an appropriate affidavit of indigency.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-016-0100

RULE SUMMARY: This rule specifies how a person may request a member of the Gorge Commission to recuse themselves from a contested case proceeding and allows the rule of necessity if disqualification would result in fewer than a quorum.

CHANGES TO RULE:

350-016-0100

Disqualification of Member of the Gorge Commission

(1) Any party may petition for the disqualification of a member of the Gorge Commission promptly after receipt of notice indicating that the member will participate in the proceeding or, 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 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 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies the procedure the Gorge Commission will use for persons who inform the Gorge Commission that they need an interpreter in a contested case proceeding.

CHANGES TO RULE:

350-016-0110

Interpreter for Individuals with a Disability and Non-English Speaking Persons in Contested Case

(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 interpreter 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 interpreter 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 the order, the Gorge Commission shall orally inform the party during the hearing of the right and of the time limits to request review.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule authorizes the use of depositions, site visits, subpoenas of material witnesses, and other forms of discovery in contested case proceedings, and specifies that the Gorge Commission may issue a protective order to limit public disclosure of information that is confidential or privileged by law, including information that is sensitive to a Tribe.

CHANGES TO RULE:

350-016-0120

Depositions; Site Visits; Subpoenas of Material Witnesses; Other Forms of Discovery

(1) Depositions. On petition of any party to a contested case, the Gorge Commission 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 Commission may issue a subpoena, requiring his appearance.¶

(2) Site Visits. On petition of any party to a contested case the Gorge Commission may order that the party be allowed an opportunity to visit the property that is the subject of a contested case before the Gorge Commission. 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 Commission may allow petitions to take depositions, for subpoenas, for site visits, or other forms of discovery as specified in sections (1) to (4) of this rule upon a showing of necessity and unavailability by other means. In determining whether to allow the petition the Gorge Commission 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies the rules of evidence for contested cases before the Gorge Commission.

CHANGES TO RULE:

350-016-0130

Evidence in Contested Cases

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude Gorge Commission 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 Commission 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 section (4) of this 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.¶

(4) The Gorge Commission 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 Commission 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule specifies the requirement for members of the Gorge Commission to avoid ex parte communications in a contested case proceeding and lists the types of communications that do not qualify as ex parte communications. The rule requires disclosure of ex parte communications, including communications that a member of the Gorge Commission received prior to serving as a decision maker in the proceeding.

CHANGES TO RULE:

350-016-0140

Ex Parte Communications

(1) A 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 section.¶

(a) Members of the Gorge Commission may communicate with one another regarding the proceeding.¶

(b) Members of the Gorge Commission may receive aid from legal counsel, or from staff assistants who are subject to the Gorge Commission's supervision; and¶

(c) 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 section 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, 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 members of the Gorge Commission may not communicate under sections (1) and (2) of this rule may not communicate with members of the Gorge Commission without notice and opportunity for all parties to participate.¶

(4) If, before serving as a decision maker in a contested case, a 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 member of the Gorge Commission, promptly after starting to serve, shall disclose the communication in the manner prescribed in section (6) of this 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 350-016-0130.¶

(6) Any 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 member of the Gorge Commission received an ex parte communication. 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 Gorge Commission shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

RULE SUMMARY: This rule refers members of the Gorge Commission to division 14 of the Gorge Commission's rules for avoiding conflicts of interest and this rule contains the standards for complying with Washington's appearance of fairness.

CHANGES TO RULE:

350-016-0150

Conflicts of Interest; 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.¶

(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 an 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-016-0160

RULE SUMMARY: This rule requires the Gorge Commission to issue a written order in a contested case proceeding and specifies the required content and a 90-day period to issue a final order.

CHANGES TO RULE:

350-016-0160

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 Commission'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 Commission 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 Commission 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 them 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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b)

ADOPT: 350-016-0170

RULE SUMMARY: This rule directs persons to the National Scenic Area Act provisions for judicial review of a final order by the Gorge Commission (16 U.S.C. 544m).

CHANGES TO

CHANGES TO RULE:

350-016-0170

Judicial Review of Rule or Order

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.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b), 16 U.S.C. 544m

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b), 16 U.S.C. 544m

RULE SUMMARY: This amendment revises section (10) to update the term, "Firewise" to "defensible space."

CHANGES TO RULE:

350-082-0080

Application for Review and Approval Required

(1) The application form required for National Scenic Area review is available at the Gorge Commission Office and on the Gorge Commission's website.¶

(2) All proposed developments and land uses shall be reviewed according to the standards in effect on the date the applicant submits a complete application for National Scenic Area review.¶

(3) A complete application is one that the Executive Director determines meets the requirements in this land use ordinance for a complete application form, a complete site plan showing the proposed site (site plans with alternative sites or building envelopes are not sufficient), all applicable information specified in the various sections of this land use ordinance, and other information that the Executive Director requires to make findings based on substantial evidence in the whole record and conclusions for compliance with the guidelines in this land use ordinance.¶

(4) The Executive Director will not accept an incomplete application for review.¶

(5) Prior to accepting an application or at any time during review of an application, the Executive Director may require the applicant to amend an application or withdraw an application and file a new application to resolve violations of applicable National Scenic Area standards or a prior Executive Director decision at the same time as the current application.¶

(6) The Executive Director shall accept and review the application pursuant to the procedures and requirements in 350-082-0080 through 350-082-0170 for consistency with the appropriate guidelines of this land use ordinance.¶

(7) The Executive Director may charge a fee for review of applications. The Gorge Commission shall set the fee after a public hearing.¶

(8) Applications for National Scenic Area review of a proposed use or development shall provide the following information.¶

(a) The applicant's name, mailing address, telephone number, and email address;¶

(b) The name, mailing address, telephone number, and email address of the landowner and all other persons or entities that hold easements or other partial interests that give a right to use or refuse use of land, as determined by the Executive Director;¶

(c) The county in which the proposed use or development would be located;¶

(d) The section, quarter section, township and range in which the proposed development would be located;¶

(e) The street address of the proposed use or development;¶

(f) The tax lot number(s) and size in acres of the parcel(s) involved;¶

(g) A description of the current land use for the parcel(s) involved and adjoining lands;¶

(h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures;¶

(i) A list of Key Viewing Areas from which the proposed use would be visible;¶

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Executive Director to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of one inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel; rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:¶

(A) North arrow;¶

(B) Map scale;¶

(C) Boundaries, dimensions, and size of the subject parcel;¶

(D) Significant terrain features or landforms (e.g., cliffs, rock faces, slopes, stands of trees);¶

(E) Groupings and species of trees or other vegetation on the parcel;¶

(F) Location and species of vegetation that would be removed or planted;¶

(G) Bodies of water and watercourses, including intermittent and ephemeral streams;¶

(H) Location and width of existing and proposed roads, driveways, and trails;¶

(I) Location, dimensions, height, and size (in square feet) of existing and proposed structures;¶

(J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting; and¶

(K) Location and depth of all proposed grading and ditching¶

(k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale and include sizes and dimensions of windows, doors, and covered openings;¶

(l) The following applications for structural development shall include a grading plan:¶

(A) Applications involving more than 100 cubic yards of grading with slopes greater than 10 percent, except applications for trails in the SMAs.¶

(B) Applications involving more than 200 cubic yards of grading on sites visible from key viewing areas.¶

(C) Grading plans shall include the following:¶

(i) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:¶

(I) Existing and proposed final grades;¶

(II) Location of all areas to be graded, with cut banks and fill slopes delineated; and¶

(III) Estimated dimensions of graded areas.¶

(ii) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:¶

(I) Its purpose;¶

(II) An estimate of the total volume of material to be moved;¶

(III) The height of all cut banks and fill slopes;¶

(IV) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended);¶

(V) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings; and¶

(VI) A description of any other interim or permanent erosion control measures to be used.¶

(m) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-082-0110 Table 1 - Notice Requirements;¶

(n) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans; and¶

(o) The signature of the applicant, and the signature or other statement of the landowner and other persons or entities that hold easements or other partial interests that give a right to use or refuse use of land, as determined by the Executive Director indicating that they are aware of the application and that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application and to conduct inspections during construction of an approved development or land use, and a final inspection when construction is completed.¶

(9) The Executive Director may require additional information necessary to demonstrate compliance with this land use ordinance, including but not limited to, a professional land survey and staking of proposed structure and building locations that are close to a property or buffer boundary, a professionally drawn site and landscaping plan, and copies of or other proof of prior building permits and land use permits. ¶

(10) The Executive Director shall provide Firewise defensible space information to applicants with application forms and encourage and assist applicants to incorporate Firewise defensible space standards in their proposals as appropriate and as consistent with the resource protection provisions in the Management Plan.¶

(11) Requirements for applications for Emergency/Disaster Response Actions are contained in 350-082-0230.¶

(12) Completed application forms shall be submitted directly to the Gorge Commission office.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 USC § 544e(c), 16 USC § 544f(l)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 USC § 544e(c), 16 USC § 544f(l)

AMEND: 350-082-0150

RULE SUMMARY: This amendment adds a new section (9) to provide a review process for temporary uses and structures allowed in 350-082-0200.

CHANGES TO RULE:

350-082-0150

Decision of the Executive Director

(1) In making a decision on a proposed use or development the Executive Director shall:¶

(a) Consult with the applicant, federal, state, local, and tribal agencies, and interested persons and entities as required in this land use ordinance or that the Executive Director at their discretion deems appropriate;¶

(b) Consider information submitted by the applicant and all other available relevant information;¶

(c) Develop new information necessary to evaluate the application;¶

(d) Consider all comments submitted pursuant to 350-082-0120 through 350-082-0140; and¶

(e) Solicit and consider the comments of the Forest Service.¶

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the approval criteria in this land use ordinance. In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of this land use ordinance.¶

(3) Applicants shall record the Executive Director's decision and conditions of approval in county deeds and records to ensure notice of the conditions to successors in interest. The record shall be associated with all tax lots and parcels that constitute the subject property. Applicants need not record a separate staff report document containing the relevant findings and conclusions. The Executive Director's decision shall include a statement specifying this recording requirement.¶

(4) The Executive Director's decision may require one or more inspections during construction of a development or land use and a final inspection. If the Executive Director's decision requires an inspection, the landowner shall permit the Executive Director on the property at a reasonable time to conduct the inspection.¶

(5) The Executive Director shall issue a decision within 135 days after accepting the application, except in one or more of the following situations:¶

(a) The applicant consents to an extension of time;¶

(b) The Executive Director determines that additional information or consultation is required pursuant to 350-082-0130 or 350-082-0140; or¶

(c) Unforeseen circumstances including, but not limited to, weather, illness, etc.¶

(6) The Executive Director shall send a copy of the decision to the applicant, the Forest Service, the applicable state agencies, the four tribal governments, the applicable county and city (if the subject parcel is located within or adjacent to a city boundary) and each person who submitted comments. The decision shall set forth the rights of appeal under Commission Rule 350-70.¶

(7) The decision of the Executive Director becomes final at the end of the appeal period unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. No person shall begin any approved land use or development during the appeal period.¶

(8) The Executive Director may withdraw a decision during the appeal period if they discover new facts or legal issues that could materially change conditions of approval or the decision. The Executive Director shall use this authority sparingly. If the Executive Director withdraws a decision, they shall provide notice of the withdrawal to all agencies, entities, and persons who received the original decision and a new notice of the proposed development with the new facts or explanation of the legal issues and provide a new comment period. The Executive Director shall issue a new decision as soon as possible after the end of the new comment period.¶

(9) This section applies to temporary structures and uses as allowed in 350-082-0200(5). The Executive Director does not require an application for a temporary structure or use. The Executive Director shall issue a letter and site plan to a landowner approving a temporary structure or use.¶

(a) The approval shall contain the expiration date and conditions of approval for the temporary structure or use, a list of persons to whom the Executive Director sent a copy of the approval, and a statement of the right to appeal.¶

(b) The site plan for the approval shall show the parcel boundaries, access road or roads, buffer zones required in Commission Rule 350-082, topography, other relevant features as necessary to establish compliance with 350-082-0200(5), and one or more locations where a temporary structure may be placed consistent with 350-082-0200(5).¶

(c) The Executive Director shall send a copy of the approval to persons entitled to receive notice of Full Review Uses as provided in 350-082-0110(2).

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 USC § 544e(c), 16 USC § 544f(l)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 USC § 544e(c), 16 USC § 544f(l)

RULE SUMMARY: The amendment to this rule incorporates the substantive amendments to the Management Plan that specify the standards for replacing a building or structure that was destroyed by a natural disaster and allow for temporary residential use and a temporary building.

CHANGES TO RULE:

350-082-0200

Existing Uses and Discontinued Uses

(1) Right to Continue Existing Uses and Structures. Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.¶

(2) Changes to Existing Uses and Structures. Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-082. Changes to exterior color and replacing siding, windows, chimneys, fences, paving; and other similar exterior features is considered a change to an existing structure.¶

(a) Expansion of Existing Commercial and Multifamily Residential Uses: In the SMAs, existing commercial and multifamily residential uses may expand as necessary for successful operation on the dedicated site, subject to guidelines to minimize adverse effects on scenic, cultural, natural, and recreation resources. Expansion beyond the dedicated site shall be prohibited.¶

(b) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this guideline, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.¶

(c) Existing Development or Production of Mineral Resources in the SMAs: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMAs may continue if both of the following conditions exist:¶

(A) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMAs.¶

(B) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.¶

(3) Replacement of Existing Structures Not ~~Damaged or~~ Destroyed by Disaster. Except as provided in section (4) below, an existing structure may be replaced ~~if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply~~ in accordance with the following standards:¶

(a) The replacement structure shall have the same use as the ~~original existing~~ structure.¶

(b) The replacement structure may have a different size or location than the ~~original existing~~ structure. An existing manufactured home may be replaced with a framed residence and an existing framed residence may be replaced with a manufactured home.¶

(c) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.¶

~~(d) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one-year time frame.¶~~

(4) Replacement of Existing Structures ~~Damaged or~~ Destroyed by Disaster. An existing structure ~~damaged or~~ destroyed by fire, flood, landslide or other similar disaster may be replaced ~~if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:~~ in accordance with the following standards:¶

(a) If the replacement structure does not comply with subsections (4)(c) through (4)(d) below, then it shall be subject to section (3) above and the time period in subsection (4)(g) below.¶

(b) As used in sections (4), (5), and (6), the term "original structure" or "original dwelling" means the structure or dwelling that was destroyed and was an existing structure or dwelling as defined in the Management Plan.¶

~~(a)~~ (c) The replacement structure shall have the same use as the original structure. An existing manufactured home may be replaced with a framed residence.¶

~~(b)~~ (d) The replacement structure and utilities shall be in the same location as the original structure. ~~An exception may be granted and the replacement structure may be~~ and utilities. The same location means that the footprint of the replacement structure is centered on the footprint of the original structure ~~used in a different location if the replacement structure complies with all the following guidelines:¶~~

~~(A) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the~~

applicant demonstrates the disaster made the original building site physically unsuitable for reconing the same orientation as the original structure or rotating the orientation by up to 10 degrees. The footprint of the replacement structure may extend no more than 10 percent beyond any one or more sides of the original footprint. The footprint of a structure includes any covered decks and porches, attached garages, and breezeways that share a wall with the structure.¶

(e) A replacement structure shall not exceed the same square foot size, footprint, and height as the original structure. The size, footprint, and height of a building include any covered decks and porches, attached garages, and breezeways that share a wall with the structure. The following adjustments to size, footprint and height are permitted for replacement structures:¶

(A) The square foot size of a replacement structure may be larger than the square foot size of the original structure. The size, footprint, and height of a building includes any covered decks and porches, attached garages, and breezeways that share a wall with the structure. The following adjustments to size, footprint, and height are permitted for replacement struction-ures:¶

(B)i) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or if the original structure was 1250 square feet or smaller in size, the replacement structure may be built up to 20 percent larger than the original structure.¶

(ii) If the original structure was larger than 1250 square feet in size and no larger than 2000 square feet in size, the replacement structure may be built up to 1500 square feet in size or 10 percent larger than the original structure, whichever is larger.¶

(iii) If the original structure was larger other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative buildan 2000 square feet in size and no larger than 2850 square feet, the replacement structure may be built up to 2200 square feet in size or 5 percent larger than the original structure, whichever is larger.¶

(iv) If the original structure was larger than 2850 square feet, the replacement structure may be built up to 3000 square feet ing sites physically suitable for construction that are no more visible from key viewing areas than the original building site.¶

(C) The new building site complies with 350-082-0600 through 350-082-0720ze or the same size as the original structure, whichever is larger.¶

(B) Notwithstanding the allowance for larger replacement structures in paragraph (A) above, the footprint of a replacement accessory building or buildings shall not exceed the footprint permitted for accessory buildings in the applicable land use designation, except, if the footprint of an original accessory building or buildings exceeded the footprint permitted for accessory buildings in the applicable land use designation, the replacement accessory building or buildings shall not exceed the original footprint of the accessory building or buildings.¶

(eC) The walls of the replacement structure shall be the same size and height as the original structure, provided: not exceed the height of the walls of the original structure unless an increase is required to comply with standards in the current jurisdictional building code. Wall height is the vertical distance between the lowest finished grade and the lowest wall-to-roof connection of each wall. For a manufactured dwelling, the interior wall height may be up to 9 feet as measured from the finished floor to the finished ceiling.¶

(AD) The footprint overall height of the replacement structure may be up to ten percent larger than the footprintas measured from the lowest finished grade to the highest point of the roof shall not exceed the height of the original structure. The footprint of a structure includes any covered decks and porches, attached garages, and breezeways that share a wall with the structure.¶

(B) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code. Height is generally defined as the greatest vertical distance between the lowest finished grade adjoining any exterior wall and the highest point of the roof.¶

(d) T f of the replacement structure shall be the same style (e.g., hip, gable, flat) and the same or lower slope as the roof of the original structure to keep the same height. The slope and height of the roof of a replacement structure may exceed the slope and height of the original structure only as required to comply with applicable building codes. Where an original structure protruded above the skyline, the replacement structure shall not protrude farther above the skyline. Where the height of a replacement structure protrudes farther above the skyline than the original structure, a different roof shape shall be used to reduce the protrusion to the original amount of protrusion.¶

(E) If, after applying paragraphs (A) through (D) above, an applicant demonstrates that the size, footprint, or height of a replacement manufactured dwelling that is closest in size, footprint, or height of the original manufactured dwelling is not reasonably available (e.g., considering time to manufacture, distance to manufacturer, cost to customize, and similar factors), then the applicant may place a manufactured dwelling that is closest in size, footprint, and height to the original manufactured dwelling, even if it exceeds the standards in paragraphs (A) through (D) above.¶

(f) In addition to the standards in subsections (4)(a) through (4)(e) above, the replacement structure shall only be subject to the following scenic and cultural resources standards:

(A) (and not other standards in Commission Rule 350-082). These standards apply to all replacement structures, including replacement structures for original structures that existed prior to the National Scenic Area Act.

(A) Scenic Resources

(i) In the GMA, the replacement structure shall comply with the guidelines regarding color and reflectivity in 350-082-0600. In the SMAs, the replacement structure shall comply with the guidelines regarding color and reflectivity in 350-082-0610. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(B)(i) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(C)(ii) In the GMA, the replacement structure shall comply with the GMA guidelines regarding landscaping (350-082-0600). These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, and may take into account recommendations for defensible space in the Scenic Resources Implementation Handbook.

(D)(iv) In the SMAs, the replacement structure shall comply with the SMA guidelines regarding landscaping (350-082-0610). These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(i) Use of plant species appropriate for the area and minimum sizes of new trees needed to achieve the standard (based on average growth rates expected for the recommended species) are required. Examples of native species are identified in the Scenic Resources Implementation Handbook as appropriate to the area.

(ii) The height of any new trees shall not be required to exceed five feet.

(iii) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be ten years.

(e) The replacement structure shall be subject to subsections (3)(a), (3)(b), and (3)(c) above if it would not be a significant historic structure that was destroyed by disaster and that is preserved, rehabilitated, restored, or reconstructed in accordance with the National Register of Historic Places guidelines (for structures in the SMA) or the National Park Service regulations for structures included in, or eligible for inclusion in, the National Register of Historic Places (for structures in the GMA) shall not be subject to paragraphs (4)(e)(A) through (4)(e)(D) above.

(B) Cultural Resources

(i) In the General Management area, if the structure is replaced in the identical location, orientation, and footprint, and is the identical or smaller size and height as the original structure, then the structure shall not require review for cultural resources.

(ii) In the General Management Area, if the structure is replaced in accordance with the standards in subsections (4)(d) and (4)(e) above, then the structure shall not require review for cultural resources, except, if the replacement structure is within 500 feet of known cultural resources or is within 100 feet of an area that has a high probability of containing cultural resources, then the structure shall be reviewed for consistency with 350-082-0620.

(iii) In the Special Management Areas, if the structure is replaced in accordance with the standards in subsections (4)(d) and (4)(e), then the structure shall be reviewed for consistency with 350-082-0620.

(g) An original structure shall be considered discontinued if development of a replacement structure approved under these guidelines for replacement of an existing structure destroyed by disaster has not commenced within ten years of the date the structure was destroyed. Each replacement structure on a parcel is separately subject to this ten-year period. Commencement of development in this provision is determined in accordance with the guidelines for expiration of approvals.

(h) An application for a replacement structure that complies with subsections (4)(b) and (4)(c) above.

(f) The original structure shall be considered discontinued if a complete land use application for a through (4)(f) above shall be reviewed using the requirements in 350-082-0080 through 350-082-0190 that are applicable to expedited development and uses and 350-082-0220(2)(b).

(i) The Gorge Commission shall develop and update as necessary an advisory handout to assist landowners and counties with the requirements for replacement structures destroyed by disaster.

(j) Alterations to a replacement structure after the replacement structure is completed shall require review and approval in the same manner and in accordance with all applicable provisions as a structure that was not previously destroyed by disaster.

(5) Temporary structures and uses on parcels where a structure was destroyed by disaster may be permitted in accordance with the following standards:

(a) A landowner of a parcel where a dwelling was destroyed by disaster or where a dwelling was damaged by disaster and is uninhabitable may place and occupy one recreational vehicle on the parcel on which the original dwelling was located. The recreational vehicle may not be rented, leased, or loaned to any person other than to a renter or lessee of the dwelling at the time of the disaster.

(b) A landowner of a parcel where one or more non-residential structures were destroyed by disaster may construct or place on the parcel one temporary structure up to 320 square feet and one story in height for storage of material salvaged from the disaster or construction materials and equipment, or for the purpose of an original structure that was destroyed structure. The color of the temporary structure shall be AMS-STD-595 Color No. 14087 or a similar dark earth tone color.¶

(c) The recreational vehicle and temporary structure shall be placed outside of resource sites and buffer zones on the subject parcel; shall use existing access; must not require a permanent foundation or grading, including ground disturbing actions for placement of water, sewage disposal, or other infrastructure; and shall comply with all applicable state and county requirements. The Executive Director shall approve the placement of a recreational vehicle and temporary structure in accordance with 350-082-0150(9).¶

(d) Every two years, the landowner shall submit documentation of their continuing need for the recreational vehicle and temporary structure. The local government shall verify the need and respond in writing.¶

(e) The recreational vehicle or temporary structure, including associated infrastructure, shall be removed within 90 days after the need for the recreational vehicle or temporary structure no longer exists or the resident of the recreational vehicle or temporary structure occupies their replacement structure is not submitted within the two-year time frame dwelling or structure. If construction of the replacement dwelling or replacement structure has not commenced within the time allowed in the guidelines for Replacement of Existing Uses and Structures Destroyed by Disaster, the recreational vehicle or temporary structure shall be removed immediately.¶

(6) Non-residential uses, except special uses in historic buildings, bed and breakfast inns on a parcel in the SMA, overnight accommodations, and commercial events, shall not be considered discontinued solely because the use is inactive for the time period to repair the original structure or rebuild the replacement residence or structure where the land use occurred prior to the disaster. Special uses in historic buildings and bed and breakfast inns on parcels in the SMA are discontinued after the historic building in which the use occurred is destroyed. An existing overnight accommodations or commercial events use may resume only in a completed replacement structure and be used as required in the existing permit and only while the existing permit remains valid.¶

(7) An existing campground may allow a landowner whose primary residence was destroyed by disaster to occupy a camping space in the campground until 90 days after the landowner can occupy their replacement dwelling. If the replacement dwelling has not commenced within the time allowed in the guidelines for Replacement of Existing Uses and Structures Destroyed by Disaster, the camping space occupancy shall be ceased immediately.¶

(5)(8) Discontinuance of Existing Uses and Structures. Except as provided in subsections (4)(a), (5), and (6) above, any use or structure that is discontinued for one year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.¶

(a) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.¶

(b) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.¶

(6)(9) Discontinued Uses and Structures. Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 USC § 544e(c), 16 USC § 544f(l)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 USC § 544e(c), 16 USC § 544f(l)

RULE SUMMARY: The amendment to this rule adds the amendment to the Management Plan specifying that replacement of structures destroyed by a disaster is an expedited review use. This clarifies the procedure that was previously unstated in the Management Plan and this land use ordinance.

CHANGES TO RULE:

350-082-0220

Development and Uses Eligible for Expedited Review

(1) The following development and uses may be allowed, provided they comply with the resource protection guidelines contained in section (2) below.¶¶

(a) Except in Open Space and Agriculture-Special, accessory structures between 60 and 200 square feet in area and ten feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include signs, decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.¶¶

(b) Additions and covered decks for existing buildings, provided the existing building is at least 500 square feet in area and the addition or covered deck is no larger than 200 square feet in area and no taller than the height of the existing building. Only one addition and one covered deck per parcel may be allowed under this guideline, regardless of whether the parcel already includes an addition or covered deck.¶¶

(c) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to six feet in height and less than or equal to 100 feet in length.¶¶

(d) Wire-strand fences other than those allowed outright, provided the fence complies with 350-082-0650(5) if it is inside deer and elk winter range as delineated in the Gorge Commission and Forest Service natural resource data or determined by an appropriate federal or state agency.¶¶

(e) In the GMA, woven-wire fences for agricultural use that would enclose 80 acres or less.¶¶

(f) Decks that are uncovered, attached and accessory to existing dwellings, and 500 square feet or less in area and 30 inches or less in height above existing grade.¶¶

(g) Road closure gates.¶¶

(h) Signs, other than those allowed outright.¶¶

(i) Outdoor lights.¶¶

(j) Air, weather, water and other similar research and monitoring facilities, provided the facilities are attached to existing structures or are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.¶¶

(k) Lot line adjustments in the GMA that would not result in the potential to create additional parcels through subsequent land divisions, as determined by 350-082-0570(1), except all lot line adjustments for parcels designated Open Space, Agriculture-Special, Public Recreation, or Commercial Recreation shall be reviewed through the full development review process.¶¶

(l) Lot line adjustments in the SMAs, subject to compliance with 350-082-0570(2).¶¶

(m) Removal or demolition of structures that are less than 50 years old, including wells, septic tanks and fuel tanks.¶¶

(n) Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.¶¶

(o) Trail reconstruction involving up to 1,000 feet of trail re-route.¶¶

(p) The following transportation facilities, provided they are not a part of larger construction or reconstruction projects (which shall be reviewed as a whole):¶¶

(A) New traffic barriers and guardrail ends, other than those allowed outright, and new wire-strand and woven-wire access control fences. This category does not include jersey barriers.¶¶

(B) New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to 120 square feet in size and less than or equal to 12 feet in height. This category does not include signs.¶¶

(C) Pave existing dirt and gravel roads, provided the activity does not increase the width of the road or disturb the toe of adjacent embankments, slopes or cut banks.¶¶

(D) New weather, air, traffic or other monitoring equipment attached to existing structures or that are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.¶¶

(q) Except in Agriculture-Special, new underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided that no ditch for linear facilities would be more than 36 inches wide and no excavation for non-linear facilities would exceed 20 cubic yards.¶¶

(r) The following aboveground and overhead utility facilities:¶¶

(A) Modify existing aboveground and overhead utility facilities or, except in Agriculture-Special, develop new aboveground and overhead utility facilities including building and equipment foundations, poles, transformers,

conduit, fencing, pumps, valves, pipes, and water meters, provided the development would be less than or equal to 120 square feet in area and less than or equal to 12 feet in height.¶¶

(B) Replace existing aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the replacement facilities would be in the same location as and no more than 15 percent larger than the physical size of the existing facilities.¶¶

(C) New antennas and associated support structures necessary for public service on existing wireless communication poles and towers other than those allowed outright, provided the size is the minimum necessary to provide the service.¶¶

(s) Replace an existing mobile home in a mobile home space within a mobile home park, provided:¶¶

(A) The mobile home to be replaced, the mobile home space, and the mobile home park shall be existing, lawful uses according to the definition of existing use or structure in 350-082-0070(73) and in accordance with 350-082-0220(1) through 350-082-0220(4);¶¶

(B) The replacement mobile home shall be in the same location as the mobile home to be replaced;¶¶

(C) The height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced; and¶¶

(D) the mass and footprint of the replacement mobile home shall be no more than 100 percent greater than a single-wide mobile home to be replaced or no more than 25 percent greater than a double-wide mobile home to be replaced.¶¶

(t) Retaining walls accessory to existing dwellings less than or equal to two feet in height and less than or equal to 100 feet in length.¶¶

(u) In the SMAs, wind machines for frost control in conjunction with agricultural use.¶¶

(v) Additions to existing buildings or structures that generate solar power for approved uses, provided that the panels and hardware are non-reflective black or dark earth tone colors and do not increase the overall roof height. This category does not include free-standing solar arrays, which are subject to full review as new structures under 350-082-0540.¶¶

(w) Replacement of Existing Structures Destroyed by Disaster as provided 350-082-0200(4). Only the procedural guidelines in 350-082-0080 through 350-082-0190 applicable to expedited development and uses and 350-082-0220(2)(e)(B) apply to this use.¶¶

(2) Proposed development reviewed using the expedited review process shall comply with the following resource protection guidelines:¶¶

(a) Scenic¶¶

(A) In the GMA, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.¶¶

(B) Except signs, the colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors approved by the reviewing agency shall be included as a condition of approval. This guideline shall not apply to additions to existing buildings smaller in total area in square feet than the existing building, which may be the same color as the existing building.¶¶

(C) Except signs, structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.¶¶

(D) Any exterior lighting shall be sited, limited in intensity, hooded, and shielded in a manner that prevents lights from being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes. Shielding and hooding materials shall be composed of non-reflective, opaque materials.¶¶

(E) Signs shall comply with 350-082-0520.¶¶

(F) Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).¶¶

(b) Cultural¶¶

(A) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey or historic survey as determined by 350-082-0620(2)(a)(A).¶¶

(B) The GMA guidelines that protect cultural resources and human remains discovered during construction (350-082-0620(6) and (7)) shall be applied as conditions of approval for all development approved under the expedited development review process, including development in the SMAs.¶¶

(c) Recreation. The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.¶¶

(d) Natural¶¶

(A) Water Resources (Wetlands, Streams, Ponds, Lakes and Riparian Areas). The development is outside water resources and their buffer zones. This guideline shall not apply to lot line adjustments or development located

inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.¶¶

(B) Sensitive Wildlife and Rare Plants¶¶

(i) The development meets one of the following: ¶¶

(I) The development is at least 1,000 feet from known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range) and known rare plants.¶¶

(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained.¶¶

(III) For sensitive wildlife, the development is within 1,000 feet of known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range), but an appropriate federal or state wildlife agency determines the Priority Habitat or sensitive wildlife site is not active, the proposed development would not compromise the integrity of the Priority Habitat or wildlife area, or the proposed development would not occur during the time of the year when wildlife species are sensitive to disturbance.¶¶

(IV) For rare plants, the development is within 1,000 feet of known rare plants, but the Oregon Biodiversity Information Center or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the rare plants.¶¶

(ii) Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or rare plants in 350-082-0650(1)(d) and (2) and 350-082-0660(1)(d) and (2).¶¶

(e) Treaty rights protection guidelines:¶¶

(A) Proposed development shall not affect or modify any treaty or other rights of any Indian tribe.¶¶

(B) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if a tribal government submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.¶¶

(C) Except as provided in subsection (B) above, 350-082-0130 shall not apply to proposed development reviewed under the expedited review process.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 USC § 544e(c), 16 USC § 544f(l)

Statutes/Other Implemented: ORS 196.150, RCW 43.97.015, 16 USC § 544e(c), 16 USC § 544f(l)