

COLUMBIA RIVER GORGE COMMISSION

Chapter 350

Division 70

Appeals From Decisions Under Gorge Commission Ordinances

As Amended Through May 1, 2011

350-70-000. Purpose.

The purpose of this division is to define the process and standards used by the Columbia River Gorge Commission in hearing appeals from decisions relating to the implementation of the Columbia River Gorge National Scenic Area Act ("National Scenic Act" or "Act"). The rule applies to appeals from decisions by the Executive Director under ordinances adopted by the Gorge Commission. This rule is intended to permit the appellant to build a more complete record than was before the Executive Director through briefing, and oral presentation of evidence and argument, and to allow interested persons to participate in that process.

350-70-010. Authority.

The National Scenic Act authorizes appeals to the Gorge Commission by a person or entity adversely affected by a final action or order, and this includes decisions by the Executive Director under a land use ordinance for a county adopted by the Gorge Commission.

350-70-020. Scope.

Scope of Rules: All proceedings commenced by Notice of Appeal shall be governed by these rules. Where this division is silent, divisions 11, 12, 14 and 16 of the Commission's rules shall be applicable provided that the specific provisions are applied in a manner that does not conflict with the provisions of this division.

350-70-030. Application.

These rules are intended to promote the efficient review of land use decisions in accordance with the National Scenic Act while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing. The rules shall be interpreted to carry out these objectives and to promote justice.

350-70-040. Definitions.

In these rules, unless the context or subject matter requires otherwise:

(1) "Applicant" means the person who requested that the Executive Director of the Gorge Commission take an action which resulted in a land use decision.

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

(3) “Counties” means Multnomah, Hood River and Wasco counties, Oregon, and Clark, Skamania, and Klickitat counties, Washington.

(4) “Days” means calendar days.

(5) “Executive Director” or “Director” means the director of the Gorge Commission.

(6) “File” means to deliver to Commission offices by personal delivery, U.S. Postal mail, or email. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, mailed, or emailed. A document that is emailed prior to midnight on the due date shall be considered filed on that due date.

(7) “Final decision”: A decision is final when it is reduced to writing and bears the signature of the Executive Director of the Gorge Commission.

(8) “Land use decision” means a final decision by the Executive Director based on the National Scenic Act.

(9) “Notice” means the Notice of Appeal and refers to the document which must be filed with the Commission in order to begin a review proceeding.

(10) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(11) “Serve” or “Service” means to send with the United States Postal Service by first class mail or to deliver in person, or to send my email, a copy of the original to all parties, including intervenors. All documents served on the other parties shall include a certification that the document was served on the same date that the document was filed.

350-70-042. Delegation of Authority to the Chair of the Commission.

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case setting, preliminary motions, and other procedural matters. The Chair of the Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission. The Chair of the Commission may also choose, at his or her sole discretion, to bring a matter to the full Commission for decision.

350-70-045. Time.

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a person has the right or is required to do some act or take some proceedings within a prescribed period of time after service of a document, and the service of the document is by mail, three (3) days shall be added to the prescribed time period. This does not apply to documents mailed when filing and service is accomplished by email.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

350-70-046. Electronic Filing and Service.

(1) The Commission allows filing and service of all documents by electronic mail (email) to the Commission's Office. All documents to be filed or served shall be emailed to crgc@gorgecommission.org, and shall have a subject heading that clearly identifies the email as filing a document or serving a document and that clearly identifies the appeal by caption and/or appeal number. The Commission allows email filing even if a person opts out of email service. A person need not file a document by mail if that person has already filed the document by email.

(2) All documents may be served by email to persons that do not opt out of email service (see rules below for Notice of Appeal and Notice of Appearance). Persons filing a petition for review are encouraged to communicate with persons who are entitled to receive a copy of the Notice of Appeal about electronic service of the Notice of Appeal.

(3) The preferred format for filed and served documents shall be a searchable portable document format (.pdf). Color originals available electronically, or easily able to be scanned in color shall be filed and served in color. Requirements for color covers or fastening of documents shall not apply to documents filed or served by email.

(4) The Commission understands that persons' computers and internet service may display times that vary by several minutes, and have different technological capabilities. Persons filing and serving documents by email should communicate with each other to ensure that the documents can be received and read. The Commission will apply the rules in this chapter in the interest of promoting full participation in an appeal, resolving the appeal in an expeditious manner, and to promote justice in disputes concerning email filing and service such as whether a document was timely filed; timely served; should have been filed or served by email; whether and when the document was received; and whether the document was sent in a readable format. In resolving disputes over electronic service, the Commission will consider whether persons

made good faith efforts to communicate about electronic mail service and whether persons attempted to resolve the dispute without involving the Commission.

350-70-047. Who May Appeal.

(1) The applicant, any person who submitted a timely written comment on a land use application, or any person entitled under 350-70-240 may appeal the final decision of an application.

(2) Notwithstanding subsection (1) above, any person may participate in the appeal as provided in this division.

350-70-050. Notice of Appeal.

(1) Filing: A person wishing to appeal a decision by the Director shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. A Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Appellant shall serve a copy of the Notice of Appeal on all persons identified in the Notice as required by subsection (3)(g) of this rule on or before the date the Notice of Appeal is required to be filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in Exhibit 1 and shall contain:

- (a) A caption, which specifies the title of the appeal as “In the matter of an appeal of Development Review Decision No. [FILE NUMBER] by [APPELLANT’S NAME].”
- (b) Adjacent to the caption, the heading “Notice of Appeal”;
- (c) The full title of the decision to be reviewed as it appears on the final decision;
- (d) The date the decision to be reviewed became final;
- (e) A concise description of the appellant’s reasons for appealing the decision including citations to the findings of fact, conclusions of law and conditions of approval in the decision and to provisions of the land use ordinance, sufficient to permit a person to understand the issues the appellant is raising to the Commission;
- (f) A brief “ADR Statement” stating whether the appellant is willing to attempt to settle the case through negotiation with the Executive Director and other interested persons, or through alternative dispute resolution (including but not limited to mediation), and specifying the potentially

interested persons (if applicable). This statement shall not be used to argue the merits of the appeal.

- (g) The name, address, email address, and telephone number of each of the following:
 - (A) The Appellant, except that if an attorney represents the appellant, then the attorney's name, address, email address, and telephone number shall be substituted for that of the appellant.
 - (B) The applicant, if other than the appellant. If the applicant is represented by an attorney, then the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;
 - (C) Any other person to whom written notice of the land use decision was mailed as shown on the Executive Director's records. The telephone number and email address may be omitted for any such person.
- (h) A statement advising that all persons may give testimony at the hearing on the appeal; however, if a person wishes to receive a copy of the record and/or participate in the proceedings prior to the hearing, then that person must file and serve a Notice of Intervention pursuant to 350-70-170. The applicant is an automatic party to the appeal and need not file a notice of intervention.
- (i) A statement that the Commission will set the date, time, and place for a hearing on the appeal and provide notice of the hearing approximately 20 days prior to the date of the hearing.
- (j) A statement that written comments on the appeal will be accepted by the Commission until the close of the public hearing, but that persons are encouraged to submit written comments within 60 days from the date of the Notice of Appeal.
- (k) A statement informing all persons whether the party filing the Notice of Appeal opts out of email service, and a statement informing persons that service of documents may be by email unless a person expressly opts out of receiving documents by email.
- (l) Proof of service upon all persons required to be named in the Notice.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the true cost to the Commission of handling the appeal.

350-70-060. Special Review Process.

(1) In any development review decision by the Executive Director where the applicant contends the result eliminates all beneficial use of the property, the applicant must request special review as follows:

- (a) Make the request in writing.
- (b) Set out the pertinent portions of the ordinance that apply;
- (c) Describe how the ordinance impacts the use of the property;
- (d) Attach copies of any documents (maps, deeds, easements, etc.) that are relevant; and
- (e) Explain why the requested use must be allowed to provide economic or beneficial use of the property.
- (f) The request for special review shall be served, concurrently with the Notice of Appeal, on the Executive Director and all persons entitled to service of the Notice of Appeal. If a person who was not served with a copy of the request for special review intervenes, then the applicant shall, as soon as possible, serve a copy of the request for special review on the intervenor.
- (g) An intervenor shall have the opportunity to specifically respond to the request and any response shall be filed and served within 14 days after the applicant serves the request for special review on the intervenor.

(2) The Director, on receipt of a request for special review and intervenors' responses (if any), shall take the following steps:

- (a) Evaluate the request for special review and intervenors' responses.
- (b) Take one of the following steps:
 - (1) Where appropriate, recommend options for use of the property that are consistent with the ordinance, or
 - (2) Where the Director finds that enforcement of the land use ordinance will deprive the landowner of all economic or beneficial use of the property, the Director shall recommend the Commission allow a use for the property. The economic or beneficial use recommended shall be the use that on balance best protects the affected resources. This section applies:

- (A) if the Forest Service or the federal government does not provide just compensation for a Special Management Area designation it made; or
 - (B) for a General Management Area designation made by the Gorge Commission.
 - (c) Include proposed findings of fact in the recommendation. This shall be completed within 30 days after the last due date for the filing of an intervenor's response; and
 - (d) Specify the factual and/or legal principles relied on in support of the recommendations.
- (3) The Executive Director shall serve the recommendation on the request for special review on the applicant and all intervenors.
- (4) The filing of a request for special review shall toll all subsequent time periods specified in these rules, except for intervention specified in 350-70-170. The time periods, beginning with the filing of the record pursuant to 350-70-070 shall begin to run on the date that the Executive Director serves the recommendation on the request for special review.
- (5) The recommendation on a request for special review shall not be construed as an approval or denial of any land use. The applicant may continue the appeal or may submit a new land use application for the recommended land use(s).

350-70-070. Record.

- (1) Contents of Record: The record shall include the following:
- (a) The final decision including findings of fact and conclusions of law;
 - (b) All evidence, exhibits, maps, documents or other written materials included in the Executive Director's land use application file; photos, maps, and exhibits that were prepared by or presented to the Executive Director in color shall be provided to the Commission in color in the original or certified copy of the record and all duplicate copies of the record;
 - (c) Minutes of any meetings conducted by the Executive Director as required by law.
 - (d) All documents relating to an applicant's request for special review, including the applicant's request, the Executive Director's recommendation, and all documents relied on by the Executive Director in making the recommendation.

- (e) The Executive Director may retain any audiotape recording, large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The Executive Director shall make these items reasonably available for inspection and duplication by any person during the pendency of the appeal, and shall specify in its filing of the record the procedure for reviewing for these items.

(2) Preparation and Service of Record: Within 30 days after the Notice of Appeal is filed, the Executive Director shall prepare and serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents which are difficult to duplicate, on the appellant and intervenors. The Commission may serve the record to persons in an electronic form to persons not opting out of email service.

(3) Specifications of Record:

- (a) The record shall:
 - (A) Include a cover bearing the title of the case as it appears in the Notice;
 - (B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins and listing each audiotape recording, large map or other exhibit or document retained by the Executive Director;
 - (C) Be securely fastened;
 - (D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;
 - (E) Be arranged in inverse chronological order, with the most recent item on top.

(4) The Commission may charge persons the cost of duplicating and serving paper copies of the record consistent with the Commission's public records rule, 350-12.

350-70-080. Objections to the Record.

(1) Before filing an objection to the record, a person shall attempt to resolve the matter with the Executive Director.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the person filing the objection. The person filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the Executive Director and attempted to resolve the objection. Objections may be made on the following grounds:

- (a) The record does not include all materials in the Executive Director's land use application file. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.
- (b) The record contains material not included in the Executive Director's land use application file. The item(s) not included shall be specified, as well as the basis for the claim that the item(s) are not part of the record. A document that is excluded from the record under this subsection may still be submitted to the Commission as otherwise provided in this division.
- (c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceedings. An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the Executive Director to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is an audiotape recording, a transcript of the relevant portion shall be submitted.

(3) The Chair of the Commission may conduct a telephone conference to consider and resolve any objections to the record.

(4) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order settling the record and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of the letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits. A letter or an order of the Chair settling the record is not appealable to the full Commission.

350-70-085. Alternative Dispute Resolution and Settlement.

The Commission recognizes: that many of the matters that come before the Commission on appeal may be resolved through alternative dispute resolution (ADR), such as mediation; that ADR may be a faster and less expensive process than appeal pursuant to these rules and beyond to the states' courts; that agreements reached through ADR may be more lasting and acceptable than a decision on the merits by the Commission or the states' courts; and, that ADR is a voluntary process.

(1) If, after reviewing the ADR statements and evaluating the matter itself, the Executive Director believes that ADR may be successful in resolving or partially resolving the matter, then it shall initiate ADR. This subsection shall not be construed to mean that participation in settlement or ADR is mandatory.

(2) Upon motion by any person or her own motion the Chair of the Commission shall place the appeal in abeyance or shall grant all necessary extensions of time to facilitate resolution through settlement or ADR. Should settlement or ADR be unsuccessful, the Chair of the Commission shall reinstate the matter or reset the applicable time periods.

(3) Any oral discussion, written documents, or other record produced exclusively for the purpose of settlement or ADR, whether or not pursuant to this section, shall be confidential and not part of the record on appeal to the Gorge Commission, nor part of the Gorge Commission's record to any reviewing court.

(4) The Commission shall not consider, as a basis for any decision pursuant to this division, a person's decision to not participate in settlement or ADR, or knowledge that the matter was not resolved through settlement or ADR.

(5) Settlement

(A) If a settlement changes the proposed development or any conditions of approval, the Executive Director shall provide notice of the changes to all persons entitled to receive notice of the original application. If the changes are substantial, then the Executive Director shall conduct a complete review of the changes in the same manner as if the settlement was a new land use application.

(B) When an appeal, or any issue in an appeal, is settled, the Commission shall not be required to review the settlement as a condition of the settlement. The Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

(C) Upon settlement of a case, the appellant shall dismiss the appeal in accordance with 350-70-225.

350-70-090. Appellant's Brief.

(1) Filing and Service of Brief: The appellant shall file at the Commission office and serve an Appellant's Brief within 30 days after the date the record is filed or settled if a party files an objection to the record. The Brief shall also be served on intervenors. Failure by the Appellant to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the Gorge Commission.

(2) Specifications of Brief: The Brief shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If an Appellant's Brief exceeding the 50 page limit is filed without permission, the Chair of

the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed and served within three (3) days of notification.

- (c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of the appellant and all intervenors. If any of the above is represented by an attorney, the name, address and telephone number of the attorney shall be substituted.
 - (d) If there is more than one appellant, the cover page shall specify the appellant(s) that are filing the Brief.
 - (e) Be typewritten, in 14-point type in a regularly used font such as Times New Roman, Helvetica, or Calibri, and double spaced;
 - (f) Be signed on the last page by the author. An electronic brief may contain an electronic signature or other generally accepted substitute.
- (3) Contents of Brief: The Appellant's Brief shall:
- (a) Present a clear and concise statement of the case, in the following order, with separate section headings:
 - (A) The relief sought by the appellant;
 - (B) A summary of the arguments;
 - (C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found, or other documents that the appellant intends to introduce at the hearing.
 - (b) Set forth each issue under a separate heading. Where several issues present essentially the same legal questions, the argument in support of those issues shall be combined;
 - (c) Contain, each as separate appendices, copies of all management plan provisions, comprehensive plan provisions, and all local state, regional, and federal laws cited in the brief, unless the provision is quoted verbatim in the Brief.
 - (d) Contain, each as separate appendices, copies of any documents and evidence, not contained in the record, that are referred to in the Brief.

350-70-110. Response and Reply Briefs.

Response and reply briefs shall not be filed.

350-70-120. Motions, Generally and Procedural Orders.

For the purpose of this section only, the term “party” shall refer to the appellant and any intervenor.

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

(2) A motion shall be filed at the Commission office by mail, email, or personal delivery.

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responses. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

(7) The Chair of the Commission may provide the parties with a copy of an order on a motion by electronic mail to parties that have not opted out of email service.

350-70-130. Notice of Hearing.

(1) The Commission shall send a notice of hearing in accordance with Commission Rule 350-16-009, and shall also include in the Notice of Hearing the due date and procedure for submitting written comments on the appeal, and the procedure that will be used for the hearing.

(2) The Commission shall provide the Notice of Hearing by first class mail to the appellant, all intervenors, and the applicant (if different from the appellant) at least 20 days prior to the hearing. The Commission shall publish notice of the hearing on or before the date the Notice of Hearing is mailed.

350-70-140. Hearing.

(1) The hearing before the Commission shall be "de novo" but shall include the record submitted by the Executive Director.

(2) Conduct of hearing:

(a) The hearing shall be conducted in the following order:

(A) The Executive Director shall briefly summarize the decision on appeal and any recommendation if different from the decision on appeal;

(B) The appellant shall present its evidence including that of any witnesses;

(C) Any person supporting the appellant shall present his or her testimony and evidence in support of the appellant;

(D) Any person opposing the appellant shall present his or her testimony and evidence opposing the appellant;

(E) Any person who wishes to offer evidence or testify but neither supports nor opposes the appellant shall present his or her testimony.

(F) The Executive Director may respond to the testimony and evidence presented raised by the testimony and evidence presented by the written and oral testimony, including exhibits.

(G) The appellant shall be allowed to present rebuttal evidence limited to the specific issues raised by the testimony and evidence presented by the written and oral testimony, including exhibits, and the Executive Director;

(H) The applicant, if different than the appellant and if an intervenor, shall be allowed to present rebuttal evidence limited to the specific issues raised by the testimony and evidence presented by the written and oral testimony, including exhibits, and the Executive Director.

(b) The appellant and members of the Gorge Commission may ask questions orally of the persons testifying. Any other person who desires to ask a question shall submit that question in writing to the Chair of the Commission, who shall ask the question on behalf of the person. The Chair of the Commission may choose not to ask any question that is repetitious, unduly prejudicial, or unrelated to the testimony and issues

raised in the appeal. The Chair of the Commission may also limit the number of questions, including from members of the Commission and the appellant to ensure hearings proceed on schedule with the Commission's agenda.

- (c) Any member of the Commission may question any person testifying, including witnesses;
 - (d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;
 - (e) The Commission may continue a hearing, may leave open the record for submission of additional evidence necessary to address issues raised at the hearing, and may set time limits for any hearing, including time limits for oral presentations;
 - (f) Exhibits shall be marked to identify the person offering the exhibits. The Appellant shall mark his or her exhibits as "Appellant's Exhibit [n]." All other participants shall mark their exhibits as "[PARTICIPANT'S NAME's] Exhibit [n]." The exhibits shall be preserved by the Commission as part of the record.
- (3) Evidentiary Rules:
- (a) Evidence of a type commonly relied upon by a reasonably prudent person in conduct of their serious affairs shall be admissible.
 - (b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
 - (c) All evidence not objected to, shall be received by the Commission, subject to the Commission's power to exclude irrelevant, immaterial or unduly repetitious matter.
 - (d) Evidence objected to may be received by the Commission. The Chair of the Commission shall rule on all offers of evidence, including objections to testimony. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

350-70-150. Depositions.

On petition of any person, the Chair of the Commission may order testimony of any witness to be taken by deposition in the same manner prescribed for depositions in civil actions. Depositions may also be taken by the use of audio or audio visual recordings. The petition for deposition shall set forth:

- (1) The name and address of the witness whose testimony is desired;

- (2) A showing of relevance and materiality of the testimony;
- (3) A request for an order that the testimony of the witness be taken.

350-70-160. Subpoenas.

The Chair of the Commission shall issue subpoenas to any person upon written request and upon a showing that the witness or the documents to be subpoenaed will provide relevant evidence generally not available without subpoena. Subpoenas may also be issued under the signature of the attorney of record for a person. Witnesses appearing pursuant to subpoena, other than the appellant, any person providing written or oral testimony, or employees of the Commission, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The person requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

350-70-170. Intervention.

(1) Any person may intervene in an appeal proceeding before the Commission. Status as an intervenor shall be recognized upon filing a Notice of Intervention.

(2) Notice of Intervention: In the interests of promoting timely resolution of appeals, a Notice of Intervention shall be filed at the Commission office within 14 days after the Notice of Appeal is filed pursuant to 350-70-050. The Notice of Intervention (exhibit 2) shall:

- (a) State whether the person supports or opposes the appellant, or whether the person neither supports nor opposes the appellant;
- (b) Include a brief statement of the reasons for filing the motion for intervention, including citations to the decision and land use ordinance, if different than the reasons set forth in the Notice of Appeal.
- (c) Include a brief "Intervenor's ADR Statement" stating whether the intervenor is willing to attempt to participate in resolving the case through negotiation or alternative dispute resolution, such as mediation. This statement shall not be used to argue merits of the appeal.
- (d) Be served on the appellant and all other persons who have filed a Notice of Intervention.
- (e) If applicable, a statement opting out of email service (note that a person must affirmatively opt out of email service).

(3) A person who files a Notice of Intervention shall be entitled to receive a copy of all matters that are filed with the Commission.

(4) Intervenor's Brief:

- (a) An intervenor who supports the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-70-090, except that the Brief shall be entitled, "Intervenor [NAME]'s Brief in Support of Appellant."
- (b) An intervenor who opposes the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-70-090, except that the Brief shall be entitled, "Intervenor [NAME]'s Brief Opposing Appellant", and shall have a red cover.

350-70-190. Consolidation.

The Commission, at the request of any person or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s).

350-70-200. Extensions of Time.

- (1) In no event shall the time limit for the filing of the Notice of Appeal be extended.
- (2) All other time limits may be extended upon written consent of the appellant and participants, the Commission's motion, or the motion of the appellant or a participant.
- (3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.
- (4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by the appellant and all intervenors, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the appellant and all intervenors.
- (5) Any other motion for extension of time that is stipulated to by the appellant and all intervenors shall be presumed granted for a period of 14 days, or until the Chair issues an order, whichever is earlier. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

350-70-210. Stays.

- (1) Only an appellant or intervenor who would have standing to appeal a land use decision may file a motion for a stay. The movant may file a Notice of Intervention concurrently with the motion for a stay. A motion for a stay of a land use decision shall include:
 - (a) A statement setting forth the movant's right to standing to appeal the decision;

- (b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;
- (c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;
- (d) A suggested expedited briefing schedule;
- (e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(3) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon the motion presented. Documents may be attached to the motion in the form of affidavits, maps or other materials, or presented at a hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-70-140.

350-70-220. Final Order of Commission.

- (1) A Final Order of the Commission shall:
 - (a) Contain the caption of the appeal and state “Final Opinion and Order”;
 - (b) Acknowledge the record and other documents that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.
 - (c) Address the Special Review under Rule 350-60-090, where applicable.
 - (d) Contain findings of fact and conclusions of law or incorporates them from the record below.
 - (e) Indicate the Commission’s decision;
 - (f) Contain the date of the final order; and
 - (g) Be signed by the Chair of the Commission.
- (2) The order shall be served on all parties.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

350-70-225. Dismissal by the Commission.

(1) Voluntary dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant filed or expressed orally to the Commission prior to an oral decision. The dismissal shall be considered with prejudice and shall be effective on the date it is filed or expressed orally to the Commission.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal when it appears to the Chair that the Appellant has failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The Appellant and intervenors shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

(3) The Chair of the Commission shall issue and serve on the Appellant and intervenors an order of dismissal, which shall be an appealable action of the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the Appellant and intervenors have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

350-70-230. Reversal or Remand of Land Use Decisions.

(1) The Chair of the Commission may grant a stipulated motion for a voluntary remand of a land use decision, or may order a remand upon motion by the Executive Director upon finding that all of the following criteria are met.

- (a) The Executive Director shall either rescind the land use decision that is the subject of the appeal or provide that any new or modified land use decision shall supercede the remanded decision;
- (b) The Executive Director shall not be required to issue a subsequent land use decision, but if he or she does, then he or she shall agree to address all of the issues raised in the appeal in that subsequent land use decision.
- (c) The Executive Director shall follow all applicable notice and review procedures in modifying the remanded decision or issuing a new land use decision.
- (d) An oral decision of the Commission has not been rendered in the matter.

350-70-240. Special Rules for Filing of Appeal After Expiration of Appeal Period.

(1) This section is intended to prevent manifest injustice that would result by the Executive Director's failure to comply with all procedural requirements such that an interested person was unable to meaningfully participate in a land use decision process. This section shall not be used to redress problems that may be redressed through an enforcement action, whether or not any enforcement action is actually undertaken.

(2) If the Executive Director approves a development that is materially different from the proposal described in the notice of development to such a degree that a reasonable person could not have understood the notice of development to describe the Executive Director's final actions, then an adversely affected person may file an appeal of the decision within 30 days of actual notice of the decision.

(3) If the development constructed is materially different from the development allowed in the Executive Director's decision to such a degree that a reasonable person could not have understood the decision to allow the actual development constructed, then an adversely affected person may file an appeal within 30 days after actual notice of the material difference, or within 30 days after the person reasonably should have known about the material difference, whichever is sooner.

(4) If the Executive Director fails to provide notice of the proposed development or a copy of the final decision to a person who is legally entitled to the notice or decision, or has requested to receive the notice or decision, then that person may file an appeal within 30 days after actual notice of the approved development.

(5) In no event shall the time for appeal exceed the time period that the Executive Director's decision is valid.

(6) A person intending to file an appeal pursuant to this section shall first attempt to resolve that person's concern with the Executive Director. The Executive Director shall give due consideration to the concerns raised and shall not rely solely on whether the concerns were timely raised. The Executive Director may choose to address that person's concerns administratively.

(7) If the Executive Director does not agree to address the person's concerns administratively within 25 days, then the person may file the appeal directly with the Commission. In addition to the requirements for the Notice of Appeal specified in 350-70-050, the appellant shall state the relevant facts and argument to establish standing to maintain the appeal.

EXHIBIT 1
(350-70-050)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

In the matter of an appeal of Development)
Review Decision No. [FILE NUMBER]) NOTICE OF APPEAL
By Jane Clark)
_____)

I.

Notice is hereby given that Jane Clark appeals Development Review Decision No. [INDICATE NUMBER OF LAND USE DECISION], which became final on [INDICATE DATE] and which involves [SET FORTH A BRIEF STATEMENT OF THE NATURE OF THE DECISION]

The reasons for this appeal are: [SET FORTH THE REASONS FOR FILING THE APPEAL, INCLUDING CITATIONS TO THE DECISION AND LAND USE ORDINANCE].

ADR STATEMENT: [SET FORTH A BRIEF STATEMENT INDICATING WHETHER YOU ARE WILLING TO ATTEMPT TO RESOLVE THE APPEAL THROUGH MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION].

EMAIL SERVICE: [STATE WHETHER YOU OPT OUT OF EMAIL SERVICE. IF YOU ARE NOT WILLING TO RECEIVE DOCUMENTS ELECTRONICALLY, YOU MUST OPT OUT. IF YOU DO NOT OPT OUT, THEN YOU WILL RECEIVE DOCUMENTS RELATING TO THE APPEAL BY EMAIL TO THE EMAIL ADDRESS YOU PROVIDE]

II.

Appellant, Jane Clark, has as her contact information: [INDICATE MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER].

[If applicable] Appellant, Jane Clark, is represented by: [INDICATE NAME, MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY].

Applicant, John Developer, has as his contact information: [INDICATE MAILING, ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER].

[If applicable] Applicant, John Developer, was represented in the proceeding below by: [INDICATE NAME, MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY].

III.

Other persons mailed written notice of the land use decision by Executive Director, as indicated by its records in this matter, include: [INDICATE NAME, MAILING ADDRESS, EMAIL ADDRESS (IF KNOWN), AND TELEPHONE NUMBER (IF KNOWN) OF ALL PERSONS WHOM THE EXECUTIVE DIRECTOR'S RECORDS INDICATE WERE MAILED WRITTEN NOTICE OF THE LAND USE DECISION.

NOTICES:

Anyone designated in paragraph III of this Notice who desires to receive a copy of the record and participate in all matters prior to the hearing, must file with the Commission a Motion to Intervene in this proceeding as required by Commission Rule 350-70-170. Filing a motion to intervene is not a prerequisite to giving written or oral testimony in this appeal.

The Commission will set the date for hearing and provide notice of the hearing approximately 20 days prior to the date of the hearing.

Written comments on the appeal will be accepted by the Commission until the close of the public hearing, but that persons are encouraged to submit written comments within 60 days from the date of the Notice of Appeal.

Dated: _____

Petitioner (each petitioner must sign)

or

Attorney for Petitioner(s)

[Add Certificate of Service. See form in Exhibit 3.]

EXHIBIT 2
(350-70-170)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

In the matter of an appeal of Development)
Review Decision No. [FILE NUMBER]) JOHN SMITH'S
By Jane Clark) NOTICE OF INTERVENTION
_____)

I.

John Smith gives notice that he intervenes in favor of the appellant or in opposition to the appellant [INDICATE WHICH] in the above-captioned appeal. Mr. Smith's (or his attorney's) address and phone number is as follows: [INDICATE MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER].

[IF THE REASONS FOR INTERVENING DIFFER FROM THE REASONS FOR THE APPEAL AS SET FORTH IN THE NOTICE OF APPEAL, THEN STATE THE REASONS, INCLUDING CITATIONS TO THE DECISION AND LAND USE ORDINANCE].

ADR STATEMENT: [SET FORTH A BRIEF STATEMENT INDICATING WHETHER YOU ARE WILLING TO ATTEMPT TO RESOLVE THE APPEAL THROUGH MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION].

EMAIL SERVICE: [STATE WHETHER YOU OPT OUT OF EMAIL SERVICE. IF YOU ARE NOT WILLING TO RECEIVE DOCUMENTS ELECTRONICALLY, YOU MUST OPT OUT. IF YOU DO NOT OPT OUT, THEN YOU WILL RECEIVE DOCUMENTS RELATING TO THE APPEAL BY EMAIL TO THE EMAIL ADDRESS YOU PROVIDE].

Dated: _____

or

John Smith

Barbara Neil, Attorney for
John Smith

[Add Certificate of Service. See forms in Exhibit 3.]

EXHIBIT 3

CERTIFICATE OF SERVICE

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this [IDENTIFY DOCUMENT] by first class mail, personal delivery, or email [INDICATE WHICH] on the following persons: [LIST NAME AND ADDRESS OF THE APPELLANT (OR THE APPELLANT'S ATTORNEY), THE APPLICANT OR THE APPLICANT'S ATTORNEY, AND EACH INTERVENOR OR THE INTERVENOR'S ATTORNEY].

John Appellant (or Attorney)
123 Main Street
City, State, Zip
Email:

John Intervenor (or Attorney)
124 Main Street
City, State, Zip
Email:

Dated: _____

Signature