

Repealer

350-11-001, 350-11-002, 350-11-004, 350-11-005, 350-11-006, 350-11-007, 350-11-008, 350-11-009, 350-11-011, 350-12-001, 350-12-002, 350-12-003, 350-12-004, 350-12-005, 350-12-006, 350-12-007, 350-12-008, 350-12-009, 350-14-001, 350-14-002, 350-14-003, 350-14-004, 350-14-005, 350-14-006, 350-14-007, 350-16-001, 350-16-002, 350-16-003, 350-16-004, 350-16-005, 350-16-006, 350-16-007, 350-16-008, 350-16-009, 350-16-011, 350-16-012, 350-16-013, 350-16-014, 350-16-015, 350-16-016, 350-16-017, 350-16-018, 350-16-019, 350-16-021, 350-16-022, 350-16-024, 350-16-025

Amendatory Section

350-011-0010. Smoking in public meetings prohibited Definitions for Division 11 of the Gorge Commission's Rules

- (1) ~~No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice indicates the meeting is to commence regardless of the time it actually commences.~~ "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) ~~As used in this section, "smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. "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.

New Section

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.

New Section

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) 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 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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

350-011-0080. Meetings by Means of Telephone, Electronic, or 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.

New Section

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.

New Section

350-011-0100. Regular Meeting 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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

350-012-0060. Response to Public Record Requests

(1) The Gorge Commission will respond to a request for public records within five business days by:

- (a) Providing the records if the records are of a nature permitting copying, or a reasonable opportunity to inspect or copy the record;
- (b) Providing an internet address and link to the records on the Gorge Commission's website; except that if the requester notifies the Gorge Commission that they cannot access the records through the internet, then the Gorge Commission must provide copies of the record or allow the requester to view copies using an agency computer;

- (c) Acknowledging that the Gorge Commission has received the request and providing a reasonable estimate of the time the Gorge Commission will require to respond to the request;
 - (d) Acknowledging that the Gorge Commission has received the request, asking the requestor to provide clarification for a request that is unclear, and providing to the greatest extent possible, a reasonable estimate of the time the Gorge Commission will require to respond to the request once clarified. If the requestor fails to clarify the request within ten business days, the Gorge Commission need not respond to it and will close the request; or
 - (e) Denying the public record request.
- (2) The Gorge Commission may, in its sole discretion, propose a search and disclosure plan specifying search terms, record locations, form of the records, clarifications to the initial request, and other material information. The Gorge Commission will share 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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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) When a public official gives notice of an actual or potential conflict of interest, the Gorge Commission shall record the actual or potential conflict in the official records of the Gorge Commission.
- (3) 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.
- (4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.

New Section

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.

Amendatory Section

350-016-0010. ~~Presiding officer - disqualification, substitution.~~ Application of Division; General Provisions

- ~~(1) — Any party may petition for the disqualification 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.~~
- ~~(2) — The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.~~
- ~~(3) — If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the commission.~~
- (1) Application of this division
 - (a) The rulemaking provisions of this division apply when the Gorge Commission enacts administrative rules as required by 16 U.S.C. § 544c(b) and other administrative rules that establish mandatory procedures and standards and interpretations of the National Scenic Area Act.
 - (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 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
 - (a) The Gorge Commission may delegate authority to enter a final order in a contested case proceeding or class of contested case proceedings to the Executive Director or other employee of the Gorge Commission. A delegation of authority under this section must be made in writing before the issuance of any order pursuant to the delegation and must be retained in the Gorge Commission's record. A rule authorizing the Executive Director or other employee of the Gorge Commission to issue an order constitutes a delegation of authority pursuant to this subsection.
 - (b) References in this division to the Gorge Commission, a member of the Gorge Commission, or presiding officer include the Executive Director or other employee of the Gorge Commission as specified in a delegation.
 - (c) The Gorge Commission shall not delegate authority to adopt, amend, or repeal a rule.
- (4) Representation by an attorney and attorney appearances in contested case proceedings.
 - (a) In a contested case, an individual may appear before the Gorge Commission on their own behalf or may be represented by an attorney. A corporation or other organization shall be represented by an attorney.
 - (b) The following attorneys may represent an individual, corporation, or other organization and appear before the Gorge Commission regardless of whether the Gorge Commission convenes a matter in Oregon or Washington:
 - (A) Members of the Oregon State Bar;
 - (B) Members of the Washington State Bar Association;

- (C) Attorneys employed by and representing the federal government (including Assistant U.S. Attorneys and U.S. Forest Service Office of General Counsel attorneys) even if not a member of the Oregon State Bar or Washington State Bar Association; and
- (D) An attorney who has already appeared pro hac vice on a related matter arising out of the same set of facts, upon filing with the Gorge Commission a copy of the court's order granting pro hac vice in the related matter. Appearance before the Gorge Commission pro hac vice on a matter before the Gorge Commission does not grant pro hac vice status to an attorney to appear before a court on judicial review of a Gorge Commission final order.

Amendatory Section

350-016-0020. ~~Commission record of contested case.~~ Definitions for Division 16 of the Gorge Commission's Rules

- ~~(1) — The commission shall maintain an official record of each contested case.~~
- ~~(2) — The commission record shall include:~~
 - ~~(a) — Notices of proceedings;~~
 - ~~(b) — Any prehearing order;~~
 - ~~(c) — Any motions, pleadings, briefs, petitions, requests and intermediate rulings;~~
 - ~~(d) — Evidence received or considered;~~
 - ~~(e) — A statement of any matters officially noticed;~~
 - ~~(f) — Proffers of proof and objections and rulings thereon;~~
 - ~~(g) — Proposed findings, requested orders and exceptions;~~
 - ~~(h) — The recording prepared for the commission at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;~~
 - ~~(i) — Any final order, initial order or order on reconsideration;~~
 - ~~(j) — Staff memoranda or data submitted to the commission; and~~
 - ~~(k) — Matters placed on the record after an ex parte communication.~~
- (1) “Gorge Commission” means the Columbia River Gorge Commission or any officer or delegated person authorized by the Gorge Commission as the context may suggest.
- (2) “Contested case” means:
 - (a) A proceeding before the Gorge 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 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.
- (3) “Individual with a disability” means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.
- (4) “License” includes the whole or part of any Gorge Commission permit, certificate, approval, registration, or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.
- (5) “Non-English speaking” person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings.
- (6) “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) “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 or 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.

- (8) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the Gorge Commission.
- (9) "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:
 - (a) Unless a hearing is required by statute, internal management directives, regulations, or statements which do not substantially affect the interests of the public:
 - (A) Between agencies, or their officers or their employees; or
 - (B) Within the Gorge 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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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).

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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.

New Section

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 a unalterable decision or statement about the merits of a quasi-judicial matter prior to hearing all evidence and argument.

(iii) The members of the Gorge Commission must base their decisions on evidence and law and must not evidence a personal bias or personal prejudice signifying an attitude for or against a party. Ideological or policy leanings of a member of the Gorge Commission are distinguishable from partiality.

(b) No member of the Gorge Commission may be disqualified by the appearance of fairness doctrine for conducting their official duty as defined in division 14 of the Gorge Commission's rules with any constituent on any matter other than a quasi-judicial action then pending before the Gorge Commission.

(c) No legislative action taken by the Gorge Commission shall be invalidated by an application of the appearance of fairness doctrine.

(d) Participation by a member of the Gorge Commission in earlier proceedings that result in an advisory recommendation to the Gorge Commission shall

not disqualify that person from participating in any subsequent quasi-judicial proceeding.

- (e) Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of the Gorge Commission from participating in a decision must raise the challenge with specific evidence and not speculation as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision.

New Section

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.

New Section

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.