Columbia River Gorge Commission

Chapter 350
Division 016

Administrative Procedure

As Amended through September 1, 2026

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General Provisions

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

(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.

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

(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.

Rulemaking

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.

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.

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.

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.

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*).

Contested Cases

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.

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 property 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.

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.

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.

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.

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.

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.

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.

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.

Judicial Review of Rule or Order

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.