

# COLUMBIA RIVER GORGE COMMISSION

## Chapter 350 Division 60

### Appeals From County Ordinances

As Amended Through August 1, 2003

#### **350-60-000. Purpose.**

The purpose of this division is to define the process and standards used by the Columbia River Gorge Commission in hearing appeals from decisions relating to the implementation of the Columbia River Gorge National Scenic Area Act ("National Scenic Act" or "Act"). The rule applies to appeals from decisions under a county ordinance consistent with the Act.

#### **350-60-010. Authority.**

The National Scenic Act authorizes appeals to the Gorge Commission by a person or entity adversely affected by a final action or order of a county.

#### **350-60-020. Scope.**

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

#### **350-60-030. Application.**

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

#### **350-60-040. Definitions.**

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

- (1) "Applicant" means the person who requested that the governing body take an action which resulted in a land use decision.
- (2) "Commission" means the Columbia River Gorge Commission.
- (3) "Counties" means Multnomah, Hood River and Wasco counties, Oregon; and Clark, Skamania and Klickitat counties, Washington.

- (4) "Days" means calendar days.
- (5) "File" means to deliver to Commission offices by personal delivery or by mail. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, or the date that it is mailed.
- (a) A motion filed with the consent of all parties may be filed by fax. When a motion is filed by fax, the original shall be mailed or delivered in person to the Commission offices on the same day or on the next business day. A motion filed by fax shall be considered filed on the date it is faxed if the fax is received at Commission office by 5:00 p.m.
- (b) Any document filed with the Commission shall include a certification that the document was served on all parties on the same or earlier date and in the same manner that the document was filed.
- (6) "Final decision": A decision is final when it is reduced to writing and bears the necessary signatures of the governing body decisionmaker(s).
- (7) "Governing body" means a county governing body.
- (8) "Land use decision" means a final decision by the governing body of a county in the National Scenic Area based on the National Scenic Act.
- (9) "Notice" means the Notice of Appeal and refers to the document that must be filed with the Commission in order to begin an appeal.
- (10) "Party" means the appellant, the governing body, or any intervenor.
- (11) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.
- (12) "Serve" or "Service" means to send with the United States Postal Service by first class mail or to deliver in person, a copy of the original to all parties, including intervenors and persons who have a pending motion to intervene before the Commission.
- (a) Only motions that are filed by fax may be served by fax. If a motion is served by fax, then it shall also be served by mailing or delivering a copy of the original to all parties on the same or next day.
- (b) All documents served on the other parties shall include a certification that the document was served on the same or earlier date that the document was filed. Service shall occur on all parties in the same manner, but need not occur in the manner which the original document was filed (Exhibit 4).

**350-60-042. Delegation of Authority to the Chair of the Commission**

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

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission.

**350-60-045. Time**

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

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

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

**350-60-050. Notice of Appeal.**

(1) Filing: Except as provided in 350-60-240 below, an appellant shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. Except as provided in 350-60-240 below, a Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Notice of Appeal on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(h) of this rule on or before the date the Notice of Appeal is filed.

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

- (a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as appellant(s), and the name of the governing body, identifying the governing body as respondent;
- (b) Adjacent to the caption the heading “Notice of Appeal”;
- (c) The full title of the decision to be reviewed as it appears on the final decision;
- (d) The date the decision to be reviewed became final;
- (e) A concise description of the decision to be reviewed;
- (f) A brief “ADR Statement” stating whether the appellant is willing to attempt to resolve the case through alternative dispute resolution (“ADR”), including but not limited to mediation. This statement shall not be used to argue the merits of the appeal.
- (g) A statement whether the appellant is willing to consider a shortened record in accordance with 350-60-060(f).
- (h) The name, address and telephone number of each of the following:
  - (A) The Appellant. If the appellant is not represented by an attorney, the appellant’s name, address and telephone number shall be included. If an attorney represents the appellant, the attorney’s name, address and telephone number shall be substituted for that of the appellant.
  - (B) The governing body and the governing body’s legal counsel;
  - (C) The applicant, if any (and if other than the appellant). If an applicant was represented by an attorney before the governing body, the applicant’s address and telephone number may be omitted and the name, address and telephone number of the applicant’s attorney shall be included;
  - (D) Any other person to whom written notice of the land use decision was mailed as shown on the governing body’s records. The telephone number may be omitted for any such person.
- (i) A statement advising all persons other than the governing body, that in order to participate in the review proceeding a person must file at the Commission office and serve a motion to intervene pursuant to 350-60-160.
- (j) A statement advising all persons other than the governing body, that in order to present oral argument at the hearing before the Commission, a person must intervene and file a brief pursuant to 350-60-120(1).

- (k) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.
- (4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the average cost to the Commission of handling appeals under this rule.

**350-60-055. Respondent's ADR Statement**

Within 10 days after filing of a Notice of Appeal, the governing body shall file at the Commission office and serve a "Respondent's ADR Statement" stating whether the respondent is willing to attempt to resolve the case through alternative dispute resolution means. This statement shall not be used to argue merits of the appeal.

**350-60-060. Record.**

- (1) Contents of Record: The record on appeal from a governing body shall include the following:
  - (a) The final decision including findings of fact and conclusions of law;
  - (b) All testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the governing body's proceeding.
  - (c) Photos, maps, and exhibits that were presented to the governing body in color shall be provided to the Commission in color in the original or certified copy of the record;
  - (d) Minutes of the meetings conducted by the governing body as required by law. A verbatim transcript of audiotape recordings shall not be required, but if a transcript has been prepared, it shall be included.
  - (e) The governing body may retain the audiotape recording, any large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The governing body shall make these items reasonably available for inspection and duplication by the parties during the pendency of the appeal, and shall specify in its filing of the record the available times and procedure for reviewing for these items.
  - (f) The Gorge Commission encourages parties to stipulate to a shortened record.
    - (A) A shortened record may eliminate duplicates of documents, letters that do not include substantive information, documents related to issues that are not being appealed, or other documents that the parties do not believe are

necessary for the Gorge Commission to decide the issues raised in the appeal.

- (B) Notwithstanding subsection (2)(A) above, a shortened record shall include the documents referred to in subsections (1)(a) and (d) above, and any document submitted in a shortened record shall comply with subsection (1)(c) and (e) above.
- (C) A shortened record may be submitted only as agreed upon by all parties. The record shall contain any document that one or more parties desires to include in the record.
- (D) Any party that desires to refer to a document that was eliminated by agreement of the parties in a shortened record may at any time file at the Commission office and serve a motion to supplement the record with that document, and shall include the document as part of its motion. A motion to supplement the record under this section shall comply with 350-60-130.
- (E) The shortened record shall be considered the complete record before the Gorge Commission for the purpose of any judicial review of the Gorge Commission's decision.

(2) Filing of Record: The governing body shall within 30 days after service of the Notice on the governing body, file at the Commission office, the original or a certified copy, and two copies of the record of the proceeding under review.

(3) Service of Record: Contemporaneously with filing the record at the Commission office, the governing body shall serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents which are difficult to duplicate, on the appellant and all other parties, including intervenors. If intervention is granted after the record is filed and served, then the governing body shall serve a copy of record as soon as possible after intervention is granted.

(4) Specifications of Record:

(a) The record shall:

- (A) Include a cover bearing the title of the case as it appears in the Notice, and the Commission's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the governing body;
- (B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2), and listing each audiotape recording, large map or other exhibit or document retained by the governing body;

- (C) Be securely fastened;
  - (D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;
  - (E) Be arranged in inverse chronological order, with the most recent item on top.
  - (F) Indicate whether it is a shortened record. The governing body is not required to indicate documents that were excluded by stipulation of all parties to produce the shortened record.
- (b) A record which does not conform to the preceding requirements shall not be accepted by the Commission.

**350-60-070. Objections to the Record.**

(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body.

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

- (a) The record does not include all materials included as part of the record during the proceedings before the governing body. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.
- (b) The record contains material not included as part of the record during the proceedings before the governing body. The item(s) not included as part of the record during the proceedings before the governing body shall be specified, as well as the basis for the claim that the item(s) are not part of the record.
- (c) The minutes do not accurately reflect the proceedings, or the transcripts of the meetings or hearings are incomplete.

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the governing body to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is in an audiotape recording, a transcript of the relevant portion shall be submitted.

(4) The Chair of the Commission may conduct a telephone conference with the parties to consider any objections to the record.

(5) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of the Chair's letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits.

### **350-60-075. Alternative Dispute Resolution and Settlement**

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

(1) The Executive Director of the Commission shall review the parties' ADR statements as soon as practicable.

(2) If, after reviewing the parties' ADR statements, the Executive Director believes that ADR may be successful in resolving or partially resolving the matter, then the Director shall send a letter to the parties and offer assistance to the parties to obtain information about ADR or to identify possible ADR neutrals, specifically the states' and other government-funded dispute resolution programs, community mediation programs, or other qualified neutrals; however, the Commission shall not be required to pay the cost of ADR. This subsection shall not be construed to prevent the parties from requesting the Commission's assistance to resolve the matter through settlement or ADR at any time, or to limit the Commission's authority to recommend to the parties that they attempt to resolve the matter through ADR.

(3) Upon motion, the Chair of the Commission shall place the appeal in abeyance or shall grant all necessary extensions of time to facilitate the parties' attempts to resolve the matter through settlement or ADR. Should settlement or ADR be unsuccessful, any party may file a motion to reinstate the matter and reset the applicable time periods.

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

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

(6) Settlement

- (A) If a settlement changes the proposed development or any conditions of approval, the governing body shall provide notice of the changes to all persons entitled to receive notice of the original application. If the changes are substantial, then the governing body shall conduct a complete review of the changes in the same manner as if the settlement was a new land use application.
- (B) When an appeal, or any issue in an appeal, is settled by the parties, the Commission shall not be required to review the settlement as a condition of the settlement. The Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.
- (C) Upon settlement of a case, the appellant shall dismiss the appeal in accordance with 350-60-205.

**350-60-080. Appellant's Brief.**

(1) Filing and Service of Brief: The Appellant's Brief shall be filed at the Commission office and served no later than 30 days after the record is filed, or settled if a party files an objection to the record. Failure to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal.

- (2) Specifications of Brief: The Appellant's Brief shall
  - (a) Begin with a table of contents;
  - (b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If a brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed and served within three (3) days of notification.
  - (c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. An intervenor shall be designated as either appellant or respondent.
  - (d) If there is more than one appellant, the cover page shall specify the appellant(s) filing the brief.
  - (e) Be typewritten, in 12-point pica type, and double spaced;
  - (f) Be signed on the last page by the author.

- (3) Contents of Brief: The Appellant's Brief shall
  - (a) State the facts that establish appellant's standing;
  - (b) Present a clear and concise statement of the case, in the following order, with separate section headings:
    - (A) The nature of the land use decision and the relief sought by the appellant;
    - (B) A summary of the arguments appearing under the assignments of error in the body of the brief;
    - (C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found.
  - (c) State why the challenged decision is a land use decision subject to the Commission's jurisdiction;
  - (d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;
  - (e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law;
  - (f) Contain a copy of any management plan provisions, comprehensive plan provision, ordinance or other provision of local law cited in the brief, unless the provision is quoted verbatim in the brief.
- (4) Copies of example Appellant's briefs are available at the Commission office for parties to review for form.

**350-60-090. Special Review.**

- (1) Where the appellant contends the land use decision eliminates all economic or beneficial use of the property, the appellant must meet the requirements for the Appellant's Brief in Rule 350-60-080 and the requirements for Special Review as follows:
  - (a) Set out the pertinent portions of the ordinance that apply;
  - (b) Describe how the ordinance impacts the use of the property;
  - (c) Attach copies of any documents (maps, deeds, easements, etc.) that are relevant; and

(d) Explain why the requested use must be allowed to provide economic or beneficial use of the property.

(2) All other parties shall have the opportunity to specifically respond to the appellant's submittal under this section in their briefs and the Executive Director or his or her designee shall also respond.

(3) The Commission, in its "Final Opinion and Order", shall

(a) Address the subject of economic or beneficial use in its findings of fact and conclusions.

(b) Specify the factual and/or legal principles relied on in support of the decision.

(c) Where appropriate, propose options for use for the property owner, or other options available to the appellant consistent with the ordinance.

(d) Where the Commission finds that enforcement of the land use ordinance will deprive the landowner of all economic or beneficial use of the property, the Commission shall remand the matter to the county for the county to allow a use as provided for by the order of the Commission. The economic or beneficial use allowed shall be the use that on balance best protects the affected resources. This section applies:

(A) if the Forest Service or the federal government does not provide just compensation for a Special Management Area designation it made; or

(B) for a General Management Area designation made by the Gorge Commission.

**350-60-100. Respondent's Brief.**

(1) Filing and Service of Brief: The Respondent shall file at the Commission office and serve a Respondent's brief no later than 20 days after the date the Appellant's Brief is filed.

(2) Specifications of Brief: The Respondent's brief shall conform to the specifications of the Appellant's Brief, except that the brief shall have a red cover. If there is more than one respondent, the cover page shall specify which respondent is filing the brief.

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the Appellant's Brief. The respondent shall specifically accept the appellant's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The statement shall be in narrative form with citations to the pages of the record where support for the facts alleged can be found.

- (b) The Respondent shall accept or challenge the appellant's statement of the Commission's jurisdiction and the appellant's statement of standing. The basis for any challenge shall be stated. If the respondent contends that the facts alleged by the appellant in support of standing are not true, the respondent shall specify which allegations are contested.

**350-60-110. Reply Brief.**

A reply brief may not be filed.

**350-60-120. Oral Argument.**

(1) The hearing before the Commission shall be on the record submitted by the county, as long as the county has based its decision upon a record made at an adjudicative hearing open to participation by persons adversely affected or aggrieved. Only parties who have submitted briefs shall be allowed to present oral argument to the Commission.

(2) If the county did not base its decision upon a record made in an adjudicated hearing open to participation by persons adversely affected or aggrieved, then anyone adversely affected or aggrieved may participate in a hearing before the Commission.

(3) If a party waives the right to present oral argument, the Commission shall consider the case based on that party's brief and the brief and oral arguments presented by other parties. The parties may, with consent of the Commission, stipulate to submit a case to the Commission on briefs without oral argument.

(4) The Commission shall inform the parties of the time and place of oral argument. Unless the Commission otherwise orders, the procedure for oral argument shall be as follows:

- (a) Members of the Commission shall have an opportunity to ask questions that they wish the parties to address in their oral arguments.
- (b) The appellant(s) shall be allowed 20 minutes for oral argument, which may be divided between the initial presentation and rebuttal, and which shall be uninterrupted by questions asked by members of the Commission. Multiple appellants shall share the twenty minutes for argument.
- (c) The respondent(s) shall be allowed 20 minutes to respond, which shall be uninterrupted by questions asked by members of the Commission. Multiple respondents shall share the twenty minutes for argument.
- (d) After the parties uninterrupted arguments, members of the Commission may ask brief questions of the parties concerning the facts of the case, the arguments made, and applicable law. Appellant(s) and respondent(s) shall each have 2 minutes to answer each question, except that the Chair may allow a longer time provided that both sides are afforded the same time to answer the question.

Multiple petitioners or respondents shall share the allotted time to answer a question.

(5) The Commission shall tape record all arguments, but any party may also arrange at its own expense to record the argument in the same or other manner.

(6) The governing body shall ensure that all audiotape recordings, large maps, or exhibits and documents, which were not included in the duplicated record pursuant to 350-60-060(1)(d), are present at the oral argument, even if the governing body chooses not to participate in oral argument. All other parties are encouraged to remind the governing body of this requirement. The governing body shall transmit such items to the Commission at the beginning of the hearing. The Commission shall have broad authority to redress a governing body's failure to transmit such items, including but not limited to, postponing the hearing, exclusion of the item from the record before the Commission, or judicial notice of the contents of the record.

(7) The Commission may consult with its staff and counsel regarding facts, legal analysis, issues and matters in the appeal. The Commission may allow, but shall not be required to allow the parties to respond to the staff and counsel's statements to the Commission.

(8) The Commission's rules concerning ex parte contact and appearance of fairness, Commission Rules 350-16-016 and 350-16-017 shall apply.

(9) The Commission shall send a Notice of Hearing in accordance with Commission Rule 350-16, which shall also include a summary of the requirements and procedures for oral argument in this section.

**350-60-130. Motions, Generally and Procedural Orders.**

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

(2) A motion shall be filed at the Commission office by mail or personal delivery, except that motions to which all parties consent may be filed by fax as provided in 350-60-040.

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

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

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions.

The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

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

**350-60-150. Evidentiary Hearings.**

(1) Grounds for Hearing: The Commission may, upon written motion, conduct an evidentiary hearing in the case of disputed allegations in the parties' briefs concerning standing, ex parte contacts or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. An evidentiary hearing may also be held upon motion or at the direction of the Commission to consider disputes regarding the content of the record or requests for stays.

(2) Motions for Hearings: A motion for an evidentiary hearing shall be filed at the Commission office and served on all parties at least 60 days in advance of oral argument, or less upon a demonstration of good cause. The motion shall contain a statement explaining with particularity what facts the moving party will present at the hearing and how those facts will affect the outcome of the review proceeding. Whenever possible such facts shall be presented by affidavit with the motion.

(3) Conduct of hearing:

(a) Insofar as the Commission finds it practical, the hearing shall be conducted in the following order:

(A) The moving party shall present its evidence including that of any witnesses;

(B) The other party(ies) shall have the opportunity to present evidence disputing that of the moving party;

(C) The moving party shall present rebuttal evidence;

(b) Any witness is subject to cross examination by opposing parties;

(c) Any member of the Commission may question any witness;

(d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

(e) The Commission may continue a hearing, and may set time limits for any hearing;

(f) Exhibits shall be marked to identify the party offering the exhibits. The exhibits shall be preserved by the Commission as part of the record.

(4) Evidentiary Rules:

- (a) Evidence of a type commonly relied upon reasonably prudent person in conduct of their serious affairs shall be admissible.
- (b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- (c) All evidence not objected to, shall be received by the Commission, subject to the Commission's power to exclude irrelevant, immaterial or unduly repetitious matter.
- (d) Evidence objected to may be received by the Commission. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

(5) Prehearing Conference: The Commission, on its own motion or at the request of any party, may call a prehearing conference to consider:

- (a) Simplification of the issues;
- (b) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
- (c) Limitation of the number of witnesses;
- (d) The form and substance of any prehearing order;
- (e) Such other matters as may aid in the disposition of the appeal.

(6) Proposed Prehearing Order: The Commission with or without a prehearing conference, may require that the parties prepare and sign a proposed prehearing order to be filed with the Commission on or before a date specified by the Commission. The order shall contain:

- (a) A statement of contentions of law of each party;
- (b) A concise statement of all contentions of fact to be proved by each party;
- (c) A statement of all agreed facts;
- (d) A list of witnesses and a summary of their testimony;
- (e) A list of exhibits and a statement of the contents of each;
- (f) Such other matters as the Commission may require in order to expedite the hearing and appeal.

(7) Effect on Time Limits: The filing of a motion for evidentiary hearing shall suspend the time limits for all other events in the review proceedings, including the issuance of the Commission's final order. If the Commission grants an evidentiary hearing, the time limits for other events shall remain suspended until the close of the hearing. Unless the parties agree otherwise, the Commission shall schedule any evidentiary hearing after the order granting the motion for evidentiary hearing is issued. If the Commission denies a motion for an evidentiary hearing, the time for all other events will begin to run on the date the Commission issues its order denying the motion, or on such other date as is specified in that order.

(8) Depositions: On petition of any party at least 14 days before an evidentiary hearing, the Commission may order testimony of any witness to be taken by deposition in the same manner prescribed for depositions in civil actions. Depositions may also be taken by the use of audio or audio visual recordings. The petition for deposition shall set forth:

- (a) The name and address of the witness whose testimony is desired;
- (b) A showing of relevance and materiality of the testimony;
- (c) A request for an order that the testimony of the witness be taken.

(9) Subpoenas: If the Commission orders an evidentiary hearing, the Commission shall issue subpoenas to any party to the appeal upon written request and upon a showing that the witness or the documents to be subpoenaed will provide relevant evidence. Subpoenas may also be issued under the signature of the attorney of record of a party. Witnesses appearing pursuant to subpoena, other than parties or employees of the Commission, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

**350-60-160. Intervention.**

(1) Standing to Intervene: The applicant and any person who appeared before the county may intervene in a review proceeding before the Commission. An intervenor shall be entitled to receipt of all matters requiring service upon the parties beginning on the date the motion to intervene is filed, regardless of whether an objection is filed.

(2) If the county review process is not open to persons adversely affected or aggrieved, any person adversely affected or aggrieved may intervene in a review proceeding before the Commission.

(3) Motion to Intervene: In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed at the Commission office and served within 14 days after the Notice of Appeal is filed pursuant to 350-60-050. The motion to intervene (exhibit 3) shall:

- (a) State whether the party is intervening on the side of the appellant or the respondent;

- (b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits, citations to the record or other proof;
- (c) Include a brief “Intervenor’s ADR Statement” stating whether the proposed intervenor is willing to attempt to resolve the case through alternative dispute resolution means. This statement shall not be used to argue merits of the appeal;
- (d) Include a brief statement about whether the proposed intervenor is willing to consider a shortened record in accordance with 350-60-060(f); and
- (4) Objections to a motion to intervene shall be filed and served within 7 days of the motion.
- (5) The intervenor shall be entitled to participate in developing the record, including shortening the record and filing objections to the record.
- (6) The Chair of the Commission may conduct a telephone conference with the parties to consider an objection to a motion to intervene.
- (7) The Chair of the Commission shall issue a written decision on the motion to intervene, which shall be served on all the parties. The Chair of the Commission shall not consider the ADR statement for the purpose of deciding whether to grant the motion to intervene.
- (8) Intervenor’s Brief:
  - (a) If intervention is sought as an appellant, the brief shall be filed and served within the time limit for filing the Appellant’s Brief, and shall satisfy the requirements for the Appellant’s Brief in 350-60-080.
  - (b) If intervention is sought as a respondent, the brief shall be filed and served within the time for filing a respondent’s brief and shall satisfy the requirements for a respondent’s brief in 350-60-100.

**350-60-170. Amicus Participation.**

(1) A person or organization may appear as amicus only by permission of the Commission on written motion. The motion shall set forth the specific interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding.

(2) Appearance as amicus shall be by brief only, unless the Commission specifically requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal and shall be filed and served within the time required for filing respondent’s brief. An amicus brief shall be submitted at the time the respondent’s brief is due unless a later date is authorized by the Chair of the Commission. No filing fee is required. An amicus brief shall have a green cover.

**350-60-180. Consolidation.**

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

**350-60-190. Extensions of Time.**

- (1) In no event shall the time limit for the filing of the Notice of Appeal be extended.
- (2) All other time limits may be extended upon written consent of all parties, the Commission's motion or motion of a party.
- (3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.
- (4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by all parties, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the parties.
- (5) Any other motion for extension of time that is stipulated to by all parties shall be presumed granted for a period of 14 days. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.
- (6) Any motion for extension of time that is stipulated to by all parties may be filed and served by fax.
- (7) Any motion for extension of time that is not stipulated to by all parties shall be treated as a contested motion pursuant to 350-60-130 above.

**350-60-200. Stays.**

- (1) A motion for a stay of a land use decision shall include:
  - (a) A statement setting forth movant's right to standing to appeal the decision;
  - (b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;
  - (c) A statement of facts and reasons for issuing a stay, demonstrating a claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;
  - (d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) A copy of a motion for stay shall be served on the governing body and the applicant for the land use decision, on the same day the motion is filed with the Commission.

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

(4) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon evidence presented. Evidence may be attached to the motion in the form of affidavits, documents or other materials, or presented at an evidentiary hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-60-150.

**350-60-205. Dismissal by the Commission.**

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

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal upon or without motion by any other party when it appears to the Chair that the Appellant and all intervenors on the side of the Appellant have failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust to the responding parties. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The parties shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

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

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

**350-60-210. Final Order of Commission.**

(1) An Order of the Commission shall:

(a) Have a cover page that contains the caption of the appeal and states "Final Opinion and Order";

- (b) Specify the items of the record that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.
- (c) Address the Special Review under Rule 350-60-090, where applicable.
- (d) Indicate whether the decision being reviewed is dismissed, affirmed, reversed or remanded;
- (e) Contain the date of the final order;
- (f) Contain a statement of the right to appeal the Commission's Order in the following or substantially similar form, "NOTICE: You are entitled to judicial review of this order within 60 days of the date of this order, pursuant to section 15(b)(4) of the Scenic Area Act, P.L. 99-663."; and
- (g) Be signed by the Chair of the Commission, or his/her delegate.

(2) The final order shall be served on all parties. The parties are not afforded an opportunity to comment on the order before it is made final by the Commission.

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

(4) No dissenting opinions by members of the Commission are allowed.

(5) For the purpose of calculating the time for judicial review of the Commission's order, the date of the order shall be the date the order is served on the parties even if that date is later than the date that the order is signed.

**350-60-220. Reversal or Remand of Land Use Decisions.**

(1) The Commission shall reverse or remand a land use decision for further proceedings when:

- (a) The governing body exceeded its jurisdiction;
- (b) The decision is unconstitutional;
- (c) The decision violates a provision of applicable law and is prohibited as a matter of law; or
- (d) The decision was clearly erroneous or arbitrary and capricious.
- (e) The findings are insufficient to support the decision;

- (f) The decision is not supported by substantial evidence in the whole record;
- (g) The decision is flawed by procedural errors that prejudice the substantial rights of the appellant(s);
- (h) The decision improperly construes the applicable law; or
- (i) A remand is required pursuant to 350-60-090(3)(d).

(2) The Chair of the Commission may grant a stipulated motion for a voluntary remand of a land use decision, or may order a remand upon motion by the governing body upon finding that all of the following criteria are met. When the Chair orders a remand pursuant to this section, it shall remand back to the last local decision maker that issued the appealed decision.

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

**350-60-230. Reconsideration.**

- (1) Reconsideration is only permitted as follows:
  - (a) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested and serving it on the Gorge Commission and all parties to the appeal.
    - (A) No petition for reconsideration may stay the effectiveness of an order.
    - (B) If a petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within thirty days from the date the petition is filed, the agency does not either:
      - (i) Dispose of the petition; or

- (ii) Serve the parties with a written notice specifying the date by which it will act on the petition.
- (b) Any party to the appeal may file a response within ten days of service of the petition.
- (c) The following factors must be present for reconsideration:
  - (A) An error has been made in the decision; and,
  - (B) New information is now available concerning the error which through due diligence could not have been acquired earlier.
- (d) Unless the petition for reconsideration is deemed denied under subsection (a) above, the petition shall be disposed of by the Commissioners who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further consideration without oral argument. Granting the petition for reconsideration shall require approval of two-thirds of the Commissioners who made the original decision. Once granted, subsequent dissolution or modification of the original decision/order requires a majority of the Commissioners who made the original decision.
- (e) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (b) of this section is not subject to judicial review.

**350-60-240. Special Rules for Filing of Appeal After Expiration of Appeal Period.**

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

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

(3) If the development constructed is materially different from the development allowed in the local government's decision to such a degree that a reasonable person could not have understood the decision to allow the actual development constructed, then an adversely affected person may file an appeal within 30 days after actual notice of the material difference,

or within 30 days after the person reasonably should have known about the material difference, whichever is sooner.

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

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

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

(7) If the local government does not allow the appeal to be filed with the local government within 25 days, then the person may file the appeal directly with the Commission. In addition to the requirements for the Notice of Appeal specified in 350-60-050, the appellant shall file a motion for an evidentiary hearing pursuant to 350-60-150 to establish standing to maintain the appeal.

EXHIBIT 1

(350-60-050)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

Jane Clark,	)	
	)	CRGC No.
<u>Appellant,</u>	)	
	)	NOTICE OF APPEAL
vs.	)	
	)	
Tahoma County,	)	
	)	
Respondent.	)	

I.

Notice is hereby given that [NAME OF APPELLANT(S)] appeals that land use decision of respondent entitled [INDICATE TITLE OF LAND USE DECISION], which became final on [INDICATE DATE] and which involves [SET FORTH A BRIEF STATEMENT OF THE NATURE OF THE DECISION]

ADR STATEMENT: [INDICATE WHETHER YOU ARE WILLING TO ATTEMPT TO SETTLE THE CASE THROUGH MEDIATION OR OTHER MEANS].

SHORTENED RECORD: [STATE WHETHER YOU ARE WILLING TO CONSIDER A SHORTENED RECORD AS ALLOWED BY 350-60-060(f)].

II.

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

Respondent, Tahoma County, has as its mailing address and telephone number: [INDICATE MAILING ADDRESS AND TELEPHONE NUMBER] and has, as its legal counsel: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER].

III.

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

Other persons mailed written notice of the land use decision by Tahoma County, as indicated by its records in this matter, include: [INDICATE NAMES, ADDRESSES AND TELEPHONE NUMBER OF ALL PERSONS WHOM THE GOVERNING BODY'S RECORDS INDICATE WERE MAILED WRITTEN NOTICE OF THE LAND USE DECISION. THE TELEPHONE NUMBERS OF SUCH PERSONS MAY BE OMITTED].

NOTICE:

Anyone designated in paragraph III of this Notice who desires to participate as a party in this case before the Columbia River Gorge Commission must file with the Commission a Motion to Intervene in this proceeding within 14 days of the date of this Notice, as required by CR 350-60-160. Anyone that desires to present oral argument to the Commission must intervene and file a brief as required by CR 350-60-120(1).

\_\_\_\_\_  
Appellant (each appellant must sign)

or

\_\_\_\_\_  
Attorney for Appellant(s)

[Add Certificate of Service. See form in Exhibit 4.]

EXHIBIT 2  
(350-60-060)

TABLE OF CONTENTS  
OF RECORD

<u>ITEM</u>	<u>PAGE</u>
1. Certified cover sheet for County record of PC file Nos. 7517 PA: Application of QFC Inc. for a permit for a subdivision .....	1
2. Record of County action on appeal of QFC Inc. from Hearings Officer's decision denying QFC Inc. proposal.....	2
3. Record of County action on proposed findings to grant appeal of QFC Inc. and approved QFC proposal .....	3
4. Letter from a County to QFC Inc. transmitting a form letter mailed to parties of interest concerning the QFC Inc. application and transmitting a copy of a notice published in the Oregonian on Sunday, June 7 and Wednesday, June 11, 1986 .....	4
5. Notice of final decision on QFC Inc. appeal and notice published in the Oregonian on Sunday, June 7, 1986 and Wednesday, June 11, 1986 .....	5
6. Form letter from County to interested parties, dated June 6, 1986, transmitting a copy of permit No. 158347, and a list of persons to whom form letter was mailed. ....	6
7. Letter from County to Oregon Department of Transportation dated June 5, 1986, transmitting a copy of Permit No. 158573 .....	13
8. Letter from County to QFC Inc., dated June 5, 1986, transmitting a copy of Permit No. 158573 .....	14
9. Letter from County to QFC Inc. dated June 5, 1986, transmitting a copy of Permit No. 158573 .....	15
10. Permit No. 158573, adopted on June 4, 1986.....	16

EXHIBIT 3

(350-60-160)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

Jane Clark,	)	
	)	CRGC No.
Appellant,	)	
	)	MOTION TO INTERVENE
vs.	)	
	)	
Tahoma County,	)	
	)	
Respondent.	)	

I.

John Smith moves to intervene on the side of (a) Appellant or (b) Respondent [INDICATE WHICH] in the above-captioned appeal.

Mr. Smith's (or his attorney's) address and phone number are as follows: [INDICATE ADDRESS AND PHONE NUMBER].

ADR STATEMENT: [INDICATE WHETHER YOU ARE WILLING TO ATTEMPT TO SETTLE THE CASE THROUGH MEDIATION OR OTHER MEANS.

SHORTENED RECORD: [STATE WHETHER YOU ARE WILLING TO CONSIDER A SHORTENED RECORD AS ALLOWED BY 350-60-060(f)].

II.

The facts establishing movant's right to intervene are as follows: [SET FORTH STATEMENT OF FACTS].

III. [OPTIONAL]

In support of this motion, John Smith relies on the attached affidavit, Memorandum of Law or both.

\_\_\_\_\_  
Date

\_\_\_\_\_  
John Smith  
or

\_\_\_\_\_  
Barbara Neil, Attorney for  
John Smith

[Add Certificate of Service. See form in Exhibit 4.]

EXHIBIT 4

CERTIFICATE OF SERVICE

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature