



## MEMORANDUM

**TO:** Columbia River Gorge Commission

**FROM:** Jeff Litwak, Legal Counsel

**DATE:** December 14, 2021

**SUBJECT:** **Action Item:** Draft Revisions to Bylaws

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### **Action Requested:**

Discuss the draft revisions to your bylaws and take public comment. You may adopt the draft revisions at this meeting if you believe they are ready for adoption or have only minor changes to the revisions. If you would like to make significant changes to these draft revisions, you should give direction to the staff and staff will bring a new draft to the Commission at a future Commission meeting.

### **Background:**

At your November 9, 2021, Commission meeting, you discussed whether to always include the most recent past chair of the Commission as a member of the Executive Committee. Your intent was to create continuity and to share that commissioner's experience with the new officers. Although you did not direct staff to prepare a draft revision to your bylaws, I did so in case you want to act on this suggestion before your new Chair and Vice-chair begin their terms on January 1, 2022. Remember, the Chair appoints members to the Executive Committee, so you would be creating a new limit on your new Chair's discretion to appoint committee members. Page 3 of the attached draft revised bylaws shows my suggested text.

### **Suggested Text:**

My suggested text contains two qualifiers. First, I suggest that you specify six months for the most recent past chair to serve on the Executive Committee to balance the benefits of continuity and experience with giving the new Chair an opportunity to share the experience of being on the Executive Committee with other commissioners. The new Chair, may, of course, keep the most recent past chair on the Executive Committee for as long as they would like.

Second, I suggest that you specify the most recent past chair must not have resigned and the Commission did not remove the most recent past chair to avoid a situation where the majority of the members of the Commission do not want the most recent past chair to serve in any further leadership role. The new Chair, of course, may choose to appoint the most recent past chair who resigned or was removed to the Executive Committee with the consent of the Commission as provided in Article V of your bylaws.

In addition to specifying a role for the most recent past chair, I suggest two clean-up changes to your bylaws.

- on page 3, in Art. III, Sec. 3, I recommend removing the phrase “appointed or elected by the Commission.” The bylaws provide only for elected officers, so the term “appointed” is confusing and the remainder of that phrase is unnecessary.
- on page 7, in Art. IX, Sec. 2, I recommend changing the phrase “as required by applicable law” to “in accordance with regulations of the Commission.” The latter is the phrase you use in Section 1 of that article and is more consistent with the National Scenic Area Act, which requires the Commission adopt regulations relating to open public records.

**COLUMBIA RIVER GORGE COMMISSION  
Bylaws**

**As Amended Through \_\_\_\_\_**

**Article I.     **The Commission****

Section 1.     The business and property of the Columbia River Gorge Commission shall be managed by the currently appointed members of the Commission (referred to as “Commissioner” or “Commissioners” in these bylaws).

Section 2.     Commissioners shall be appointed pursuant to the Columbia River Gorge National Scenic Area Act, Pub. L. No. 99-663, § 5, 100 Stat 4274, 4277 (1986), Chapter 499, Washington Laws 1987 and Chapter 14, Oregon Laws 1987, as the same may be hereafter amended. These authorities do not authorize appointment of alternate Commissioners.

Section 3.     The Executive Director shall maintain a roster of Commissioners.

Section 4.     Commissioners shall be appointed, may be removed, and may continue to serve after expiration of their appointed term in accordance with law, policy, or practice of their appointing entity.

**Article II.     **Meetings of the Commission****

Section 1.     The Commission shall meet in accordance with the open meetings regulations adopted by the Commission and as specified below.

Section 2.     A majority of the currently appointed Commissioners shall constitute a quorum for the transaction of business. The representative of the Secretary of Agriculture shall be counted in determining whether a quorum exists for a meeting.

Section 3.     Proxy attendance is not allowed. Only appointed Commissioners may transact the business of the Commission, except that the representative of the Secretary of Agriculture may designate a representative to attend meetings of the Commission in their absence.

Section 4.     Meetings of the Commission, both regular and special, may be held at the Commission office, or at any other place within the Columbia River Gorge National Scenic Area or by telephone or video conference. The Commission shall strive to meet in person at least once each year in each county and may meet outside the National Scenic Area where there is no practical meeting location within the National Scenic Area in a county. The Commission may meet outside of the six counties when the Commission is invited to meet jointly with another government.

Section 5. Special meetings may be called at any time by the Chair or by the Vice-chair in the Chair's absence, or by a majority of Commissioners. The representative of the Secretary of Agriculture is counted in determining a majority for calling a special meeting. Persons authorized by this paragraph to call special meetings of the Commission may fix any reasonable time and place for such meetings in accordance with the open meetings regulations adopted by the Commission. In emergency situations, meetings shall be called in accordance with emergency provisions of the open meetings regulations adopted by the Commission.

Section 6. Whenever any notice is required to be given to any Commissioner, a waiver thereof, acknowledged by signature or electronic communication, shall be deemed the equivalent of giving of notice. Attendance at a meeting shall also constitute a waiver of notice of such meeting except where a Commissioner attends for the stated purpose of objecting to the transaction of business because the meeting is improperly called or convened.

Section 7. Each Commissioner, with the exception of the representative of the Secretary of Agriculture, shall have one vote on matters coming before the Commission. Voting shall be by Commissioner in person, or by telephone or electronic meeting pursuant to the open meetings regulations adopted by the Commission. All matters coming before the Commission shall be decided by a simple majority vote of a quorum of currently appointed Commissioners, except for matters requiring a special majority pursuant to Pub. L. No. 99-663. In the event of a tie, the proposal fails, and the Commission may, but shall not be required to, deliberate to a majority, or continue the matter to a future meeting. Vote by proxy is not allowed.

Section 8. In accordance with Chapter 499, Washington Laws 1987 and Chapter 14, Oregon Laws 1987, each Commissioner is eligible to receive compensation or per diem and expenses for each day during which the Commissioner attends an official meeting of the Commission or performs statutorily prescribed duties approved by the Chair. Per diem and expenses of the Commissioners shall be paid in accordance with applicable state law.

Section 9. Commissioners shall exercise interest in the agenda through requesting items for consideration for the agenda, which shall be communicated to the Executive Director or Commission Chair. Such items shall be reasonably scheduled for the earliest appropriate regular Commission meeting. Emergency or urgent requests shall be considered for the next regular Commission meeting whenever possible, or if not possible, then by special or emergency meeting.

### **Article III. Officers**

Section 1. The officers of the Commission shall be a Chair and Vice-chair and others as may be deemed necessary.

Section 2. The Chair and Vice-chair and any officers as may be deemed necessary shall be elected by the Commission by a majority vote of Commissioners appointed from each state. The terms of such officers, unless terminated earlier, shall expire on December 31 of each year, but if necessary, shall be extended automatically until the next regular or special meeting at which officer elections are held. In the event a new Chair or Vice-chair is not elected, the Commission may hold elections over to the next regular meeting or a special meeting, or continue balloting as many times as necessary to obtain the required majority for a single candidate. Nominations for officer positions do not require a “second.” The Commission shall take all nominations for each officer position and vote on all nominations for each officer position at the same time (this procedure modifies Roberts Rules of Order, which requires voting on each nomination individually in the order in which the nominations were made).

Section 3. Officers of the Commission shall serve no more than two consecutive terms in each position; however, the Commission may suspend this limit when voting for officers of the Commission. Any officer may be removed by a majority vote of the members appointed from each state.

Section 4. Duties of Officers.

a. Chair: The Chair shall: preside at all Commission meetings; appoint chairs and other members of committees and task forces subject to the advice and consent of the Commission; have the authority between meetings of the Commission to refer to the proper committee or Executive Director any matter needing attention; sign contracts or other instruments that the Commission has authorized to be executed, except when the signing and execution thereof have been expressly required by law to be otherwise signed or executed by some other officer in some other manner; and perform other duties specified in the Commission’s rules, these bylaws, or as deemed proper and desirable by the Commission by express or reasonably implied delegation. In carrying out these duties, the Chair shall communicate with the Executive Director and members of the Commission.

b. Vice-chair: In the absence of the Chair, the Vice-chair shall perform the duties of the Chair. When so acting, the Vice-chair shall have all the powers and be subject to all the restrictions applicable to the Chair. The Vice-chair shall perform such other duties from time to time as may be assigned by the Chair or Commission. The Chair or Vice-chair shall be an ex-officio members of all committees and task forces, unless specifically appointed to serve on a committee, or if the number of the members of the committee, including the Chair or Vice-chair, would constitute a majority of the currently-appointed Commissioners.

c. Immediate past-chair: The most recent past chair shall be a member of the Executive Committee for the first six months after leaving the Chair position, provided the most recent past chair did not resign and the Commission did not remove the most recent past-chair.

d. During the temporary absence of the Chair and Vice-chair, the most recent past Chair shall perform the duties of the Chair. In the absence of the most recent past Chair, the Commission may select a temporary Chair to preside at meetings and carry out the other duties of the Chair. In the absence of a temporary Chair, the Commission's Counsel or Executive Director may request any Commissioner to act on motions and orders for quasi-judicial actions or other matters that require immediate attention. No Commissioner is authorized to assert for themselves the role of temporary Chair.

#### Section 5. Executive Director

a. There shall be an Executive Director. That individual shall have general executive control of management and operations within the budget and work plans established by the Commission. In the execution of these policies and duties, the Executive Director shall report to the Chair and all other Commissioners.

b. The Executive Director shall: (1) have direction of events and projects related to management and operations; (2) in accordance with the Commission's personnel policies, retain employees of the Commission or discharge them, direct their work, and fix compensation and other terms of employment for such employees, except that the Executive Director shall consult with the Commission prior to personnel decisions that would have a significant budget impact, such as creating a new position; (3) have charge of all files and records and shall direct the publicity and general correspondence; (4) report to the Commission about the activities of the Commission and make recommendations; (5) sign contracts or other instruments related to management, operations and such other documents as may be delegated by the Commission; (6) make decisions concerning the initiation, handling, and conclusion of litigation involving the Commission, provided that the Executive Director shall report to the Commission prior to initiating or concluding litigation, or report at the next meeting if prior reporting would not be feasible; and (7) perform all the duties incidental as may be assigned by the Commission or reasonably implied as executive control and operations of the Commission.

c. The Executive Director shall prepare proper minutes of all Commission meetings and transmit the minutes to Commission members. The minutes shall record attendance and all motions, the names of those proposing the motions and the resulting votes. The Executive Director shall maintain copies of all Commission meeting minutes in perpetuity.

d. The Executive Director may appoint a member of the Commission's staff to fulfill necessary duties of the Executive Director when the Executive Director takes authorized leave. If the Executive Director position is vacant, the Chair, with the advice of the Commission, may appoint a member of the Commission's staff to act as Executive Director for a specified length of time or may assume some of the responsibilities of the Executive Director.

#### **Article IV. Commissioners**

Section 1. Each Commissioner is expected to actively participate in the business of the Commission. Commissioners shall communicate with the Executive Director to request staff assistance for carrying out the business of the Commission. This requirement is intended to facilitate Commissioners and staff working in concert to accomplish the business of the Commission.

Section 2. Each Commissioner is expected to actively participate in and attend the meetings of the Commission. If unable to attend a meeting, a Commissioner shall contact the Chair or Executive Director to notify of their inability to attend. Notice of inability to attend shall be given no less than 24 hours in advance of the meeting unless circumstances dictate otherwise. The Chair or the Executive Director at the direction of the Chair may report a Commissioner's repeated absences to that Commissioner's appointing authority.

Section 3. The Commission shall defend and indemnify Commissioners to the fullest extent allowed by law for claims arising from the conduct of the Commission's business. The Commission may seek reimbursement for its costs of defense and indemnification if a Commissioner has knowingly engaged in unlawful action.

Section 4. The representative of the Secretary of Agriculture may participate in all discussions and deliberations of the Commission unless prohibited by Commission rules.

Section 5. Commissioners are expected to act in accordance with the Commission's Code of Conduct, which is attached to these bylaws for reference.

#### **Article V. Internal Committees**

Section 1. The Chair of the Commission, subject to ratification by the Commission at the next Commission meeting, may establish one or more committees. Committees shall have only the authority to study and make recommendations with respect to the subject matter assigned to them, and to report to the Commission unless otherwise directed by the Commission.

Section 2. Committees may meet at such times and with such frequency as the members in their sole discretion may deem desirable or necessary. All committee meetings must be called by the committee chair and notice of such meetings shall be given in accordance with the open meeting regulations adopted by the Commission. All Commissioners shall be given notice of all committee meetings, including notice of meetings of committees of which they are not members.

#### **Article VI. Participation in External Committees and Meetings**

Section 1. Commissioners may serve on or attend committees and meetings of other government and non-governmental entities relevant to the Commission's work as

specified in sections 2 through 4 below. Commissioners are encouraged to discuss their interest in service and attendance with the Executive Director and Chair of the Commission.

Section 2. When a government or non-governmental entity requests a Commissioner serve as a member of a committee and expects the Commissioner to speak for the Commission, the Chair of the Commission will appoint a Commissioner to serve subject to ratification by the Commission at the next Commission meeting. The Commissioner may begin to serve before the Commission ratifies the appointment. The Commissioner serving on the committee is expected to report back to the Commission on progress made by the working group and seek Commission input as needed. The Commissioner serving on the committee is eligible to receive their per diem as allowed by other law.

Section 3. When a government or non-governmental entity requests a Commission regularly attend meetings to provide updates about the Gorge Commission, the Chair of the Commission will appoint a Commissioner to be the regular attendee subject to ratification by the Commission at the next Commission meeting. The Commissioner may begin to attend before the Commission ratifies the appointment. The Commissioner regularly attending the meetings is expected to report back to the Commission and seek Commission input as needed. The Commissioner regularly attending the meetings is eligible to receive their per diem as allowed by other law.

Section 4. When a Commissioner attends a meeting without an expectation to speak for the Commission or provide updates about the Commission, the Commission does not need to authorize the Commissioner to attend. The Commissioner attending the meeting may speak but shall make clear any comments are personal and not on behalf of the Gorge Commission. The Commissioner attending the meeting is not eligible to receive per diem for attending the meeting.

#### **Article VII. Parliamentary Authority**

Roberts Rules of Order, Newly Revised shall serve as general parliamentary authority for procedures not covered by the bylaws and rules.

#### **Article VIII. Fiscal Year**

The fiscal year of the Commission shall be in accordance with the state in which the Commission contracts for administrative and fiscal services.

#### **Article IX. Open Meetings, Records and Disclosure**

Section 1. All meetings of the Commission and committees shall be open to the public, subject to the necessity for occasional executive sessions of meetings, in accordance with regulations of the Commission. Meetings shall be conducted in accordance with the provisions of these bylaws and the open meeting regulations adopted by the Commission.

## Section 2. Open Public Records

- a. The records of the Commission shall be open to the public in accordance with regulations of the Commission.
- b. The Commission provides Commissioners an official email address. Commissioners shall use their official email and not any personal email for communicating with other Commissioners, staff, external entities, and all persons relating to the business of the Commission.
- c. Commissioners shall preserve all records as required by applicable law. Commissioners shall consult with Commission staff prior to deleting records. Preserving records includes phone records, voice mails, text messages, email, paper, and metadata of electronic records as required by applicable law. Upon completion of service on the Commission, Commissioners shall transmit all their Commission records that are not preserved in the Commission's office.
- d. Commissioners shall comply with requests for disclosure of public records. If requested, Commission members shall search their personal files and electronic devices for responsive records.

Section 3. A Commissioner who has any immediate or potential financial interest or other interest which would or could influence any decision or action in any matter coming before the Commission or requiring official action shall fully disclose the nature of that interest at a public meeting prior to deliberating and voting on the decision or action in accordance with the applicable Commission rules for disclosure, conflicts of interest, and recusal from voting.

## **Article X. Amendment of Bylaws**

These bylaws may be amended at any regular or special meeting by a two-thirds majority vote of a quorum of the currently appointed Commissioners present, provided that a copy of such proposed amendment or amendments shall be sent to each Commission member at least 24 hours prior to the date thereof.