

CERTIFICATE AND ORDER

FOR FILING

PERMANENT

ADMINISTRATIVE RULES WITH THE OFFICE OF THE CODE REVISER

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of **PERMANENT** rule(s) adopted on April 26, 1994, by the Columbia River Gorge Commission to become effective May 16, 1994.

The within matter having come before the Columbia River Gorge Commission after all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises.

Notice of Intended Action in Code Revisers Register

No _____ Yes _____ X _____

NOW THEREFORE, IT IS HEREBY ORDERED that the following action to be taken:

Adopted: 350-60, Appeals From Decisions Under County Ordinances as Administrative Rules of the Columbia River Gorge Commission

DATED this 3rd day of May, 1994.

By: Jonathan Doherty

Title: Jonathan Doherty, Executive Director

Statutory Authority: RCW 43.97.015 to 43.97.035, Chapter 499, Washington Laws 1987

For Further Information Contact: Jan Brending, Rules Coordinator, (509) 493-3323.

CODE REVISER'S OFFICE
STATE OF WASHINGTON

MAY 0 5 1994

TIME: 3:32
CSR: 94-10-013 0

COLUMBIA RIVER GORGE COMMISSION

RULE 350-60

SUMMARY

The rule sets forth the process in which an effected party may appeal to the Columbia River Gorge Commission a decision made by a county governing body implementing the Columbia River Gorge National Scenic Area Management Plan through county land use ordinances. The Commission is the proponent of the proposed rule.

STATEMENT OF NEED

1. The National Scenic Area Act contemplates the Gorge Commission shall act in an appellate role once land use ordinances have been adopted by counties in the Gorge or, when the Gorge Commission has adopted such ordinances to implement the Act.
2. The public needs a detailed process for appeals to the Columbia River Gorge Commission.

STATUTORY AUTHORITY

Authority to adopt the rule as proposed derives from the Scenic Area Act (16 U.S.C. § 544 et. seq.) and the Columbia River Compact, Article I, Section a(4)(g), at ORS 196.150 and RCW 43.97.015. The proposed rule is necessary as a result of federal law, 16 U.S.C. § 544 et. seq, as well as state law.

STATUTE OR LAW RULE IMPLEMENTS

The proposed rule is necessary to implement the Scenic Area Act (16 U.S.C. § 544 et. seq.) and the Columbia River Compact, Article I, Section a(4)(g), at ORS 196.150 and RCW 43.97.015.

DOCUMENTS RELIED UPON

The proposed rule is based on the Columbia River Gorge National Scenic Area Management Plan and the National Scenic Area Act (16 U.S.C. § 544 et. seq.). Copies of these documents are available at the Columbia River Gorge Commission office.

STATEMENT OF ANTICIPATED EFFECTS

The proposed rule provides an appeal process from decisions made by a county governing body in implementing the Management Plan for the Columbia River Gorge National Scenic Area Act through land use ordinances as required by the National Scenic Area Act.

FISCAL IMPACT STATEMENT

The proposed rule will not have an adverse fiscal impact on the public or local government. The rule provides a process for appeals from decisions of a county governing body which will ensure an efficient review process consistent with the Act.

ADVISORY BODY

The proposed rule was not reviewed by an advisory body specifically appointed to review rules developed by the Commission. However, the Commission has gone through a process whereby the rule was submitted to interested parties, including both states and six counties, for their comments. Two workshops were held with interested parties to obtain input on the rule and a workshop was held with the Commission to obtain its input. Because the Commission has chosen to use a workshop type format and solicit comments prior to filing the rule for rulemaking it feels the use of an advisory body review is not necessary.

COLUMBIA RIVER GORGE COMMISSION

Chapter 350

Division 60

Appeals From County Ordinances

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 Intent to Appeal and Petition shall be governed by these rules.

Appeals commenced by a Notice of Appeal filed under the Final Interim Guidelines shall continue to be governed by Commission Rule 350-20 as adopted December 1, 1987, and the Final Interim Guidelines.

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 or any member thereof.

- (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, not by fax. To be considered filed, a document must be received at Commission offices by 5:00 p.m.
- (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 Intent to Appeal and Petition and refers to the document which must be filed with the Commission in order to begin a review proceeding.
- (10) "Party" means the petitioner, the applicant if different from the petitioner, the governing body, and any person who intervenes.
- (11) "Transmit" means to send with the United States Postal Service by first class mail or to deliver in person.

350-60-050. Notice of Intent to Appeal and Petition.

- (1) Filing: The Notice of Intent to Appeal and Petition shall be filed with the Commission on or before the 30th day after the date the decision sought to be reviewed becomes final. A Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.
- (2) Service of Notice of Intent to Appeal and Petition: The Notice of Intent to Appeal and Petition shall be filed with the Commission and served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the Notice of Intent to Appeal and Petition is required to be filed.
- (3) Contents of Notice of Intent to Appeal and Petition: The Notice of Intent to Appeal and Petition 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 petitioner(s), and the name of the governing body, identifying the governing body as respondent;
 - (b) Below the caption the heading "Notice of Intent to Appeal and Petition";
 - (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) The name, address and telephone number of each of the following:
 - (A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's name, address and telephone number shall be included. If an attorney represents the petitioner, the attorney's name, address and telephone number shall be substituted for that of the petitioner. If two or more petitioners are unrepresented by an attorney, one petitioner shall be designated as the lead petitioner.
 - (B) The governing body and the governing body's legal counsel;
 - (C) The applicant, if any (and if other than the petitioner). 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.
 - (g) A statement advising all persons, other than the governing body, that in order to participate in the review proceeding a person must file a motion to intervene pursuant to 350-60-140.
 - (h) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.
- (4) Filing Fee and Deposit for Costs: A filing fee and deposit for costs may be charged by the Columbia River Gorge Commission.

350-60-060. Record.

- (1) Contents of Record: The record shall include the following:
 - (a) The final decision including findings of fact and conclusions of law;
 - (b) All transcripts, 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) 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.

(2) **Transmittal of Record:** The governing body shall within 30 days after service of the Notice on the governing body, transmit to the Commission the original or a certified copy, and two copies of the record of the proceeding under review. The governing body may, however, retain any large maps or documents which are difficult to duplicate, until the date of oral argument.

(3) **Service of Record:** Contemporaneously with transmittal, the governing body shall serve a copy of the record, exclusive of large maps and other documents which are difficult to duplicate, on the petitioner or the lead petitioner, if one is designated, and all other parties.

(4) **Specifications of Record:**

(a) The record shall:

(A) Be filed in a suitable folder; the cover shall bear 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 large map or document retained by the governing body under subsection (2) of this rule;

(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.

(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's legal counsel. If the governing body amends the record in response to an objection, the date the amendment is received by the Commission shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

(2) An objection to the record shall be filed with the Commission within 10 days following service of the record on the person filing 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 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 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 Commission shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Commission, the date of the Commission's letter or order shall be deemed the date of receipt of the record for purposes of computing subsequent time limits.

350-60-080. Request for Review.

(1) Filing and Service of Request: The Request for Review shall be filed with the Commission within 30 days after the date the record is received by the Commission. The Request shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a Request for Review within the time required by this section shall result in dismissal of the appeal.

(2) Specifications of Request: The Request for Review shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer Request is given by the Commission. If a Request for Review exceeding the 50 page limit is filed without permission, the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed within three (3) days of notification by the Commission.

- (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. If there is more than one petitioner, the cover page shall specify the petitioner(s) filing the Request. An intervenor shall be designated as either petitioner or respondent.
- (d) Be typewritten, in pica type, and double spaced;
- (e) Be signed on the last page by the author.
- (3) Contents of Request: The Request for Review shall
 - (a) State the facts that establish petitioner'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 petitioner;
 - (B) A summary of the arguments appearing under the assignments of error in the body of the Request;
 - (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 Request, unless the provision is quoted verbatim in the Request.

350-60-090. Special Request Review Process.

- (1) Where the petitioner contends the land use decision eliminates all economic or beneficial use of the property, the petitioner must meet the requirements for request for review in Rule 350-60-080 and the requirements for Special Request for 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 petitioner's request under this section in their briefs and the development review officer designated by the Executive Director 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 petitioner 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: Respondent's brief shall be filed within 50 days after the date the record is received by the Commission. A copy of the respondent's brief shall be served on the petitioner or lead petitioner and all intervenors.

(2) Specifications of Brief: Respondent's brief shall conform to the specifications of the Request for Review, 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 Request for Review. The respondent shall specifically accept the petitioner'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) Respondent shall accept or challenge petitioner's statement of the Commission's jurisdiction and petitioner's statement of standing. The basis for any challenge shall be stated. If respondent contends that the facts alleged by petitioner in support of standing are not true, 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.

(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) Only parties who have submitted briefs shall be allowed to present oral argument to the Commission.

(4) 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.

(5) The Commission shall inform the parties of the time and place of oral argument. Unless the Commission otherwise orders, petitioner(s) shall be allowed 30 minutes for oral argument, which may be divided between the initial presentation and rebuttal. Multiple petitioners shall share the thirty minutes for argument. The respondent(s) shall be allowed 30 minutes to respond. 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.

350-60-130. Procedural Orders.

The chair of the Commission or presiding officer designated by the chair shall issue procedural orders on behalf of the Commission relating to case setting, requests for intervention, preliminary motions, and other procedural matters.

350-60-140. Appearance of Fairness; Ex Parte Contacts

(1) Members of the Commission shall comply with the appearance of fairness in appeals and proceedings under these rules.

(2) Members of the Commission shall not have ex parte contact with applicants or interested parties seeking land use permit, or opponents to the permit, while the application or appeal thereto is pending under a land use ordinance for the Scenic Area.

(3) Members of the Commission shall place on the record of the appeal or proceedings under these rules any ex parte contact set forth in subsection (2). The Chair or presiding officer shall notify all parties to the appeal or proceeding. The Chair or presiding officer shall consider the position of the parties and, after review of the matter, make a recommendation to the Commission to ensure the appearance of fairness is maintained. The member of the Commission who was the subject of the ex parte contact may voluntarily step down from hearing the matter. The Commission may, in the alternative, request the member of the Commission step down from hearing the matter.

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 with the Commission and served on all parties 60 days in advance of oral argument. 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. Status as an intervenor shall be recognized when a motion to intervene 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 as soon as is practicable after the Notice of Intent to Appeal and Petition 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 petitioner 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) Be served upon the Commission and all parties.

(4) Intervenor's Brief:

- (a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for filing the Request for Review, and shall satisfy the requirements for a Request for Review in 350-60-080.
- (b) If intervention is sought as a respondent, the brief shall be filed within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in 350-60-100.

(5) Objections to a motion to intervene shall be filed within 7 days of the motion.

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 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 Commission. No filing fee is required. An amicus brief shall have a green cover.

350-60-180. Consolidation.

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 Intent to Appeal and Petition be extended.

(2) In no event shall the time limit for the filing of the Request for Review be extended without the written consent of all parties.

(3) All other time limits may be extended upon written consent of all parties, the Commission's motion or motion of a party.

(4) A motion for extension of time shall state the reasons for granting the extension and must be filed with the Commission within the time required for performance of the act for which an extension of time is requested.

(5) Any agreement by the parties for an extension of time shall automatically extend the time for issuance of the Commission's final order by an amount of time equal to the extension agreed to by the parties.

(6) In the event the Commission extends the deadline for issuance of its final order without consent of the parties, it shall enter the specific findings to explain such action.

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, if any, on the same day the motion is filed with the Commission.

(3) Unless otherwise ordered by 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 Commission shall base its 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 Commission and follow the process in 350-60-130.

350-60-210. Final Order of Commission.

(1) An Order of the Commission is final when the cover page of the order containing the caption of the appeal:

- (a) States "Final Opinion and Order";
- (b) Contains findings of fact and conclusions of law or incorporates them from the record below.
- (c) Addresses the Special Request for Review Process under Rule 350-60-090, where applicable.
- (d) Indicates whether the decision being reviewed is dismissed, affirmed, reversed or remanded;
- (e) Contains the date of the final order; and
- (f) Is date stamped by the Commission.

(2) The order shall be mailed to all parties.

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

(4) Notwithstanding subsections (1)(a) and (b) of this section, an order granting a motion to dismiss an appeal is a final order.

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 petitioner(s);
- (h) The decision improperly construes the applicable law; or
- (i) A remand is required pursuant to 360-60-090(2)(d).

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.

RULRES\350-60.NEW/jmb

EXHIBIT 1
(350-60-050)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

Jane Clark,)	
)	
Petitioner,)	
)	
vs.)	CRGC No.
)	
Tahoma County,)	
)	
Respondent.)	

NOTICE OF INTENT TO APPEAL AND PETITION

I.

Notice is hereby given that petitioner intends to appeal 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]

II.

Petitioner, 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 as required by CR 350-60-140.

Petitioner (each petitioner must sign)

or

Attorney for Petitioner(s)

CERTIFICATE OF SERVICE

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this Notice of Intent to Appeal and Petition on all persons listed in paragraphs II and III of this Notice pursuant to CR 350-60-050(2) by (a) first class mail or (b) personal delivery.

[INDICATE WHICH]

Dated: _____

Signature

EXHIBIT 2
(350-60-060)

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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
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10.	Permit No. 158573, adopted on June 4, 1986	16

EXHIBIT 3
(350-60-160)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

Jane Clark,)	
)	
Petitioner,)	
)	
vs.)	CRGC No.
)	
Tahoma County,)	
)	
Respondent.)	

MOTION TO INTERVENE

I.

John Smith moves to intervene on the side of (a) Petitioner 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].

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

EXHIBIT 4

CERTIFICATE OF FILING
[For Document Other Than
Notice of Intent to Appeal]

I hereby certify that on [INDICATE DATE], I filed the original of this [IDENTIFY DOCUMENT], together with [INDICATE NUMBER OF COPIES] copies, with the Columbia River Gorge Commission, 288 E. Jewett Blvd., P.O. Box 730, White Salmon, WA 98672, by (a) first class mail or (b) personal delivery [INDICATE WHICH].

Dated: _____

Signature

EXHIBIT 5

CERTIFICATE OF SERVICE

[For Document Other Than
Notice of Intent to Appeal]

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

Dated: _____

Signature