

**Columbia River Gorge Commission**

**Compliance Activities Report**

**2020**

**January 12, 2021**

## PREFACE

This report summarizes the Columbia River Gorge Commission's non-judicial compliance activities during Calendar Year 2020. This report includes a summary of Commission compliance activities in administering the Commission's National Scenic Area land use ordinance for Klickitat County, the Management Plan, and the National Scenic Area Act. This report does not include the counties' compliance activities.

In this year's report, staff is adding an additional section on **complaints received** where there were no compliance issues discovered. This section reflects significant staff time invested in determining whether properties and land uses are within the jurisdiction of the Gorge Commission.

This report does not disclose any confidential information about sensitive resources. This report also does not give in-depth detail about the cases, such as details of the issues or names of landowners; dates of complaints, investigations, and communications; and some resolutions because Commissioners may have to conduct hearings on enforcement actions, and detailed information could constitute improper communications outside of the record. As well, some of this material may be confidential. Staff will evaluate requests for information about individual compliance and enforcement actions on a case-by-case basis.

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## SUMMARY

Most of the Commission staff worked remotely between mid-March and the end of 2020 and thus were in the field less than usual. However, staff continued work to resolve new and pending compliance issues, working with Klickitat County and landowners to find opportunities for resolving compliance issues voluntarily. At the end of 2019, the Commission staff was continuing to work to resolve 10 pending compliance issues. In 2020, the Gorge Commission fully resolved five of these issues (one of which turned out not to be a compliance issue) and has nearly resolved all but two of the other compliance issues pending from 2019. Staff received complaints about several land use activities in 2020, but upon investigation, determined that only one constituted a compliance issue. Staff expects to fully resolve that issue in early 2021.

In 2020, the Commission staff also designed a Klickitat County Compliance Study to gauge the level of compliance with the Management Plan and land use ordinance, which the Commission approved to start. Due to COVID-19, and the need to complete the Gorge 2020 Management Plan update while working remotely in 2020, the Klickitat County Compliance Study will now be conducted in 2021 as a Commission priority. Progress on this study is not included in this report but will be reported separately as the study moves forward.

## RESOLVED COMPLIANCE ISSUES

### **Communication Tower Foundation—Director's Decision Issued**

*Discovery:* In summer 2019, Commission staff discovered a Klickitat County building permit for upgrades to an existing communications tower in the National Scenic Area that did not have a corresponding Director's Decision. This discovery was made from the monthly list of building permits that Klickitat County sends the Commission because of a litigation settlement more than 10 years ago. Upgrades to the existing tower included a new concrete foundation. Staff completed a site visit and discovered the work had already commenced, and that the excavation for the new foundation was nearly complete.

*Staff Actions:* Staff asked the construction crew on site to halt construction until an application was submitted, and a permit was obtained.

*Resolution:* Staff worked with the applicant to complete an application for the proposal. A Director's Decision was issued in March 2020. While working on this issue, staff was initially unable to find permits for the dwelling on the parcel. This permit matter is discussed below in the Complaints section of this report.

### **Unpermitted Garage—Director's Decision Issued**

*Discovery:* In December 2017, staff discovered that a landowner was constructing a garage without applying for a National Scenic Area permit. The garage had been fully framed and roofed but was still unfinished. Staff discovered the garage while conducting a site visit for an application on an adjacent parcel. Staff took photographs and documented the garage from the

adjacent parcel and then viewed and took photographs of the garage from key viewing areas showing that the garage broke the skyline as seen from one or more key viewing areas.

*Staff Actions:* Staff made several attempts to contact the landowner by mail and finally left a copy of its initial contact letter at the construction site. The landowner was out of the country for the winter, but the builder provided contact information and had the landowner contact the Commission office. In 2019, the landowner applied for a permit to replace the existing home and unpermitted garage. Part of the application included removing the unpermitted garage. Staff approved the design for the new home and garage in July 2020.

*Resolution:* At the time the Director's Decision was approved, the garage had been deconstructed and removed from the subject parcel.

### **Hardship Dwelling Permit Renewal**

*Discovery:* In fall 2018, while following up on past approvals in Klickitat County that did not have final inspections, staff reviewed an application for a hardship dwelling approved in 2015. The landowner did not comply with a condition of approval to renew the approval through the Gorge Commission every two years for as long as the hardship exists.

*Staff Actions:* Staff verified that the landowner completed the hardship dwelling placement and Klickitat County issued a Certificate of Occupancy in August of 2015. In January 2020, staff contacted the landowner and verified that the hardship still exists. Staff followed up with a letter to the landowner reiterating the condition of approval in the Director's Decision to contact the Gorge Commission every two years to renew the hardship request.

*Resolution:* The Director's Decision from 2014 allowed the hardship dwelling to continue. The applicant needs to contact the Gorge Commission in 2022 to renew the hardship request.

### **Unpermitted Yurt—Director's Decision Issued**

*Discovery:* In fall 2018, a tenant on the subject property contacted the Commission to complain about the habitability of a dwelling and that persons were living in a yurt. That same day, the landowner came into the Commission office and asked about bringing his parcel into full compliance. The landowner explained that the yurt was originally placed as a temporary structure and acknowledged that it had not received necessary county and Commission permits.

*Staff Actions:* Staff completed a site visit, took photos of the yurt, and advised the landowner to complete a development review application. The dwelling from the tenant's complaint was not a compliance issue, but the yurt did not have a National Scenic Area approval and its use as a second dwelling unit is not permitted. Staff spoke with the tenant in the yurt, who confirmed that the landowner told him he would need to move out. Staff received an application for an after-the-fact review of the yurt. There were cultural resources in the vicinity and a Cultural Resource Reconnaissance Survey was completed.

*Resolution:* Staff issued a Director's Decision in June 2019, that applied conditions of approval to the use of the yurt, including screening vegetation, paint color, exterior building materials, and prohibition against use as an accessory dwelling. The applicant received a county permit

changing the use of the yurt to a non-residential accessory building. Klickitat County conducted an inspection and confirmed that the yurt had been converted to an accessory structure and could not be used as a dwelling. Commission staff conducted a final inspection in November 2020.

## **PENDING COMPLIANCE ISSUES**

### **Unpermitted Accessory Buildings**

*Discovery:* In spring 2017, the Commission received an application for an accessory building. During the site visit to the property, staff noticed the applicant had four other accessory buildings that did not have National Scenic Area permits.

*Staff Actions to Date:* In 2018, the landowner amended the application to include after-the-fact review of the accessory buildings on the property. In fall 2018, the Director's Decision approved the proposed new accessory building and two of the unpermitted accessory buildings. To satisfy the size limitation for accessory buildings in the Management Plan and land use ordinance, the Director's Decision required the applicant to remove two of the unpermitted accessory buildings. The buildings do not need to be removed until the new accessory building is completed. As of the end of 2020, some of the building materials for the new accessory building are on the parcel, but the applicant had not started construction and thus had not yet removed the two unpermitted accessory buildings necessary to comply with the size restrictions in the Management Plan and land use ordinance. Staff has followed up with the landowner to remind him about the expiration date of the permit

*Next Steps:* Staff will conduct a final inspection once construction is complete.

### **Compliance with Conditions of Approval**

*Discovery:* In spring 2019, Commission staff received a complaint that a parcel was out of compliance with conditions of approval from a prior Commission decision. This is a parcel where there have been prior violations and a contentious permitting history.

*Staff Actions to Date:* Commission staff conducted three site visits and confirmed that there were multiple violations where conditions of approval were not being met. Staff sent a letter to the landowner and met with the landowner and the landowner's realtor several times in spring and summer 2020. Staff also contacted the buyer's realtor and sent correspondence of the conditions of approval to assure the buyer was aware of the permit conditions. The landowner sold the property in fall 2020 after meeting most of the conditions of approval. The new landowner has agreed to resolve the remaining conditions of approval in 2021.

*Next Steps:* Staff will follow up with the new landowner and confirm compliance in 2021.

### **Agricultural Building Used as a Dwelling**

*Discovery:* In winter 2019 staff received an application for a replacement dwelling on a 5-acre parcel designated SMA Agriculture. Staff reviewed the development history of the parcel and

concluded the “dwelling” the applicant wanted to replace was an agricultural building that had been converted into a dwelling with only some county permits, not all county permits, and no National Scenic Area permits. The Act specifies that a new dwelling on land in the Special Management Area requires a minimum parcel size of 40 acres. Because the parcel is only 5 acres in size, the parcel is only eligible for a dwelling that replaces an existing dwelling. The parcel had received a permit for a dwelling prior to the National Scenic Area Act, but that dwelling had been removed after converting the barn to a dwelling.

*Staff Actions to Date:* Staff developed permit history and other communications record to establish a timeline of events of what development occurred and when. Staff evaluated legal issues and brought the parcel into compliance.

*Next Steps:* Staff is currently working on the Director’s Decision, which is anticipated in February 2021.

### **Solar Panels**

*Discovery:* In August 2020, while reviewing permit applications for Klickitat County, staff found an application for solar panel arrays for both residential and agricultural uses on a parcel in the National Scenic Area. This discovery was made from the monthly list of building permits that Klickitat County sends the Commission because of a litigation settlement more than 10 years ago. The application had been approved by Klickitat County, but no application had been submitted to the Gorge Commission.

*Staff Actions to Date:* Staff contacted Klickitat County and explained solar panels require NSA review. Staff then contacted the landowner and requested an after-the-fact application for the solar panel array. The landowner quickly responded with a complete application.

*Next Steps:* Staff is working on a Director’s Decision for the after-the-fact review of the solar panels which will be issued in 2021.

### **Railroad Structure Color**

*Discovery:* In fall 2018, staff received an email from Forest Service staff regarding a powerhouse structure that was highly reflective unpainted metal located along the railroad tracks in Klickitat County. Forest Service staff provided a general description of the location.

*Staff Actions to Date:* When staff was ready to follow-up at the beginning of 2019, Forest Service staff were furloughed and unable to provide more information.

*Next Steps:* Staff is still working with the Forest Service on a strategy to resolve this and will make it a priority for 2021.

### **Unpermitted Communication Facility**

*Discovery:* In fall 2018, staff received an email inquiry into whether a radio repeater station had received a National Scenic Area permit. Staff reviewed the parcel history and determined that the project had not been permitted.

*Staff Actions to Date:* Staff recommended that the owner of the station turn in an application to bring the project into compliance. Staff observed the project from the field. The repeater tower is under six feet in height and eligible for expedited review. In 2018, staff spoke with the project owner and was waiting for more information about whether the repeater was permitted, and if not, then it would require a complete project application. The owner of the station has stopped responding to the Commission staff.

*Next Steps:* Staff has attempted to contact the landowner for assistance in communicating with the station owner and for records relating to the communication facility. Staff will continue working to contact the landowner in 2021.

## **COMPLAINTS INVESTIGATED (NO COMPLIANCE ISSUES DISCOVERED)**

### **Possible Unpermitted Dwelling**

*Discovery:* In Summer 2019, during the review of the permit history for the parcel that contained the communication tower foundation (see above in resolved issues), staff was unable to find that the existing dwelling on the parcel received any Commission or county planning or building permits. Staff reviewed the Assessor's Records and determined that the dwelling was constructed after the date of the National Scenic Area Act.

*Staff Actions:* Staff reached out to the landowner and with Klickitat County to gather information. Staff worked with the landowner and with Klickitat County to obtain proper documentation for the dwelling.

*Resolution:* Staff found the dwelling was constructed in compliance with the National Scenic Area Act and had obtained the applicable permits. The Gorge Commission's development review database did not have a complete entry for the permit, which made it difficult for staff to locate. Klickitat County also could not find the permit because the permit had not been digitally archived and staff time was required to locate the paper file.

### **Private Road Construction Complaints**

*Discovery:* Several complaints were received for construction of a road that would serve as a driveway to access a landowner's property that is partially in the White Salmon Urban Area and partially in the general management area.

*Staff Actions:* Staff reached out to the landowner and Klickitat County to resolve this issue and required proof that the driveway construction was in the urban area and not in the NSA part of the property. Staff confirmed the driveway is completely within the Urban Area. The property



has subsequently been sold. The realtor and the new owner are aware of the restrictions related to the land use designation of the portion of the property that is in the NSA.

### **“White House” Complaints**

*Discovery:* Several complaints were received regarding a white house being built on Courtney Road in Klickitat County.

*Staff Actions:* The house is located on top of a bluff overlooking White Salmon and very visible from the Hood River Bridge because it is currently white from the TYVEK wrapping. Staff determined that the house is outside the NSA. Given its visibility, the Executive Director reached out to the homeowner and requested they consider using dark earth tone paint when the construction of the house is complete, even though it is not required.

### **Gravel Quarry Complaint**

*Discovery:* In March 2020, staff received a complaint regarding an active gravel quarry. The complaint stated the work at the site was new development.

*Staff Actions:* Staff contacted the landowner and asked for information regarding the continued use of quarry. Staff also reviewed its own records, which included correspondence between the Gorge Commission and the landowners dating back to 2006 that stated the quarry had been in use since before the National Scenic Area Act and in continuous use. In May, staff sent a letter to the landowner stating the quarry was an existing use, although expansion of the quarry would require an application for review by the Gorge Commission.

### **Private Road Construction Complaints**

*Discovery:* In 2019, staff received an inquiry from WSDOT about an application for an access connection for a road that had segments in both an Urban Area and GMA Open Space. Staff contacted the applicant and explained road building was not a reviewable use in the GMA-Open Space land use designation, and that proposals for new roads in the National Scenic Area require an application for review by the Gorge Commission. In Spring 2020, multiple complaints were received that the road was actively being constructed.

*Staff Actions:* Staff has been monitoring the site for any signs of unpermitted activity in the General Management Area. Staff sent letters to WSDOT, the landowners and the original applicant for the access connection explaining the land use policies for lands designated GMA-Open Space, emphasizing that road building was not an allowed use. Staff continues to actively monitor the site for possible violations.