



TO: Columbia River Gorge Commission

FROM: Krystyna U. Wolniakowski, Executive Director

DATE: September 10, 2019

SUBJECT: **Information Item:** Compliance in the National Scenic Area: Permitting, Monitoring, Enforcement and Impediments --Part 3

Background:

On March 12, 2019, Commission staff presented a comprehensive report entitled “*Information Item: Compliance in the National Scenic Area: Permitting, Monitoring, Enforcement and Impediments*” (Attached). This report laid out the process in which the Commission has sought to achieve compliance with the standards in the management plan for Klickitat County and how it works closely with the five NSA counties to oversee permitting and compliance in accordance with the requirements of the National Scenic Area Act.

In compiling data related to compliance and alleged violations, staff reviewed the number of cases in sample years 2008, 2013 and 2018 in Klickitat County and concluded that the number of compliance issues discovered and resolved has remained generally consistent. However, no enforcement actions have been needed in the past 5 years because violations have been resolved through voluntary compliance and issuing “after-the-fact” permits.

In addition, the report presented several impediments to compliance. Examples include limitations with the Commission’s development review database and information management that integrates geospatial information with our paper and electronic records, lack of adequate funding for Commission and county planning staff to proactively monitor existing permits or to discover violations outside of the complaint driven system (Commission staff were reduced from 11 to 6 in 2009), and that not all Director’s Decisions are recorded on county deeds consistently so that new landowners may not be aware of past NSA conditions on a permit issued for that property, just to name a few.

The Commission had not issued an “Enforcement Report” since 2010, so legal counsel re-started that for 2018 in March 2019, and will continue to do so on an annual basis from here forward. The report is a valuable tool for demonstrating Commission efforts at resolving compliance issues within the National Scenic Area.

Staff recommended the Commission ask the counties for a briefing on county practices, processes, statistics and impediments. At the June 11, 2019 Commission meeting, the County Planning Directors made presentations about their permitting, compliance and enforcement processes, which are very similar to the Commission’s approach in Klickitat County. Their remarks are captured in “County Planning Director Comments” (attached). Each County Planning Director addressed a series of questions posed by Commissioners. Several Commissioners expressed that the Commission and county staff proactively coordinate compliance and enforcement activities. In addition, Commissioners requested a “sampling” of permits in each county to determine if conditions of approval are being met. The results could assist with developing an ongoing comprehensive compliance monitoring system across the entire National Scenic Area. Creating an affirmative compliance program—whether using electronic data or in-person visual inspections—will take some mix of additional staff time and financial resources, reprioritizing work, sharing resources with partners, and redesigning processes and long-range planning projects to include new compliance tasks.

The Commission’s relationships with partner agencies—counties, cities, state agencies, tribes—and private, utility, and other entities that the Commission commonly interacts with are based on informal understandings, which change when there are leadership transitions with Commission staff and/or partners’ staff or when a disagreement evolves. The Commission has not used memoranda of understanding (MOUs) or other similar arrangements with partners in the past. However, MOUs can establish and create lasting relationships by clearly defining roles and responsibilities, by addressing common and uncommon situations, and identify other aspects of working together toward a common goal. Other agencies use MOUs frequently. For example, the Tahoe Regional Planning Agency currently has more than 50 MOUs that establish responsibilities and tasks for specific entities to undertake exempt projects, to delegate review tasks, and other purposes.

Addressing Impediments

1. ***MOU’s with Counties:*** Since the June 11, 2019 panel presentation by the County Planning Directors, Commission and Forest Service staff met with them on August 5 2019, to discuss their presentations and their responses to the Commissioners questions, and to determine our next steps collectively. The topic of creating an MOU between the Commission and each county to clearly define roles and responsibilities related to permitting, compliance, monitoring and enforcement was generally supported by the County Planning Directors. In a situation where there are issues that cross multiple county boundaries, having a well-defined protocol for responses by all parties would be very helpful.

2. ***Adding Compliance and Monitoring Capacity:*** The Commission’s 2019-2021 budget included one new “Vital Sign Indicators” staff planner position to lead the effort on reviving the VSI project, compiling criteria and indicators to protect and manage resources, work with agencies to develop monitoring plans to track progress, and insure that the Commission has more data to assist with the Gorge 2030 management plan review and update process. In addition, this position will commit 25% of their time to compliance monitoring to assist in addressing the backlog of post-permit and final inspections needed in Klickitat county, and as time allows, assist other county building inspectors with site visits to determine if conditions of approval have been met in county permits.

3. ***Improving Information Management:*** The Executive Director is working to secure match funding from Oregon and Washington legislatures in spring 2020 to replace the ACCESS database so information management will no longer be an impediment for monitoring and tracking compliance and enforcement.

4. ***Increasing Landowner Awareness about NSA Requirements:*** Commission staff have recently brought many landowners into compliance after violations have been discovered through after-the-fact-reviews and issued permits that bring them into compliance.

Next Steps

Staff will schedule a work session this fall to begin working on MOU's with each county and any procedural changes needed for enhanced coordination.

In order to verify the level of compliance with permits issued in the NSA, staff will work with the County Planning Directors to develop a random sampling program to determine the level of compliance achieved with current permit conditions. This may require additional resources, depending on the scale and geographic scope of the sampling program.

During fall 2019, the Commission will begin recruitment for the VSI Planner approved in the 2019-2021 budget. The planner should be hired by early 2020 and will be an integral part of assisting the Commission and the counties with the sampling program initially, and developing a longer-term monitoring strategy moving forward, based on the results of the sampling program.

As part of the Gorge2020 management plan review process, staff is already reviewing current language to determine if gaps exist that should be fixed to achieve better compliance through clarifications in management plan policies and guidelines. During the March Commission meeting, there was discussion about identifying which compliance and enforcement methods are most effective in the National Scenic Area and staff recommended using an outside expert to help design and conduct such a study, interpret its results, and then make policy recommendations. Depending on the scope and extent of this study, additional resources may be necessary to fund the study.

Staff welcomes the Commission's discussion and guidance for improving the "culture of compliance" in the National Scenic Area. There is one limitation to the Commission's discussion. On August 29, 2019, the Commission received a motion for a permanent injunction from the appellants in the August 13, 2019 appeal hearing relating to the Zimmerly gravel pit. That motion will still be pending on the date of the Commission meeting, so the Commission should avoid any mention or discussion of the Zimmerly gravel pit and county and commission proceedings.