

**NSA County Planning Director Comments
at the
6/11/2019 Columbia River Gorge Commission Meeting**

The Gorge Commission invited the County Planning Directors to participate on a panel and to provide insight on their permit, monitoring, compliance and enforcement processes. The Commissioners posed a series of questions that provided a framework for their remarks. The following is a transcript of the discussion.

Mitch Nickolds - Clark County Development Director

I'm done with your questions that were sent to us and just trying to provide answers for everyone to look at and consider and in the interest of responding to direct questions, I'd like to be able to do that as we move along. Generally, in Clark County we have a complaint driven response process for any violations of the gorge scenic area codes that we have adopted. And this is . . . it's interesting the testimony that we received a little bit earlier from someone from Skamania County that is troubled with being identified as a complainant. In Clark County ultimately, we do the investigation and we become the witness and the complainant. We will respond to a complaint, but only to the extent that we verify and report and then identify potential violations whereupon we will utilize our quasi-judicial process to issue the notice and order, schedule a compliance requirement for any specific violations and then if they fail to comply, offer them an opportunity for a hearing. If not then, issue the determination and order to follow-up with implementing monetary penalties, timeframes and even stop work orders as may be needed.

Just a small part of Clark County is currently in the Gorge Scenic Area, but we happen to have a railroad that runs through it, BNSF, and we have a surface mining operation and I think you all are familiar with that and some of the challenges that we are facing there. That initial act as instituted by us in response to complaints from Friends of the Gorge and others in the area, residents who are struggling with the operation of the surface mine and the impacts. One of the things that we found out in Clark County was the framework within which our counsel hears proposals for surface mining overlays or any code amendments to our planning and land use, is a fairly well-scripted process that doesn't really allow a lot of time for individual members of the community to really elaborate about their concerns. At counsel's direction, because we had so much challenge with our surface mining operations and the impacts, and because of the recession we lost some resources that we had utilized for monitoring on an ongoing basis, we have convened a surface mining advisory committee, which is an open forum, to allow the public, the regulators, and the mine operators to come together to discuss and clarify issues, to discuss concerns, and to develop solutions in a collaborative environment and allow basically as much time as anyone needs to discuss or respond to complaints or issues or speculation that there may be a problem and get to the bottom and get to the facts. We've had three of those meetings thus far and we're concentrating on the Livingston, not the Livingston, the Yacolt Mountain Quarry, then we'll go to the Livingston Quarries, and then down to the Zimmerly pit, which are in succession the issues du jour, if you will, for the county as it pertains to the surface mining. As we go through this process, it's kind of cathartic. It's beginning to give people an opportunity to understand that they are valued and that they

are a benefit to us. Informing staff about their concerns can lend itself to influencing our recommendations when looking at an application for mining overlay or something along those lines. So, it has been really beneficial for us to implement that forum environment to handle those things and similarly when we get to the Zimmerly pit, there are a number of very, very concerned individuals who are struggling with the operation of the mine and the permissions granted, both by county, by the Gorge Commission, and by DNR over the years. Trying to untangle that is quite a challenge. But hopefully a forum will be helpful in that sense as well.

With that, I'll take any questions you have.

Robert Liberty – Thank you for coming and testifying today. In the middle of May I sent some questions through our director that I hoped you had had an opportunity to address. Did you have any chance to look at those questions?

Mitch Nickolds - I did.

Robert Liberty – And is that something you are not prepared to respond to yet or are you wanting to respond to that now?

Mitch Nickolds – I would be happy to respond now.

Robert Liberty – Great, I'm ready.

Mitch Nickolds – Ok, the first question that I looked at was: How does each county determine whether unpermitted development is taking place? For instance, is there a regular, proactive process that they rely upon?

Robert Liberty – Those are Bowen's questions.

Mitch Nickolds – Oh, I'm sorry, it don't have a name.

Krystyna Wolniakowski – I didn't distinguish . . .

Robert Liberty – That's fine.

Krystyna Wolniakowski – They are just submitted questions.

Mitch Nickolds – So I explained, we are a complaint and report driven process and we utilize a quasi-judicial process to adjudicate those complaints. We do the investigations with code enforcement officers who will go out and investigate and identify potential hazards. If there are, in fact, hazards that require stop works, we are prepared to issue the stop work notices. We are currently, we just had an appeal with a notice that we issued and the commission is dealing with the aftereffects of that as well.

Next question was: Is the process primarily complaint-driven, how does each county facilitate ordinary citizens making these complaints?

We take them any way we can get them. We have a website which you can report, we have specific to surface mining now we also set up an additional website with a link there that you can file a report on. You can use email, you can contact us by telephone, and walk in the door and file a complaint.

Bowen Blair – How about anonymously?

Mitch Nickolds – We'll take anonymous complaints. Ultimately, we have to . . . the burden of proof is on us so in order to show the violation, we have to do the investigation. And that's the struggle for a lot of folks because they see things that we don't and one of the neat things about the forum is that we trying to facilitate a very fast response from the mine operators to the citizen complaints and eliminating us as an intermediary because it sometimes takes us two or three hours to get out to a site, which can have a dramatic effect on whether or not we see something.

Bowen Blair – Thank you.

Mitch Nickolds – Next question: How often, if ever, does the county go back and look at whether conditions on permitted development are being adhered to? The instance was given as a county permitted a development based on a certain paint color and vegetation screening, does a county go back ten years later and see if the color has been changed and whether the vegetation has survived?

Ultimately, compliance with the aspects of any permit, any land use permit, any building permit is the permit holders. Whether or not the county or any other jurisdiction or regulatory agency observes a violation does not diminish the requirement that the holder of the permit continually comply with the requirements. When we find that we have a chance to modify a CUP or conditional use permit or any other type of permit or do an addition on a home, whatever, if we find there are aspects of that structure or property that are out of compliance, that is the time for us to reopen that, take a look at the compliance requirements and revisit those to bring those things into compliance as may be necessary if there are violations. If it's continually maintained in compliance with the approvals that were mandated at the time the permit was issued, we can't then look at new codes that have been amended or a revised code and apply those, unless there is a specific method to do that adopted in the code.

Bowen Blair – It sounds like the only way you would be aware that a condition is not being fulfilled would be if there was a complaint.

Mitch Nickolds – True, and through the discovery process.

Next question: Does each county have a compliance officer? If so, how much of that person's time is dedicated to the NSA outside of the UA's, and has the funding for compliance (including any officers) gone up or down in the last 5-10 years? Is it expected to go up or down in the next five?

Clark County has a dedicated budget that's paid for from the general fund for code enforcement activities. They have been staffed with two code enforcement officers, a support staff and a lead for the past ten years and that has not changed. We have just added a replacement code enforcement officer for an individual that left us. That individual is going to be dedicating 50% of his time to the surface mining industry and compliance. And that will include site visits, working proactively to head things off in advance to try and identify potential hazards that may be issues. And something that comes to mind is blasting schedules. Seeing what we can do to foster a relationship between the mine operators so that they can publish their blasting schedules so that people can prepare for those instead of being surprised

or shocked by them. Also doing things like posting signage around the mine entrances to warn people of heavy truck traffic. Doing things to help identify that operational use of those lands in areas that give people a heads-up when they're driving through looking for land or a place to live. Ultimately, we will look at increasing the budget. I have been working on a plan to modify our code enforcement program to make it much more responsive and that means that instead of waiting years and years and years to collect liens and allowing properties to languish out of compliance, to initiate a collection process that is much more robust as driven by ultimately a collection agency, that the accounts are turned over to collection if they go more than ten days accruing penalties for ten days out of compliance. And if we have to do summary abatement where the county actually has to go and do the work and spend money, we'll do a special lien assessment to acquire the tax assessment with next year's taxes. Putting ourselves in a position for foreclosure. We have to be more responsive than we have been. That's our process has inured to a lot of delay and slowness of process that we're trying to work out.

Next question: What is their self-assessment about their capacity to properly implement and enforce Gorge Management Plan implementing ordinances, relative to what they believe are the problems with enforcement? If they think there is a deficiency, what is their proposal for remedying the problem?

I've talked about the surface mining advisory committee. That referred to the specific problem which was lack of responsiveness and just allowing the framework of our regulatory process, our ordinance process, our surface mining overlay districts and our land use process to give people three to five minutes to talk about something that is distressing, is emotionally charging and is very, very difficult for them to reconcile when they bought a property not knowing that there was going to be a surface mining operation in their midst. Those are just some of the challenges. The forum is a mechanism to give everybody the voice they need and a forum to create a common understanding of the operations, considering everything from the economic viability of the industry to the rural culture and rural nature of the area and maintaining those things and finding the balance.

As far as codifying our processes, we're going to have to go back to counsel and ask for in our 2020 budget these new positions, this new look, the new way of doing business in our code enforcement office. I think because some of them have taken these calls from very frustrated people, that they are going to find, that we're going to find, that there is a good deal of support there, as long as we have a robust process that is responsive.

Next question: What is a proper allocation of responsibilities for enforcement between our commission and their governments, with respect to monitoring, investigation, and enforcement? What protocols and processes need to be established to clarify these roles and responsibilities? Which governments are expected to take the lead with respect to which of these issues/activities.

I need more time to answer that question in all honesty. It's a very comprehensive and holistic question in the sense of all of the different nuisances affecting the scenic area and all of the responsibilities that the individual agencies have. We can't assume roles that we don't have - been granted to us through the authority of the council. What we can do is look at recommendations. If the Gorge Commission were to come out and say counties we would like you to consider doing this or amending your gorge scenic code to do this or accomplish this or to have this level of responsiveness or to add this level of accountability on a local level or even provide a local remedy for people that are aggrieved of the gorge scenic area rules and regulations. We would be willing to consider that. But all in all to get a more detailed answer, I need to consult with the County Manager on this one.

Next Question: What can they propose to the Commission by way of a cost-effective evaluation of implementation of the Management Plan, that allows us to determine whether there are problems or are we succeeding with respect to:

- (a) Construction without permits in violation of Gorge Management Act implementing regulations;
- (b) Violations of conditions of approval related to GMA implementing ordinances;
- (c) Disagreement between the Commission and the staff on the proper interpretation and application of their implementing ordinances?

Again, this something that is going to take a lot more than today for me to answer. I will tell you that we're certainly willing to build a robust and collaborative relationship with the Commission and the citizens and the industry and everybody involved but it's going to take some time. There is a lot of damage done out there.

The last question we have: What are their thoughts for building an effective, efficient integrated monitoring and enforcement system and database that can be shared?

Absolutely love it. We are working right now on a land management system process that is going to have a very robust public portal and hopefully it will be robust enough to give you access to look at the permits and stuff that we issue in the gorge scenic area, and to look at the reviews that we have accomplished and everything associated with that. We think that is a wonderful idea. The more information that we can share, the more we can put out, the better off we will be.

Robert Liberty – Thank you. I know that those are demanding questions. The last point is that this is an integrated system so it's not just looking at individual cases but the cumulative effect that would help us with planning (*inaudible*) and under that are these questions: Is this the outcome that our ordinances, shared ordinances, were intended and if so, do you like those results, are we not getting results because we're not interpreting properly, we're not getting results because of violations? That's how these things fit together from planning, to permitting through enforcement and a monitoring role. I'm glad you are enthusiastic about building such a system.

Mitch Nickolds – Yea, absolutely. What I've seen in the short time that I have been involved with Clark County is that a lot of - multiple interpretations of the same thing. It's very, very difficult having and we wonder if we had a data stream that basically told a clearer story for everybody concerned.

Eric Walker – Interim Director, Hood River County

Thank you, Madam Chair, Commissioners. Once again, my name is Eric Walker and I am with Hood River County. I appreciate the opportunity to come before you this afternoon.

I did provide a memo to you dated June 7th which responds to some of the questions maybe in a more broad way. As stated, Hood River County currently has an active code compliance management program that is managed by a half-time code compliance coordinator who is housed in the Community Development Department. The county's code compliance program is almost entirely complaint driven and is based on voluntary compliance. We do have an enforcement arm of that but that's kind of used as a last resort. We typically try to provide and encourage folks to come in and work with the county

directly and then there's relationships with property owners that come in and go through the review and do whatever is necessary to come into compliance as opposed to taking it to the next step.

Currently we do not have the staff time or available resources to proactively look for violations outside of those that are received by complaint. We do accept anonymous complaints. In my earlier email I identified various practices that the county currently implements when appropriate to achieve compliance. These practices are typically applied through the normal application process, such as evaluating earlier permits to ensure compliance with past permit conditions and to withhold final approval or issuance of a building permit until certain conditions have been satisfactorily met.

As for permit monitoring, county planning staff does not typically conduct site visits after a permit has been issued and after signing off on a building permit. Although we do rely on our building inspectors to at least confirm that the buildings are appropriately sized and placed on the property.

In Hood River County's case, the greatest impediment to code compliance and permit monitoring is again the lack of available staff, time and resources, which we assume will be a common theme to these discussions and are not isolated to Hood River County. Although the county is fortunate to currently have a half-time person available for code compliance, I would consider it woefully inadequate to properly implement the county's entire code compliance program. The commission should also be aware that the county may not even be able to sustain its current program in the future due to serious budget constraints, including the recent rejection of two ballot measures sponsored by the county to fund existing programs. Because of this, we expect that our code compliance position will be eliminated in July, 2020 if not before should no other funding source be identified. If this happens, the remaining staff, which would include two planners and the director, will be even more constrained to respond timely to most land use violations within the county, including those within the National Scenic Area and priorities will have to further be shifted. Although we continue to see the value and the need for code compliance, and certainly consider it an essential part of a healthy planning program, the Commission should be aware of these existing challenges and limitations that Hood River and the other gorge counties are and will continue to face moving forward.

Thank you. I'm not necessarily prepared to answer each of these questions today, but I would be glad to respond to any questions you might have.

Bowen Blair – Thank you for your memo. That was great. It really was helpful.

Robert Liberty – I have a question. So we're short of resources, you're short of resources. The reason I ask the cost effectiveness was thinking things like sampling techniques and having a database in which information is entered that can be shared and then a way of assigning responsibilities between us. Do you think these are - and then making that also a part of your plan update process as well as ours. Do you think that would be something that Hood River County would be interested in discussing with us?

Eric Walker – I think Hood River County is certainly open to creative ways to address compliance. We see the value of it, we see that it's a very important part of the entire planning program and without it, there is no incentive or encouragement for people to come in and to make applications in order to comply with those codes. We're certainly open to that and would certainly be interested in participating in those discussions. Certainly, we look to our colleagues in the other counties to see what they're doing and if there's ways that we can change or tweak or modify our planning program to be more efficient

and effective. We certainly would do that, realizing that we do have these limitations that we're grappling with.

Robert Liberty – Part of the question is sort of a diagnostic approach which is to determine whether those three different potential areas of problems, which is: Not getting a permit, not obeying conditions or misapplication, misinterpretation of the code. Trying to do that comprehensively for all decisions is obviously beyond the capacity right now but doing some sort of joint analysis and survey to sort of see - well is there a problem or not a problem and where should we focus. That's one thing and I'm speaking only for myself, I think might help us think about how to apply resources. And a separate issue is who moves first and who does what is another thing again. I think that's meant to address and clarify responsibilities and maybe making it a little more manageable to carry out those responsibilities for monitoring, enforcement and evaluation.

Eric Walker – Yea I would say if you're looking at Hood River County to take the lead on that, we just don't have the capacity to do that but certainly we're willing to participate, and we're encouraged by any creative ways to participate.

Rodger Nickolds – Madam Chair, a quick question. I would be interested in hearing from all five of you: What roughly percentage of the national scenic area takes up your time as opposed to the rest of the county and how much resources it takes up as well in terms of costs, persons working to cover it?

Eric Walker – Yea, that is a really good question. I think that for Hood River County, the amount of . . . if you just look at administrative-type applications, those that require review, about 15% of our total applications come from National Scenic Area-related requests. As a whole, National Scenic Area applications have a tendency to take a little bit more time, but I would say just ballparking 15% is a good representation. When we looked at enforcement, the number was about 12-15%. So, it's right in the ballpark as far as Hood River County goes.

Angie Brewer – Wasco County Planning Director

Hi, can you hear me? Thank you for having me today. I appreciate being part of the conversation and I apologize for not sending it electronically earlier, but I did bring a hard copy of the memo for you all, providing a brief summary of what the Wasco County Code Compliance Program includes. We are also a complaint driven program that relies on voluntary compliance whenever possible but does have an enforcement mechanism when it is needed. I should start by answering your question Commissioner Nichols. The scenic portions of Wasco County makes up less than 6% of our land base but we have documentation to show that more than 50% of our code compliance officer's time is spent in scenic area portions of Wasco County and I can tell you with confidence that the scenic area grant that we get from DLCD does not cover the cost of that. I mentioned this in the memo, just briefly, that part of that can be contributed to the fact that the bulk of our population is near the scenic area but also as in Hood River County, the regulations are more complex in the scenic area than outside of the scenic area and so it takes a little bit more time to resolve those cases typically than outside of the scenic area.

The county's philosophy . . . I inserted our mission statement here to kind of give you the vibe of the program we're trying to operate. It says that we're "Working for our community through professional

and accountable code compliance to enhance the beauty, livability, economy, health and safety of Wasco County.”

In order to do that, our program addresses both land use violations and also nuisance complaints and as a result, about two-thirds of our workload for the program are nuisance complaints which are usually accumulations of waste causing some kind of health or safety concern. And about a third are land use violations and those are the ones that we know about or are visible from the road in some way. I would just like to note that a lot of our county’s development is not visible from a public road, so it is very difficult to know how well we’re doing or not doing because without invitation to visit private properties, we simply don’t know what might be out there. We do not have a follow-up inspection component of our land use permitting process right now. We do work closely with our building inspectors and make sure that the plans that they are reviewing have a planning stamp of approval that they are building what they said they were going to build in the location that they said they were going to build in. Wasco County, as of yesterday, is implementing a local building codes program. We’ll have inspectors on line as of July 1st, so we’ll have new information coming into our system than we currently have high level of coordination, if you will. We do a lot of anonymous complaints that come in. We used to allow to be completely anonymous with no landowner contact information, or I should say, complainant contact information listed, but recently learned the hard way that that violates the law. So, we have to obtain the information from the complainant, but they check a box asking to be held in confidence unless the courts require that information to be released. So we hold it in confidence as much as we can but a higher power could release it if they deemed it appropriate.

Bowen Blair – Angie when you say “we hold it in confidence”, you mean the name of the complainant?

Angie Brewer – The name and contact information, yes.

Bowen Blair – Ok, thanks.

Angie Brewer – We also hold active code compliance cases - that the files themselves are confidential until the case is closed unless there’s nothing really egregious or a danger to anyone’s safety involved. We have a one FTE program code compliance officer that we’ve had on staff now for almost two years. We’ve had a code compliance officer on staff for almost ten years with a few hiccups in funding in between. As a result of those hiccups, we have some inconsistencies in our databases that we’re resolving and with the shift to a web-based platform our databases are being improved. I’m trying to think if there is anything else in my memo that . . . if there’s anything else in my memo that you would like me to elaborate on, please let me now.

I can respond to some of the questions that were shared by Krystyna on a bit of a high level. Some of them will require some additional time to follow up on if you’d like a formal response on behalf of the county.

The first question: How does each county determine whether unpermitted development is taking place and whether or not we have a regular proactive process that we rely upon?

As I noted earlier, we’re complaint driven and there’s no final inspection component. We do have the ability to require, well we do require folks to come into compliance with anything that’s on their property before a new permit is released and so that has proven to be proactive in some ways although we don’t go out looking for compliance cases and we don’t have any regular mechanism to follow-up on

conditions of approval. Quite simply, the limitations on that are staff capacity and the fact that every year the total sum of existing land use cases that have conditions of approval increases. So, you might have 50 cases from today that date back that you are checking on annually and then suddenly every year that increases by however many cases the county is reviewing. Your workload will always increase with the number of cases you're approving and unless there is some kind of lottery system or rotation you're trying to apply, you'll never be able to keep up with the workload that exists from following up on every single condition of approval.

The second question is: Is the process primarily complaint-driven, how does each county facilitate ordinary citizens making these complaints?

As I noted, we do allow anonymous complaints. We accept those complaint forms in numerous ways. We have hard copies at the counter, we have them online and fillable PDF's online. They can come in any way they need to, but they do need to be submitted in that formal way. We do have the authority to pursue conditions of approval compliance whenever we become aware of a condition of approval not being in compliance. So all that simply takes is us becoming aware of the problem whether that's driving by, you can see it from the road, a neighbor calling in saying hey they put in a new development that wasn't approved in that permit or something. We do have authority to follow-up on them.

Let's see - How often, if ever, does the county go back and look at whether conditions of approval are being adhered to?

I think I've already answered that.

Does each county have a compliance officer?

Yes, we definitely have one. Funding for compliance, like I said, has had a few hiccups.

And then whether or not it is expected to go up or down in the next five.

As far as funding goes, I am not anticipating any changes that I . . . there are no changes that are anticipated that I am aware of. Not to say that unforeseen circumstances could exist that I just don't know of yet but so far so good.

What is our self-assessment about our capacity to properly implement and enforce Gorge Management Plan, to implement ordinances, relative to what they believe the problems are with enforcement? And what do we think the deficiency might be or remedies to the problem?

I struggled with how to answer this because there are several pieces wrapped into this one. The problems with enforcement, if you will, is a complicated question because the public has their own perceptions and shares with us often what they think the problems with enforcement are. We know what our limitations and staff capacity to actually conduct code enforcement but I will just share with you that the feedback that we get from our landowners is that there is a bit of a perception of a double standard on behalf of the scenic area rules and how they are being enforced. So, for example, an individual landowner might have conditions of approval for house color, and let's say they have a house on 20 acres, they have trees, their house has faded but they are not very visible and their impact isn't humungous individually. But not far away there is a public recreation site with a parking lot scale of ten cars and there's 200 cars lining both sides of the street and you know there's impacts happening there

but somehow that is not being pursued as a code compliance issue. There is a double standard there that the public has a hard time registering. And it is hard for the planners at the counter to explain why your house color is ruining the Gorge but 200 extra sets of boots on the ground are not harming resources and often the reflected material on those cars on the hillside are not a scenic resource issue. So, there is some problem with enforcement there that leads to be an equity issue and a public perception issue with the landowners.

As I mentioned and noted in my notes, because the permits run with the land, the volume of those permits to keep track of will always be increasing. I think there is room for opportunity to identify some kind of lottery system, but I don't necessarily think that we should assume or plan for the fact that we could follow-up on every single case, every single year at every single location.

What do we see as a proper allocation of responsibilities for enforcement between the Commission and their governments, with respect to monitoring, investigation, and enforcement? What protocols and processes need to be established or clarify these roles and responsibilities? And it goes on from there.

I think this warrants a larger conversation but I would offer up that the Gorge Commission did issue land use decisions, as well as the Forest Service in the late 80's and early 90's and all of us are saddled with a handful of land use decisions that were . . . that contain interpretation of rules and binding conditions of approval issued by this body, not our bodies, so sometimes those can be difficult for us to interpret or enforce. And I think there is some room for discussion around those ones. As far as land use decisions issued by Wasco County, we would want to remain the primary entity applying those rules and interpreting those conditions of approval.

Cost-effective evaluation of implementation of the Management Plan, ways to determine whether there or not there are problems or whether or not we are succeeding with respect to construction without permits.

We know that construction happens out on the landscape every day. I don't think it surprises any of us when we learn about it. Often times it's a public education gap. A lot of landowners don't understand that they need permits for various things. Just as an example that I know you all heard at a fairly recent past gorge commission meeting – minor things like retaining walls with stackable bricks you get at Home Depot require some kind of scenic area review or a fence or a gate. We had a gate go from expedited review get kicked into a full review. It took almost four months for someone to get a gate on their existing fence. Those kinds of things are . . . people just don't think about those things.

Violations of conditions of approval related to GMA implementing ordinances. I would just clarify that we also implement SMA regulations. I would just change this to non-federal implementing ordinances. That is a hit or miss issue depending on the landowner and quite a few of us meet regularly with the realtor association trying to make sure that when new landowners come into the area or lands change hands, that folks are generally aware of the scenic area rules and that they need to do a little research to familiarize themselves as to what it means to buy in the scenic area and live in the scenic area.

And then - Disagreement between the Commission and the staff on the proper interpretation and application of their implementing ordinances?

I'm not really sure if this means disagreement between the gorge commission and the gorge commission staff or what. But I would say that we don't often get direct guidance from the gorge commission as a

body. We usually use the Gorge Commission staff as technical assistance. So if that at all answers that question, we're usually deferring to Gorge Commission staff for technical assistance.

And then the final question: Thoughts for building an effective, efficient integrated monitoring and enforcement system and database that can be shared?

This is something that I would prefer to speak with my board county commissioners about as far as some kind of data sharing agreement. Certainly, a lot of it is public record but I would like to have a larger conversation about that.

Are there any questions for me?

Adam Barber – Multnomah County

Good afternoon Madam Chair, Commissioners. I'm Adam Barber with Multnomah County and I'll provide an overview of our program in Multnomah County. I think I'll be touching on a number of these questions, but I can answer any questions that I didn't at the end. So, lots of similarities that I'm hearing with the way we're structured at Multnomah County particularly with Wasco and Hood River Counties. I have provided a copy of a tri-fold summary of our program to the commission as well as a flow-chart. I won't go into detail, but it outlines the process that we follow which is a voluntary compliance process. My office is in charge of compliance and enforcement for land use regulations, not necessarily nuisance regulations. Those are going to be handled by a different county program in Environmental Health. So we're really talking about what (*inaudible*) regulations (*inaudible*) the landscape. We currently have two FTE dedicated to this compliance and enforcement program, but we were reduced down to one starting next fiscal year, so we only have two FTE for another few weeks and that will be a change to our program and will dramatically impact how quickly we can respond. We also have the voluntary compliance model as a philosophy as procedures and regulations and there are really three main drivers that really help get the ball moving when someone has an issue, raises an issue to us. The first is the complaint is filed - that will start things happening in our office. We'll begin to investigate. Also, a property owner can request resolution of an issue. So that is also a trigger that we will prioritize because we don't want to have someone come in the door willing to take the first step and then we turn them away. Another point that I wanted to make is that our land use code has a full compliance requirement. What this means is that anytime that we review an application, we are required to confirm that the property is in full compliance with the zoning regulations and that all development on the property has been permitted and is in compliance with past permits. Now I will say that in practice, we're performing that full compliance review at a very high level. For instance, we're looking at aerial photos, we're making sure there aren't more structures on the property than have been permitted in the past, we're looking at the acreage of the property to make sure it was configured in a way that matches our records but we're not driving to the site and looking at paint colors, we're not counting individual trees and bushes. But we will get down to that level of detail if we receive information during the land use planning process that an issue may exist. So, we do rely on the neighbors. They help engage in the land use process and flag issues for our staff's attention. Our staff typically do not go out into the field as we go through land use reviews.

We have a very cooperative approach in Multnomah County. We only move to enforcement if our voluntary compliance process fails and when I say enforcement, I mean fines and/or liens on property if

finances are not paid in a timely manner. But the vast majority of the time, our voluntary compliance program is successful. 95% or higher in any given year we are successful with that but there are some downsides. It's a very slow process. It's very labor intensive and in fact every complaint that comes in that is validated is assigned a land use planner to assist the code compliance staff to help them navigate the process. So, then you have two FTE dedicated at times to resolving an issue and it takes a lot of hit on keeping the program moving.

We make it easy for people to file a complaint. They can call us, they can email, they can fill out a web form, they can fill out a paper form at the counter or they can fill it out and mail it in to us. But we do not accept anonymous complaints. We have tried that in the past. We also learned that we were running afoul with some legal issues. We also found in practice that it was not working well for us. We would have people that would submit dozens of complaints using different email addresses and things like that. It was very hard to focus on whether a lot of emails coming in was signifying a big issue in the community or if it was one person that had an issue next to them that was really becoming an issue for just that person. And for an equity standpoint, we also thought that it shouldn't matter how many people complain about an issue. If an issue is considered problematic for one member of the community then that should be enough to get it in front of us. But we don't have unlimited resources, so we do have a very strict priority ranking scheme and based on current resources of two FTE, we generally can only focus on high priority cases. So, if a complaint comes in that is not high priority, it will likely go to the backlog. And high priority would be any kind of issue that could potentially damage the environment. Another one - issues that threaten public health and safety. And then the third again is anytime a landowner is coming to us to resolve an issue, that is also a high priority. We don't want to lose that opportunity. Paint color is likely not going to fall into that high priority. Landscaping probably not as well. So that is something that we talk about and we struggle with and it's difficult when we know there is an issue, but we don't have the resources to address it.

The flow chart outlines our process for how we track and formalize complaints. I'll just point out that we have an internal database tracking system when a complaint is filed, it is turned into an "under review case" in our system. So, all the staff can see that a complaint has been filed and that's a flag to not issue a permit until we can resolve if that issue has been resolved or is a nonissue. As the investigation escalates, it can turn into a zoning violation, stop work orders can be issued if the issue is ongoing out in the field. We also have an opportunity for a voluntary compliance agreement to be signed by a landowner which commits the landowner to resolving a situation with very specific action steps within a very specific timeframe. That provides us with a little bit more breathing room to issue permits if they are working towards resolution and so that has been a very successful tool for us to work cooperatively and know that we have some level of commitment from a landowner to resolve an issue. The vast majority of the time, that works but if we do have a landowner that disengages with us, we do need to move to enforcement and we do have a hearings officer that's involved in the process assessing fines. So, there's a formality to it that I appreciate. I will point out that our fine calculation is very interesting, and I don't know how this is done in other counties, but we have 2 ½ pages of administrative rules to describe how the variables work for our fine equation. And it's really a straight multiplier with a number of factors that relate to the motivation of property owner to resolve the issue, the frequency of the violations in the past, the degree of the intention to break the law and then how responsive the landowner has been. And mathematically, it can grow very quickly into a large sum. It's a very interesting formula and I would recommend that commissioners look at that if that is of interest.

As far as county-wide metrics, we receive about 50 new complaints every year. We resolve about that same number – 50 every year. So those are going to be the priority complaints. We currently have a

backlog of about 225 and so that's been pretty steady over time, so I am concerned with the reduction down to one FTE that that backlog is going to grow. The number of complaints is not going to cease coming in because we only have one FTE. So, it's something that we need to think about in Multnomah County. As far as in the scenic area, we tend to have about ten come in every year and last year we resolved six. Commissioner, you asked about the percentage of resources going to scenic area – I would say it's about 20% in our program. So, it's a little higher than the geographic distribution of the scenic area for our jurisdiction because the issues are fairly complex and also in our community, the community members are generally aware of the scenic area regulations and I think there's an awareness of what should be happening and a maybe a sensitivity when things are not going the way that they should. We do tend to get calls. It's a connected community in the gorge in our jurisdiction where other parts of our jurisdiction aren't so connected culturally. We do hear about issues in the gorge more often than other areas is my very unscientific assessment. I would say that we do want to maintain a cooperative relationship with our community members. We don't want people to be afraid and call us to ask questions and to let us know when something is not going well. But again, this is a slow process. It takes a lot of resources and we might need to start to rethink that given reduction down to one FTE. What I'm sensing over time in our communities, is that our neighborhood associations want to help us because they recognize the reality of lack of resources. And so, we will have neighborhood association board members or representatives take photos and send information. They'll try to get the word out to the community that they're on it so please stop individually emailing the planning department looking for updates. I think they recognize that it is difficult for us to focus on an issue when we're getting five and six emails and calls from different people in the community. So that's a model out there. I know we haven't formalized any kind of relationship with the neighborhood associations but I'm liking what I'm seeing, and our relationships are getting stronger with our neighborhood groups. Just an idea to throw out there.

As far as the database, I do think that is a good idea. I think ultimately the Gorge Commission could think about trying to secure funding for compliance in a holistic way from this stage to help out the counties. I think that the first step is data collection and understanding what the problem is that is trying to be solved. Multnomah County is interested in pursuing that conversation a little further.

Any questions for me before I hand off the mic here?

Rodger Nichols – I just have to ask this one . . . it's a philosophical question so you can disregard it totally. When I hear you talk about cooperation, etc, etc., it kind of gets into the mind thought police aspect of attitude and I think that has no bearing. I can understand why it would in your view, but I think on a larger philosophical – your opinions of things should not matter in terms of the way you're treated. And charging more of people that have a bad attitude may be satisfying but I don't think it's philosophically defensible.

Alan Peters – Skamania County

So again, I'm Alan Peters of Skamania County. We don't have any code enforcement or code compliance officers. Code enforcement is done by our planning staff. We have two planners and myself, so a three-person planning department. It's hard for me to make a distinction between code enforcement and planning. For us they are truly one and the same. As far as the percentage, I did want to talk about that a little bit. Almost 80,000 acres of land in Skamania County are within the National Scenic Area and that

accounts for approximately 30% of all the (*inaudible*) areas in the entire gorge. So, we're one of six counties but about one-third of the acreage. Some of that, of course, is public land but we do have a lot of privately-owned land in the NSA. That's a lot of acreage for 1.5 FTEs to cover. It's basically about 50% of everything we do. Because of that, I would say we rely almost entirely on complaints. We've talked about anonymous complaints. I would say we do not accept anonymous complaints, but we do keep the identity of the complainant in confidence if they request and in Washington we're allowed to do that with our public disclosure laws. Although we require a name we're not required to submit it to people.

Over the five years, we've received an average of approximately 7 complaints per year in the NSA and that accounts for about a fifth of the complaints we received. Most of the complaints that we receive pertain to accumulation of junk or occupancy of recreational vehicles. We actually do not see that many complaints about unpermitted violations or unpermitted development. That's kind of the minority of the complaints we receive.

We talked about paint colors. I can think of about only one complaint where someone did complain about the paint color. It was a valid complaint. It was made in retribution for a complaint that that property owner had made so that's something that does go on in Skamania County and probably other counties as well.

While we don't have a code enforcement officer driving around looking for violations, I would say that it is probably not fair to say that we're entirely complaint driven because we do a lot of enforcement through our development review process as planners.

Over the last five years, we've reviewed an average of 43 NSA applications per year in Skamania County. After receiving an application, the first thing we do is to review the prior case history. We'll look to see if there are any unresolved violations, any open building permits or otherwise and we look at prior land use applications and decisions, including those that would have been issued by the Gorge Commission under the interim guidelines. As time goes on, more and more of the applications we receive will have prior conditions of approval attached to them.

Each development application gets a site visit usually pretty early on in the process. Those are pretty crucial to our review process for a number of reasons. But they're also important to see if those prior conditions of approval are still being met or if there are other violations on the property. One recent visit revealed that a decades-old requirement to plant several trees was never satisfied. At another recent site visit we learned that an applicant had cut down several trees that were required as a condition of approval. We looked at satellite imagery, saw that the trees were, in fact, planted, they had matured to a certain age and then at some point they disappeared. We were able to resolve both of those during development review by attaching the requirements to satisfy those prior conditions or replant those trees as new conditions of approval with the current development review we're doing. Stuff like that does happen. I don't want to say people are chopping down trees left and right but there are violations that we do observe during those site visits. Sometimes we'll observe unpermitted developments undertaken by a property owner when we're doing a site visit. These are usually pretty minor – Angie mentioned retaining walls, fences, maybe a small shed. These violations are usually corrected by requiring the applicant to revise their permit application. Bring in that shed or that fence. Sometimes we can approve them after the fact but usually there is some mitigation that's going to be required. Maybe it is as simple as painting in some cases. We've had people remove portions of structures. I think it is important to know that these are people who have turned in applications for development, so these aren't folks that just don't like getting permits. A lot of time they understand that

they need a permit for something large, but they don't understand or know that they need a permit for something that might seem pretty miniscule to them. There are people out there who do make honest mistakes and there are those people that are just going to do it anyway.

Once an NSA application is approved, we do conduct two additional site inspections. The first one is before the footings are poured. We actually have a planner who goes out and verifies that the building is the size we expected and in the location we expect. We'll look at setbacks. This is primarily for visual subordination but it's also important to know when we're dealing with sensitive habitat areas, riparian areas, stuff like that. Then there is a final inspection which occurs at the completion of construction where we verify that all of the conditions of approval have been satisfied. This is made by a planner. At that time, sometimes we'll pick up new things that have popped up over the course of the construction. Retaining wall is a really good example where someone has approval to build a home but find out they need a retaining wall . . . there's another application that we're going to need to require. We usually amend the application that approved the house.

Until recently the issue that we've had with that program is that those inspection requests were a burden on the applicant and not everyone was calling for them. I would say most did but not everyone did, and we'd find out that building was final, people were living in the house for several months before we'd actually get a call for inspection. So as of this week, actually as of Monday, we're requiring that within the NSA, a planner has to do a final inspection and sign off on the building permit before a certificate of occupancy is issued. We'll see how that goes. Our building official wasn't excited about that but it's something that we thought was important to see that the conditions are completed before occupancy is issued.

We're aware that our current staffing levels prevent us from doing effective code enforcement. Over the past several months, we've had a lot of discussions with our Board of County Commissioners, with our Sheriff's Office, with our prosecuting attorney's office about how we can revise our existing program procedures to be more effective and to get quicker, better results. The issue we have now is that the process does drag on and takes basically getting before a judge before a fine can be placed on a violation. We're trying to expedite that a little bit and hopefully get people to take us a little more seriously. I am hopeful in the next five years or so we'll at least have a part-time enforcement officer. The only thing between us and an enforcement officer really is the cost. It's something that our commissioners are interested in. When I talk about code enforcement, I am speaking not just of these permit violations but the nuisance violations, complaints – things like that. Our commissioners don't want to continue to see the kind of junk that we do see around county but if we do have someone that's doing that, we'll also have the resources to maybe be a little more proactive or a little more responsive within the NSA. But the reality is just based on the complexity of the regulations in the NSA, and not even just the NSA, but also in the county, that code enforcement officer is likely going to need to have some assistance from planning staff as well. That's something that we're expecting. But until that occurs, development reviews remain the priority of the planning department and that's going to be the primary way that we achieve code compliance. Honestly, I think that's the best way we can limit the amount of future violations - by providing new customer service at that stage, and having people avoiding permits because they think they're going to take too long. As we think about how to allocate our common resources, we get paying customers who have shovel-ready projects who want those approved. That's where we're focusing our resources.

Hopefully, I've answered most of the questions on that list. I did get a chance to look at that beforehand, but I didn't provide answers for each and every one of them. As far as collaborating, working with the

other jurisdictions and the Gorge Commission staff, that is something that we already do. I think that certainly there is interest in participating in something that was more centralized but as it is we do reach out to each other when we have questions about specific types of developments. It would be nice to know if there are specific projects that maybe have been approved that the Gorge Commission does have concerns about – and I'm speaking of the Gorge Commission staff. Another thing within the last couple weeks, we got a complaint forwarded by the Gorge Commission staff that dealt with an issue in our county. If I recall correctly, the complaint was anonymous but for us it wasn't anonymous, it was from the Gorge Commission. So if the Gorge Commission wanted to collect complaints and send them to us, we would be happy to accept those. We're handling that complaint as if it came from anyone else.

If there's any questions, I'd be happy to answer them.

Bowen Blair – Alan, you mentioned people who just decide to avoid the whole permitting process. Any idea how widespread that is in Skamania County?

Adam Peters – I'd say it's pretty widespread. I don't know how many examples there are, and this is not just NSA, it's outside of the NSA. That's something that we've thought a lot about. One thing we're hoping to do this fall is hold a couple of open houses on either end of the county – Underwood and maybe on the west end of the county – to try to educate people about what the scenic area permit requirements are. Kind of a neighborhood open house where we're available to answer questions but remind people that even that retaining wall requires a permit. I think the more we can educate people.

Bowen Blair – Thank you.

Lorrie DeKay – Any more questions.

Rodger Nichols – I would just like to thank everybody – really superb bunch of reports. We've never done this before. We've never had the fabulous five here altogether. I'd like to do this again sometime because - I think maybe annually or something. I think it would be very helpful to keep the lines of communication open. Thank you all for an excellent job.

Robert Liberty – I have a comment, not a question. Thank you for the time you took to answer the questions. Just some observations: One – no surprises for me, primarily complaint driven and understaffed. It's not really anyone's responsibility in review and fulfillment of our conditions of approval. There is no integrated system to look at the cumulative decisions and determine the scope of the problem – any of those three problems – which is no permit, not conditions approved, disagreement on the application of our requirements. And because there currently aren't resources, the idea of doing all of the decisions – I don't think anyone is advocating that. To me, the conclusion is very clear. Someone has to take responsibility for looking at a sampling of the decisions over time to determine the scope of the problem and to figure out what we do about it. Until we do that, we're not fulfilling our responsibilities. So that is a top priority for me in the coming year. I hope we get our extra planner and that it should be a seamless system so that he can evaluate the affect of one set of decisions which is: Are we getting the outcomes that we want? If we are not, is it because we have problems with enforcement or is it because we have problems with our regulations and our plan. To me that is fundamental. That's what we do to plan update from the 1998 management report. All of this ought to flow together so it doesn't become a huge undertaking every time. Without a plan for an evaluation of some sort of sampling, we can't know what the problem is. Now the partnership relationship with counties is important because there are a lot of similarities, but I detected some nuisances. Alan you

talked about the significances of lack of permits other people think not so much. I think, was it Mitch, commented about not sure about consistency of interpretation even within the county. We know from one proceeding before us that hearings officer does not waive its responsibility to review our conditions of approval. So, I think there are definitely things we can sort out. I'm not saying we start from scratch and look at everything but taking on that work in the next year or so, I think we can build a system that is beneficial in terms of enforcement and helping us understand, all of us in other jurisdictions, whether we're actually achieving the objectives of our plans.

Bowen Blair – I would certainly echo that. I would also echo Rodger's thanks for all of you coming and the candor that you expressed. That was really helpful in my opinion. I agree, there was not a lot of unexpected testimony. A couple of things that I saw is that with respect to unpermitted development, it's clear the counties don't have the funds to be proactive here. When you find out a violation, it's usually through a complaint or it's through the landowner requesting a new permit for development. That worries me, and it gets back to our charge under the legislation of monitoring this sort of work and you guys, it's pretty clear, at least three of the counties either don't have compliance officers or they are losing those funds. I think two of them are remaining consistent – Wasco and Clark County. But that's a real problem. As Robert said, somebody has got to do it. We can't rely entirely on you for funding reasons. So that's unpermitted development and with permitted development, we just spent an entire morning looking at a development proposal and wondering whether trees were sufficiently screening the development and eventually whether the paint colors would be appropriate. But if nobody's going back after three or four years to see if those trees are still standing or whether the color of the house is still the same, what have we accomplished? I think we've accomplished very little. So that means either we start monitoring and figuring out whether there is widespread non-compliance or there is compliance out there and then try to do something about it. It's our obligation and I don't think there's any denying that. I also think that in a typical county situation where it's complaint driven, it's usually neighbors and it's different in the NSA where the legislation was passed 35 years ago to try to create one gorge and we realized one of the reasons for legislation was that Skamania County for instance, shouldn't be responsible for zoning laws that would protect views from Multnomah County residents. I think we have the same sort of situation here with a complaint driven system where the impact may be felt more across the river than it is by the actual neighbors. It tells me that a complaint driven system isn't appropriate. So, what do we do again? Robert mentioned that we don't have the funds, the counties don't have the funds. It seems to me that we have to have some sort of sampling to determine how widespread unpermitted development is. If it is widespread. We've heard some testimony that it might be. And when it comes to permitted development, are conditions being followed up on. Are they being adhered to five years down the road – ten years down the road. So, the challenge – the ball is in our court and the challenge is pretty substantial. It's going to require the commission and the commission staff help us figure out how to handle this. But again, I want to come back and thank you all for your candor today and the information. It was really helpful.

Mitch Nickolds – If I could offer a bit of an observation – we struggle with unpermitted activity on any property and there are two very distinct types of non-compliance. For us there's that which people are intentionally going out of the way to avoid our permitting process. They are either disincentivized by the cost or the amount of time it takes to get a permit processed, so they decide to proceed anyway. Recently we received a lot of other contractors and people who are diligently trying to comply with code who are not interested in competing against those folks who are intentionally avoiding the permit process. The other aspect of non-compliance is over a period of time involve transfer of property. When there is a transfer of property that comes with it a substantial obligation to maintain a particular requirement that was reviewed under the gorge scenic act or any other land use review process that

required continued compliance, unless there is a covenant in place that really gives the next purchaser, the successor of the property, the information that there are specific requirements to maintain that, that we normally won't find out about it until after the fact. Until somebody's cut down that stand of trees or somebody's removed that rockery or whatever the case may be required in the permit. Or they erect that barrier or try to do some erosion control and all of the sudden they find themselves visited by us. We're interested in a much more responsive process and one that instead of one like a hearings examiner's process, one that involves a very large amount of time and expense of going to a civil enforcement board where we have a board comprised of volunteer citizens who act as a quasi-judicial body to take care of violations of the codes but who can process them through a series of very well-scripted steps that include adoption of a resolution and clear most of the work off the slate so that you can get to the hearings for the month. I used that process in Pasco and I was there for 17 years and we could hear up to 300 cases and processed 300 cases a month. So, there are ways to do this. Through public outreach we can provide programs to give people an opportunity to voluntarily comply before we enact a penalty endorsement or lien. There are things we can do, and I'm interested in working with all of the folks here to try to find a way to ensure that the scenic area is well protected.

Angie Brewer – Madam Chair, may I ask a question? I am curious whether there is a plan for how to use the information that comes out of any kind of assessment mentioned by Commissioner Liberty. The report that you held up, the early 2000's report I think.

Robert Liberty – 1998

Angie Brewer – Thank you. That was specifically, as I recall, specifically developed as a feedback loop for the efficacy of the rules that were in place at the time. I'm curious if that's the goal because I think as hard as we try and as much as we're fans of code compliance in making sure that our rules are being implemented consistently and are adhered to, it is an uphill battle at best. I'm just curious - will the goal be to inform some of the 2020 process to identify whether or not the existing regulations are working or is it a certain separate goal.

Robert Liberty – Well Ms. Brewer I would hope it could be the former, but I think it may be, as a matter of timing, might come subsequently.

Eric Walker – One other thing that I would like to point out is that when you're talking about sampling of compliance issues, I think it is good to prioritize the severity of what the non-compliance issue is. There are some violations that are more egregious and severe and worthy of consideration than others. I also see this as an opportunity to look towards expanding the list of uses that could be allowed outright or expanding the uses that would be subject to expedited review as a mechanism to limit some of these more minor type violations that take up more time.

Robert Liberty – I would agree that sort of the challenge would be that if the sampling were to focus on things we agree are more important, it's not going to really address the second point about expediting things. Given the limited resources, I really think we should just have high level of agreement about what we think are serious problems, but the slight difference about what I've been talking about and my colleague Bowen's is that I would like it to feed into this kind as well. It's also just looking at – let's assume everything was correctly interpreted and there's zero enforcement problems, we still have to look at is this the outcome we want. We can't know whether or not we have a need to change the regulations unless we determine what the problem is – it's not with the regulations, the problem is with enforcement. That's kind of the link to me. By having the database, we can do that all kind of

continuously and maybe develop a more sampling approach and then decide is it worth more resources. If we could conclude no, all of the violations are tiny and minor and they can be corrected, then it's not worth resources. Or certain counties or certain issues it is. That's kind of what I'm hoping for but I'm one commissioner.

Bowen Blair – The other thing about a complaint driven system is that it lends itself pretty well to visually perceptible violations. If somebody puts up a house and doesn't follow screening, you could see that. But if it comes, particularly in the eastern gorge, to cultural resources or natural resources, water, that sort of thing, that's the kind of thing that may not be visually evident, that doesn't lend itself, by in large, to complaints.

Lorrie DeKay – Any other comments, questions?

Krystyna Wolniakowski – I want to thank you all for coming and spending the afternoon and helping us discuss these issues that have been on our mind for quite a while. This is the second panel that we've had relating to compliance and enforcement. You heard from the staff back in March and now from the county planning directors. We're going to take some time to really process all of the information that we've heard today and wanted to know from the Commission if we have some next steps for us from the discussions that we've had in March and today.

Robert Liberty – I think I have been pretty clear. I would like a recommendation from the staff and a plan for evaluation to determine whether there's a problem with these three different aspects of compliance - so no permit, not following conditions of permit, disagreement on application of our standards as implemented by the counties, and how that can be done. And how we use that ultimate developed database to keep track of development, whether all development. And longer term, are there systems using new technology, like LIDR or other systems, where we can help work with the counties to identify problems with unpermitted uses for example. I think you know that I originally hoped this would be an important part of our plan update but I'm reconciled to doing it assuming we get some new staffing or maybe if we have to make another argument or appeal to the legislatures but we can do some of this work if we do receive the additional funding from the Oregon legislature to match the generosity of Washington State. That's my recommendation.

Bowen Blair – I certainly support that.

Krystyna Wolniakowski – So noted. Thank you. We'll get back to you with our next steps then as soon as we find out more about our budget.

Lorrie DeKay – That is a key issue there. Thank you very much all you wonderful planners and thank you for working so well with our staff. I think the relationships are getting better and better all the time and we really appreciate you coming.