



To: Columbia River Gorge Commission

From: Krystyna U. Wolniakowski, Executive Director
Aiden Forsi, Land Use Planner

Date: April 14, 2020

Subject: **Information Item:*** Update on Compliance Activities (Part 4) and Survey Design for National Scenic Area Compliance Study in Klickitat County

Background

In March, June and September 2019, staff prepared reports to the Commission about compliance and enforcement issues within the National Scenic Area, current impediments to achieving compliance, and actions the staff is already taking to resolve compliance issues. In January 2020, the staff prepared an annual report as an overview of compliance issues that were resolved in 2019 and ten that are still pending and should be resolved in 2020. As of the end of February 2020, eight of the ten are making excellent progress and will be resolved in the next few months. The final two are more complicated and may take longer to resolve.

Addressing Impediments to Compliance and Timelines

In the September 10, 2019 staff report on “Compliance in the National Scenic Area—Part 3”, staff identified several action items that could be addressed and next steps but did not identify a timeline for the actions nor if they can be completed with current resources. Some of these can move forward with existing staff, and others will require more funding in the FY2021-2023 biennium. Since the last report in September, staff has made the following progress on the action items discussed in September:

1. **MOUs with Counties:** Staff is currently working on developing a template for MOUs that can be customized with each county. Staff has scheduled a Planning Director’s meeting for March 19, 2020 to discuss the template and will follow up with individual meetings to customize each MOU. Given the steps that will be needed to formalize these, we are planning to have these ready for the Commission and counties to approve by late fall 2020.
2. **Adding Compliance and Monitoring Capacity:** We currently have .25 FTE for compliance and monitoring that is funded by the Vital Sign Indicators appropriation. If we receive additional Washington State funding for the Klickitat County Planner position, part of the planner’s time may be devoted to additional post-permit inspections. Klickitat County’s current funding for that position

does not authorize reimbursement for the planner's time spent on compliance activities. Additionally, for the FY 2021-2023 Biennium appropriations request, the Commission will submit a Policy Option Package (OR) and Decision Package (WA) to support one additional planner position to serve as a compliance and enforcement specialist.

3. ***Improving Information Management:*** The effort to improve our database, geo-reference all permits, and be able to query past Director's Decisions and conditions of approval, is dependent on additional funding this biennium for phase 1, and in the FY2021-2023 biennium to implement changes and digitize Commission records in Phase 2. The Commission will know by April 2020 if the states will provide funding to complete the Phase 1 "Needs Assessment."
4. ***Increasing Landowner Awareness about NSA Requirements:*** Staff has done some outreach in the last year at public events but has not initiated a systematic program to increase landowner awareness. We meet regularly with several entities that work directly with landowners in other ways, such as the Underwood Conservation District and the Mid-Columbia Association of Realtors. A more intentional approach to landowner awareness will take additional funding. Additionally, the sampling compliance study (next action item) may help staff understand how much compliance, or lack of compliance, is related to landowner awareness.
5. ***Design a random sampling program for Klickitat County:*** Attached to this memo is staff's proposed study design for Klickitat County to determine the extent that unpermitted development is occurring, and the extent of compliance when development has been permitted.

Since September, staff has received other questions from Commissioners below in addition to the action items discussed above.

Q. In its February 2019 memo, staff laid out eight critical legal issues (page 18) that it did not want to discuss while appeals and Friends of the Columbia Gorge's 60-day notices of intent to sue were pending. These are policy issues that need to be discussed as part of our compliance duties.

Staff agrees the Commission and staff need to discuss these. These legal matters are still ongoing. In the *Zimmerly* appeal, the mining parties have sought judicial review of the Commission's appeal decision. Briefing and a hearing is occurring now through this spring. Some of the legal questions in the February 2019 memorandum are primary issues in the case. Staff also asked Friends of the Columbia Gorge whether it would withdraw the 60-day notices of intent to sue the Executive Director, and Friends stated that it is not withdrawing those. At this time, staff recommends the Commission continue to hold off publicly discussing these issues to avoid prejudicing these cases/potential cases.

Some of the legal questions are also related to rulemaking. Staff is planning to address significant rulemaking discussions (including enforcement, urban area boundary revisions, plan amendments, and appeal procedures) after the Commission completes Plan Review and adopts any revisions. Staff is planning to work with the Commission on a work plan for all the post-Plan Review work that the Commission and staff has identified after the Commission completes Plan Review.

Q. What steps can the staff and Commission take with existing funding to improve enforcement, such as: requiring annual permit renewals for high impact activities; logging and tracking all violation complaints that we receive; streamlining the enforcement flowchart that Jeff recently presented; and addressing when counsel represents the CRGC or director?

The Commission's new staff position includes .25 FTE to work on compliance and enforcement. Staff has not started this conversation yet. Staff is using that .25 FTE to work on the compliance cases that were incomplete at the end of 2019. Requiring annual renewals for certain types of activities is something that would need to be addressed during Plan Review because the Management Plan currently specifies renewal requirements for certain types of land uses (e.g., hardship dwellings) and expiration dates (see Management Plan p. II-7-3). Staff also notes that it is already logging and tracking complaints that it receives.

Staff recommends the Commission wait until after it completes Plan Review to have additional conversation about the enforcement process. Staff would prefer not to start a time-intensive conversation while trying to complete Plan Review by August 2020.

Q. How can we come into compliance with respect to our regulations, and should we consider new protocols, and perhaps new regulations, that set—for example—timelines to achieve voluntary compliance?

Staff recommends discussing these and other commissioner suggestions after the Commission completes Plan Review. At this time, we have resolved compliance issues by working with the landowners who have voluntarily fixed the problems. Some of these have taken a few months to resolve and some longer, depending on the issue. We do not have a specific set deadline to resolve an issue and deal with each compliance issue finding on a case by case basis-- but as long as the landowners are cooperative, we work with them individually to establish a schedule to reach compliance.

Q. Similarly, how can we affordably analyze the overall development trends and patterns in the NSA and adjust our monitoring program accordingly?

Staff's new VSI planner is working on this. Staff will alert the Commission when it is ready to discuss this.

Attachment A

Survey Design for Compliance Study in Klickitat County

Purpose

The purpose of the study is to determine the extent of compliance with the National Scenic Area Act development standards and other authorities within Klickitat County.

Study Questions

There are two core questions for this compliance study:

1. *With what frequency do compliance issues manifest within the National Scenic Area in Klickitat County?*
2. *What are common compliance problems within the National Scenic Area in Klickitat County?*

Study Method Overview

Staff recommends collecting two samples to answer the study questions. The first is a sample of all tax lots within Klickitat County that are subject to the standards of the Management Plan. This will tell us the frequency and type of development activities that are occurring without National Scenic Area approval. The second is a sample of all approved applications within Klickitat County since 1988. This will tell us the frequency and type of compliance problems with Director's Decisions, such as compliance with application materials, approved site plans and conditions of approval.

To determine the size of the first sample, staff used GIS tools to extract information on all tax lots that are wholly or partially within the National Scenic Area in Klickitat County. There are 1113 tax lots, of which any part touches land within the mapped exterior boundary of the National Scenic Area and outside the mapped boundaries of the Urban Areas of White Salmon/Bingen, Lyle, Dallesport, or Wishram. Staff determined the size for the second sample by extracting all Director's Decisions issued by the Gorge Commission from the Commission's Development Review database. There are 484 Director's Decisions that approved some type of development activity. For a study to fall within a 95% confidence interval with a 10% margin of error, staff will need to use 89 samples of tax lots and 81 samples of approved Director's Decisions. The confidence interval and margin of error may be affected by staff's ability to conduct site visits (see *Site Visits* sections below).

Some of the tax lots are outside the Gorge Commission's jurisdiction (i.e., lands held in trust for the Columbia River Treaty Tribes), and some of the data in the Commission's datasets are incomplete. Additionally, the Commission has issued multiple Director's Decisions on several individual tax lots. Staff will determine how to address these sample issues as they arise.

Staff will split collection of the two samples into two distinct parts to manage staff's overall workload (discussed below). Staff will conduct the survey of tax lots first, and then conduct the survey of Director's Decisions.

Staff expects that evaluation of sample tax lots will involve examining current development and any applicable Director's Decisions to determine whether development has occurred without National Scenic Area approval. Likewise, evaluation of sample Director's Decisions will involve examining whether all development on a tax lot has been permitted. However, each sample needs to be considered independently to ensure that the survey answers the core question without bias from other samples.

Data Considered in Survey Design

As part of conducting the study, Staff will rely on several sources of data, both internal (for example, our Development Review database) and external (e.g., satellite imagery from Google Earth). Using this data, staff

will examine historic and current development on site, and make determinations of compliance for each surveyed tax lot. Staff intends to review enough information to determine whether there is a compliance issue, and the type of compliance issue, which may not be all available information.

Staff Resources

The Gorge Commission currently has .25 FTE (a part of the new VSI Planner position) allocated for compliance work. All other FTE are assigned to other work, so staff is limited in the amount of time it can spend researching compliance issues in Klickitat County. This complicates the study somewhat, as researching any individual tax lot or Director's Decision could very easily turn into a substantial project, depending on the difficulty in obtaining necessary information or the details of the specific compliance issues at hand. Staff is conscious of this and developed the survey method to limit the amount of unnecessary research that takes place and will attempt to find the most direct research paths when answering complicated questions about development on any given tax lot or for any given Director's Decision.

Where staff identifies compliance issues, they will do as much research as necessary to describe the compliance issue but will be judicious in how much time and effort is applied to any one tax lot. Staff is interested in macro-level compliance trends, not the details of site-specific compliance issues, and will limit research into specific issues once they determine that more research is unlikely to yield different information.

Part 1 – General Procedure – Reviewing Sample Tax Lots in Klickitat County

Selecting Sample Tax Lots

Tax lots are identified by unique numbers. Staff will randomize the list of tax lot ID numbers and select a representative sample from the full list. Staff may stratify the sample based on non-identifiable site characteristics to ensure that the survey is representative (i.e., ensuring that all Land Use Designations in Klickitat County are part of the sample). In cases where the data used to select tax lots for initial review is incomplete or insufficient in some way, staff will remove that entry and add another from the randomized list. Landowner cooperation is not a factor in whether a tax lot is selected from the list.

Staff will send a letter to the owner of each tax lot selected from the list. This letter will state the purpose of the study and request access to the tax lot (see *Site Visit* section below). We will inform landowners that we will work with them to voluntarily resolve any compliance issues that we find. Depending on the number of compliance issues we discover through this study, staff may not be able to begin work on or resolve all the compliance issues immediately.

Research Phase

For each tax lot, staff will conduct research using internal and external sources of data. As a baseline, staff will examine our development review database, historic and current aerial and satellite imagery, and assessor's maps to determine what development exists or existed on site, when it was constructed, and whether it was approved by the Gorge Commission. The results of this research will be captured in a standardized way that allows for analysis of all results at the end of the study.

Site Visit

For each tax lot sampled, staff will attempt to conduct a site visit. Staff cannot enter a property without permission from the landowner so some site visits may be from public rights-of-way or other publicly accessible areas, such as key viewing areas. Staff will schedule site visits in advance for landowners that allow staff to access the site.

During site visits, staff will examine what development appears on the property and determine whether the development on site at that time is what also appears in satellite images and assessor's records, and if there are any apparent resource impacts from that development.

If staff is not able to access a site, staff believes it will still be able to use other available information to be able to identify whether there is compliance, but staff may not be able to make an accurate assessment of all compliance issues on site, and the results of the survey may be affected to that extent. Staff's ability to access a site will not exclude that site from review, though they will note where access impeded research and account for that in the survey results.

Determining Compliance and Summarizing Study Results

After staff has surveyed the sample tax lots, it will analyze and summarize the results, extrapolate the results, and answer the core study questions.

Part 2 – General Procedure – Reviewing Sample Director's Decisions in Klickitat County

Selecting Decisions

Director's Decisions are identified by unique case numbers. Staff will randomize the list of Decisions and select a representative sample from the full list. Staff will consider how many tax lots with Decisions were reviewed in Part 1 to determine how many samples to study.

Staff may stratify the sample based on non-identifiable site characteristics to ensure that the survey is representative (i.e. ensuring that all Land Use Designations and types of development are part of the sample). In cases where the data used to select Director's Decisions for initial review is incomplete or insufficient in some way, staff will remove the entry and add another from the randomized list. Landowner cooperation is not a factor in whether a Director's Decision is selected from the list. If the sample includes two or more decisions for a single tax lot, staff will examine all of them as one sample, and add more Decisions from the randomized list to ensure an adequate sample size for the study.

Staff will send a letter to the owner of each tax lot selected from the list. This letter will state the purpose of the study and request access to the tax lot (see *Site Visit* section below). We will inform landowners that we will work with them to voluntarily resolve any compliance issues that we find. Depending on the number of compliance issues we discover through this study, staff may not be able to begin work on or resolve all the compliance issues immediately.

Research Phase

For each Director's Decision, staff will conduct research using internal and external sources of data. As a baseline, staff will examine the content of the decision, current satellite imagery, and assessor's maps to determine whether development that exists on site was approved by a Director's Decision. The results of this research will be captured in a standardized way that allows for analysis of all results at the end of the study.

Site Visit

For each tax lot sampled, staff will attempt to conduct a site visit. Staff cannot enter a property without permission from the landowner so some site visits may be from public rights-of-way or other publicly accessible areas, such as key viewing areas. Staff will schedule site visits in advance for landowners that allow staff to access the site.

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Determining Compliance and Summarizing Study Results

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Post Study Staff Actions

Staff will analyze the results of the study and report back to the Commission. The results of the study will inform any further staff actions; as such, staff cannot propose a work plan for post-study actions until the study is nearer to completion.

Next Steps

Staff requests the Commission approve the study as outlined above. After the Commission's approval, staff will create survey tools, establish a timeline for completing each phase of the study, and begin the study.