



The Duty to Enforce: Columbia River Gorge Commission Enforcement Responsibilities

The bedrock of our environmental laws is the mandate to enforce against companies and persons who sacrifice our clean air, clean water, and national scenic treasures for personal profit. The Columbia River Gorge National Scenic Area Act, the federal law that protects the Gorge from irresponsible land uses and development, is a great example.

Congress recognized the importance of enforcement when it passed this landmark law in 1986. It authorized the creation of the Columbia River Gorge Commission and directed it to monitor development and land use activities in the National Scenic Area and to ensure compliance with Gorge protection laws. It also allowed for citizen lawsuits against the Commission and other agencies to compel them to enforce the National Scenic Area Act when they fail to do so.

By rule, the Commission's executive director has a mandatory responsibility to investigate all alleged violations in the National Scenic Area and to pursue enforcement of any violations of Gorge Commission rules or orders, county ordinances, or Management Plan provisions.

Unfortunately, despite repeated pleas for help from hundreds of citizens, the Commission's director and staff have refused to carry out their enforcement responsibilities under the Scenic Area Act and implementing rules for the past several years, thus allowing numerous illegal activities to continue with impunity. The Commission director has abdicated the enforcement responsibility, while being fully aware that these violations are occurring.

These violations are damaging protected resources, such as scenic resources, water quality, and fish habitat. In addition, the failure to enforce is endangering public safety, harming adjoining landowners, and diminishing property values. Ultimately, this results in an erosion of public support for the Gorge Commission.

Under the Commission's rules, the Commission's director is required to initiate enforcement whenever he or she concludes that a violation is occurring. Furthermore, the Commission's director is authorized to, at any time, shut down illegal activities immediately by issuing a simple stop-work order.

Despite these requirements, the Commission's director and staff have offered a continually changing series of invalid excuses for not taking enforcement action. The most commonly cited excuse is that the Commission staff must appear to be "fair" and "neutral," in case there is a future appeal to the Gorge Commissioners. This is incorrect.

The Commission director's enforcement mandate is completely separate and independent of the appellate role of the Gorge Commissioners to hear appeals within the National Scenic Area.

Moreover, the Commission's rules expressly state that the "appearance of fairness" doctrine applies only to the Gorge Commissioners, not to the Commission director or other staff. Finally, it is irrelevant whether any violations known to the Commission's director may also happen to be the subject of a county appeal or may be appealed to the Gorge Commissioners, because the Management Plan for the Columbia River Gorge National Scenic Area states that in such appeals, "the Executive Director does not represent the position or stated direction of the Columbia River Gorge Commission."

The lack of enforcement by Commission staff appears to be broad and systemic. In 2016, the Gorge Commission removed references to land use enforcement from the Commission's mission statement on its website and from its job postings. Since then, the Commission's director has not initiated any land use enforcement actions. These alarming changes send the wrong message to Gorge landowners—that the Gorge Commission staff will no longer enforce the Scenic Area rules, leaving Gorge residents who are harmed by violations to suffer the consequences.

The Commission staff's failure to enforce the Scenic Area rules is a stark reminder that, regardless of how strong land use and environmental laws may be on paper, they are worthless if they are not enforced.

Friends of the Columbia Gorge is committed to supporting the Commission director in exercising her enforcement responsibilities. We also stand ready to compel the Gorge Commission to fulfill its enforcement mandate, if necessary.

Enforcement Rules:

The adopted rules regarding enforcement can be seen here:

<http://www.gorgecommission.org/images/uploads/pdfs/Commission%20Rule%20350-30%2020110501.pdf>

Of particular note and relevance:

Commission Rule 350-30-030. Notice of Alleged Violation.

"(1) If the violation is not de minimis, the Director **shall** serve written notice of violation on the alleged violator by personal service or by registered or certified mail."

Commission Rule 350-30-100. Summary Order.

"Where an imminent threat exists to resources protected under the law and/or to public health, safety or welfare, the Director may issue a summary order requiring the alleged violator to promptly stop work or take other necessary action pending a notice of alleged violation and a contested case hearing before the Commission under 350-30-070."

These provisions require the Commission's director to issue a notice of violation whenever he or she becomes aware of a violation, and authorize the director to issue a stop-work order even before issuing a notice of violation, if necessary to protect the public health, safety, or welfare. These rules are not currently being complied with.