



Schroader, Kathy

From: Cnty Board of County Councilors General Delivery
Sent: Friday, May 20, 2016 8:48 AM
To: Mielke, Tom, Madore, David, Stewart, Jeanne, Olson, Julie (Councilor), Boldt, Marc
Cc: McCauley, Mark, Tilton, Rebecca, Schroader, Kathy
Subject: FW: Comments on the Clark County Comprehensive Plan 2016 Update for May 19 public hearing
Attachments: Futurewise Comments on Comp Plan Preferred Alt PC and County Council Public Hearing May 18, 2016 Final pdf

From: Tim Trohimovich [<mailto:Tim@futurewise.org>]
Sent: Wednesday, May 18, 2016 3:06 PM
To: Cnty Board of County Councilors General Delivery; Cnty 2016 Comp Plan
Subject: Comments on the Clark County Comprehensive Plan 2016 Update for May 19 public hearing

Dear Sirs and Madams

Enclosed please find Futurewise's Comments on the Preferred Alternative Clark County Comprehensive Plan 2016 Update for the Planning Commission and Board of County Councilors May 19, 2016 joint public hearing. We are also mailing paper originals with enclosures to the two addresses listed.

Thank you for considering our comments.

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May 18, 2016

The Honorable Marc Boldt, Council Chair
Clark County Board of County Councilors
PO Box 5000
Vancouver, Washington 98666-5000

Mr Steve Morasch, Chair
Clark County Planning Commission
Clark County Community Planning
Attn 2016 Comp Plan Record
PO Box 9810
Vancouver, Washington 98666-9810

Dear Council Chair Boldt, Councilors Madore, Mielke, Olson, and Stewart, Planning Commission Chair Morasch, and Planning Commissioners Wright, Blom, Quring, Barca, Johnson, and Bender

Subject: Comments on the Preferred Alternative Clark County Comprehensive Plan 2016 Update for the Planning Commission and Board of County Councilors May 19, 2016 joint public hearing.

Sent via U S Mail and email to boardcom@clark.wa.gov, comp.plan@clark.wa.gov

Thank you for the opportunity to comment on the Preferred Alternative for the Clark County Comprehensive Plan 2016 Update. While we appreciate that Clark County is timely updating its comprehensive plan, modifications are necessary to the Preferred Alternative to meet community needs, protect water quality, and comply with the Growth Management Act.

Futurewise is working throughout Washington State to create livable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems. We are creating a better quality of life in Washington State together. We have members across Washington State including Clark County.

Summary of Recommendations

- We recommend that Clark County not adopt the new Agriculture 10 (AG-10) and Forest 20 (FR-20) zones. Neither Option #1 or Option #2 will conserve agricultural and forest land as the community wants and as the Growth Management Act requires. Our detailed discussion of the problems with the AG-10 zone begins on page 4 of this letter. Our detailed discussion of the problems with the FR-20 zone begins on page 9 of this letter. See also page 11 of this letter for a discussion of the problems with clustering on natural resource lands.

- We recommend that the County not adopt the proposed urban growth area (UGA) expansions. Compact urban growth areas save taxpayers and ratepayers money and have other benefits.¹ The urban growth area expansions are not needed and, in the case of La Center and Ridgefield urban growth area expansions, will pave over productive farmland. Please see page 10 of this letter for more information.
- Clarify and improve new policies 3.5.9 and 3.5.10 to better protect agricultural land. Please see page 12 of this letter for more information.
- We support including the proposed goal, policy, and strategy encouraging sustainability based on the *Clark County Sustainability Policy* adopted in 2007 and the *Growing Healthier Report* adopted in 2012. Sustainable practices reduce costs long-term and will help to maintain healthier communities.
- Update the Geohazard Protection Programs of Chapter 4 Environmental Element and chapter 40.430 Clark County Code (CCC) to better protect people and property from the adverse effects of landslide hazards and incorporate the lessons of the Oso landslide. Please see page 14 of this letter for more information.
- We recommend resolving the Transportation Facility Plan deficit in Chapter 5 the Transportation Element. Please see page 17 of this letter for more information.
- We support adopting the *2010 Clark County Bicycle and Pedestrian Master Plan* by reference and the adoption of the bicycle and pedestrian facility policies. This existing county plan and the new policies encourage healthy and low-cost transportation and recreation opportunities. Walking and bicycling are particularly beneficial in that they are activities that people can enjoy for their entire lives.
- We support adopting policy 5.5.1 as part of the Transportation Element to support the state "Target Zero" initiative. Eliminating serious transportation injuries should be our long-term goal.
- Update the Capital Facilities Plan element to comply with state law and reduce costs for taxpayers and facility users. Please see page 17 of this letter for more information.
- Amend Capital Facilities Policy 6.2.2 to comply with state law and to protect senior water rights holders and lot and home buyers. Please see page 20 of this letter for more information.
- We support including the housing policy recommendations from the *Aging Readiness Plan* (2/7/2012) and the *Growing Healthier Report* (6/5/2012) in the Housing Element. These

¹ John Carruthers and Gudmaundur Ulfarsson, *Urban Sprawl and the Cost of Public Services* 30 ENVIRONMENTAL AND PLANNING, B. PLANNING AND DESIGN 503, 518 (2003) enclosed with the paper original of this letter.

policies will provide for and encourage housing types well suited to our aging population and housing that will help promote lifetime health

- We support the updated goals and policies for Chapter 8, the Historical, Archaeological and Cultural Preservation Element Clark County has a rich prehistory and history The updated goals and policies will help maintain historic, archaeological, and cultural resources and the economic, social, and other benefits these resources provide
- We support the new policies proposed for Chapter 11, the Community Design Element These policies are based on the updated vision for the county and will help carryout that vision

Detailed Recommendations on the Comprehensive Plan Update

Please do not combine the three rural comprehensive plan designations into one "Rural" designation. See the 2016 Comprehensive Plan Update BOCC Preferred Alternative - Comprehensive Plan

The Growth Management Act (GMA) requires and the Washington State Supreme Court has held that the rural element of the comprehensive plan must include a variety of rural densities² In *Kittitas County v Eastern Washington Growth Management Hearings Board*, the Kittitas County Comprehensive Plan had a single rural comprehensive plan designation Kittitas County's Limited Areas of More Intense Rural Development (LAMIRDs) also had separate comprehensive plan designations The county argued that the reference in the comprehensive plan to "zoning regulations that have included six possible designations (with three possible densities) and innovative zoning techniques" complied with the Growth Management Act requirement for a variety of rural densities³ Based on the plain language of the GMA, the Washington State Supreme Court held that the comprehensive plan itself must include a variety of rural densities and the Kittitas County Comprehensive Plan violated this requirement⁴

The Washington State Supreme Court identified a practical reason for this requirement

¶ 40 We also note a practical concern raised by RIDGE and CTED They argue that reading the GMA to not require that the Plan itself provide for a variety of rural densities will result in the evasion of GMA requirements through site-specific rezones This is not the first time this court has recognized this potential problem See *Woods v Kittitas County*, 162 Wn 2d 597,

² RCW 36 70A 070(5), *Thurston County v Western Washington Growth Management Hearings Board*, 164 Wn 2d 329, 357, 190 P 3d 38 (2008)

³ *Kittitas Cnty v E Washington Growth Mgmt Hearings Bd*, 172 Wn 2d 144, 167, 256 P 3d 1193, 1204 (2011)

⁴ *Kittitas Cnty*, 172 Wn 2d at 169, 256 P 3d at 1205 "A plain reading of the statute indicates that the Plan itself must include something to assure the provision of a variety of rural densities"

629–32, 174 P 3d 25 (2007) (Becker, J , concurring) Because interested parties cannot raise GMA compliance issues in Land Use Petition Act (chapter 36 70C RCW) petitions, *id* at 616, 174 P 3d 25 (majority opinion), site-specific rezones are only evaluated for compliance with the GMA through evaluation of their consistency with the existing Plan. A comprehensive plan that is silent on the provision of a variety of rural densities (and other protective measures for rural areas) effectively allows rezones that circumvent the GMA. This argument may prove too much, as rezones must also comply with development regulations, which can be challenged for compliance with the GMA. *Id* at 615–16, 174 P 3d 25. However, in *Woods*, the petitioner's land was designated at one dwelling unit per 20 acres, and the County later approved a 3-acre rezone after it was too late for her to challenge the development regulations for compliance with the GMA. *Id* at 629–30, 174 P 3d 25 (Becker, J , concurring) (“The rezone was the first and only time that the actual change of density on the subject site could have been challenged as violating the GMA”), RCW 36 70A 290(2) (stating that petitions challenging a comprehensive plan or development regulation as noncompliant with the GMA “must be filed within sixty days after publication”). While we decide this question on the basis of the plain statutory language, we recognize that reading out the requirement that counties include certain protections in the Plan itself, including to provide for a variety of rural densities, could result in the evasion of GMA requirements through site-specific rezoning.⁵

The proposed single “Rural” comprehensive plan designation is just like the single rural designation in the *Kittitas County* decision. Like in *Kittitas County*, Clark County’s the single rural designation violates the GMA. So we recommend you do not include this change in the Preferred Alternative and retain the existing separate rural comprehensive plan designations.

Do not adopt the AG-10 zone, reducing the minimum lot size for 2,571 parcels currently zoned AG-20 to ten acres because the new zone will not conserve farm land and will likely result in smaller lots and therefore increase the per acre price of farmland, hastening the conversion of farmland to vacant land or other uses. See proposed Clark County Code (CCC) 40.210.010, Forest, Agriculture and Agricultural-Wildlife Districts (FR-80, FR-40 20, AG-20 10, AG-2 WL), Table 40.210.010-2, Lot Requirements, and related amendments

The Preferred Alternative will create a new Agriculture 10 (AG-10) zone reducing the minimum lot size for 2,584 parcels currently zoned Agriculture 20 (AG-20) from 20 acres to

⁵ *Kittitas Cnty*, 172 Wn 2d at 169, 256 P 3d at 1205

ten acres ⁶ An estimated 1,750 new parcels could be created under full build-out conditions in the new AG-10 zone ⁷

The new AG-10 zone, which halves the minimum lot size and doubles the density in the agriculture zone, will not conserve agricultural and forest land as the Growth Management Act requires. In the *Soccer Fields* decision, the Washington State Supreme Court has held that [t]he County was required *to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products* ⁸ A ten acre minimum lot size and density will not meet this standard. Professor Arthur C. Nelson analyzed agricultural land preservation techniques and concluded that “[m]inimum lot sizing at up to forty-acre densities merely causes rural sprawl—a more insidious form of urban sprawl” ⁹ In 2012, the American Farmland Trust identified the land use regulations necessary to protect farmland and concluded that to “make substantial progress protecting farmland in the Puget Sound region, minimum parcel size would be at least 40 acres and preferably larger” ¹⁰ This recommendation is consistent with Professor Nelson’s recommendation and would apply to Clark County.

Clark County’s average farm size has increased from 37 acres in 2007 to 39 acres in 2012, an increase of 5.4 percent ¹¹ During the same time period, Washington’s average farm size increase by 4 percent ¹² The increase in average farm size does not support a reduction in the minimum lot size or an increase in density.

Rather than reducing the minimum lot size, which will not protect agricultural land from incompatible development as Professor Nelson’s analysis shows, the county should maintain

⁶ *Clark County Comprehensive Plan 2016 Update Planning for growth 2015 – 2035 Summary – Issue Paper* 8 p. 1

⁷ *Final Supplemental Environmental Impact Statement* p. 1-6 (April 2016)

⁸ *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn 2d 543, 556, 14 P 3d 133, 140 (2000) emphasis in original

⁹ Arthur Nelson, *Preserving Prime Farmland in the Face of Urbanization: Lessons from Oregon* 58 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 467, 471 (1992) copy enclosed with the paper original of this letter. The Journal of the American Planning Association is a peer-reviewed journal. See the Journal of the American Planning Association Instructions for authors webpage accessed on May 12, 2016 at http://www.tandfonline.com/action/authorSubmission?journalCode=ripa20&page=instructions#VzS_NV_uUk and enclosed with the paper original of this letter.

¹⁰ Dennis Canty, Alex Martinsons, and Anshika Kumar, *Losing Ground: Farmland Protection in the Puget Sound Region* p. 9 (American Farmland Trust, Seattle Washington Jan. 2012) accessed on May 12, 2016 at <https://4aa2dc132bb150caf1aa-7bb737f4349b47aa42dec77a72d5264a-sl.cf5.ticcdn.com/Losing-Ground-Farmland-Protection-in-the-Puget-Sound-Region.pdf> and enclosed with the paper original of this letter.

¹¹ United States Department of Agriculture, National Agricultural Statistics Service, *2012 Census of Agriculture Washington State and County Data Volume 1 • Geographic Area Series • Part 47 AC-12-A-47 Chapter 2 County Level Data, Table 8 Farms, Land in Farms, Value of Land and Buildings, and Land Use 2012 and 2007* p. 271 (May 2014) accessed on May 12, 2016 at http://www.nass.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_County_Level/Washington/sws1.pdf and a copy of *2012 Census of Agriculture Washington State and County Data Volume 1* was enclosed with the paper original of Futurewise’s Sept. 10, 2015 letter to Clark County on the Draft Supplemental Environmental Impact Statement (SEIS).

¹² *Id.*

or increase the minimum lot size and adopt exclusive farm use zoning¹³ This is the path that Skagit County is taking to protect its farmland¹⁴

In addition, research shows that the smaller the parcel of land, the higher the per acre cost of the land¹⁵ So by reducing the agricultural minimum lot sizes and allowing the subdivision of agricultural land into smaller lots, the Preferred Alternative will increase the per acre cost of farm land These changes may well increase the costs above what farmers can pay for resource lands, resulting in the conversion of farm land to other uses Unfortunately, “[o]ne of the key obstacles [to agriculture] in Clark County is the limited access to high quality agricultural land at an affordable cost”¹⁶ “The agricultural industry in Clark County has faced tremendous pressure from encroaching development and rising land costs in the last decade These pressures have [led] to an overall loss of farm production”¹⁷ This is one of the reasons why the Washington State Department of Agriculture’s *Washington Agriculture Strategic Plan 2020 and Beyond* documents the need to conserve existing agricultural lands to maintain the agricultural industry and the jobs and incomes the industry provides¹⁸ As the strategic plan concludes “[t]he future of farming in Washington is heavily dependent on agriculture’s ability to maintain the land resource that is currently available to it”¹⁹

However, by doubling the density allowed on agricultural lands, the county is increasing the cost of agricultural land As it has in the past this will lead to a continuing loss of farm production and the continued conversion of agricultural land This violates the Growth Management Act

The new AG-10 zone allows nonagricultural uses such as private recreational facilities, country clubs, and golf courses²⁰ In the *Souer Fields* decision, the Washington State Supreme Court held that recreational uses cannot be allowed on agricultural lands of long-term commercial significance As the court wrote “The County’s amendments, which allow active recreational

¹³ Arthur Nelson, *Preserving Prime Farmland in the Face of Urbanization Lessons from Oregon* 58 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 467, 471 – 72 (1992)

¹⁴ Skagit County Department of Planning and Development Services, *Administrative Official Interpretation pertaining to implementation procedures for Skagit County Code (SCC) 14.16.400(6) Siting Criteria in the Agricultural-NRL zoning district* pp 2 – 4 (May 14, 2010) accessed on May 12, 2016 at <http://www.skagitcounty.net/PlanningAndPermit/Documents/Siting%20of%20Non-Ag%20Buildings%20in%20Ag-NRL%20zone.pdf> and enclosed with the paper original of this letter

¹⁵ Cynthia J Nickerson and Lori Lynch, *The Effect of Farmland Preservation Programs on Farmland Prices* 83 AMER J AGR ECON 341 p 347 (May 2001) accessed on May 12, 2016 at <http://pubag.nal.usda.gov/pubag/downloadPDF.xhtml?id=43517&content=PDF> and enclosed with the paper original of this letter This article was peer-reviewed *Id* at 341

¹⁶ Globalwise, Inc., *Analysis of the Agricultural Economic Trends and Conditions in Clark County, Washington* Preliminary Report p 48 (Prepared for Clark County, Washington April 16, 2007) accessed on May 12, 2016 at http://www.clark.wa.gov/planning/comp_plan/documents/final_ag_analysis_prelim_report.pdf and cited pages enclosed with the paper original of this letter

¹⁷ *Id* at p 42

¹⁸ Washington State Department of Agriculture, *Washington Agriculture Strategic Plan 2020 and Beyond* pp 50 – 52 (2009) accessed on May 12, 2016 at <http://agr.wa.gov/foi/> and cited excerpts enclosed with the paper original of this letter

¹⁹ *Id* at p 50

²⁰ Proposed Table 40.210.010-1 Uses

uses on designated agricultural lands, do not comply with the GMA, and the land in question does not qualify for innovative zoning techniques under RCW 36 70A 177 ”²¹ The new AG-10 zone also allows other non-agricultural uses such as governmental facilities and schools have been built on agricultural land ²² In the Lewis County decision, the Washington State Supreme Court held that allowing “non-farm uses of agricultural lands failed to comply with the GMA requirement to conserve designated agricultural lands ”²³

This holding is also supported by the farm land protection literature Limiting uses reduces incompatible uses in agricultural areas and prevents land speculation from increasing land costs above what agricultural products can support ²⁴ Schools are particularly a problem in agricultural areas due to the sensitivity of children to overspraying from fields and residual agricultural chemicals ²⁵

The Growth Management Act (GMA), in RCW 36 70A 070(1), also requires that the “land use element [of the comprehensive plan] shall provide for protection of the quality and quantity of groundwater used for public water supplies ” Further, the GMA, in RCW 36 70A 070(5)(c), provides in relevant part that the “rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by (iv) Protecting critical areas, as provided in RCW 36 70A 060, and surface water and groundwater resources ” In reviewing these GMA requirements, the Washington State Supreme Court has held that “several relevant statutes indicate that the County must regulate to some extent to assure that land use is not inconsistent with available water resources ”²⁶

Unfortunately, in the Preferred Alternative the planned land use is inconsistent with available water resources When Ecology adopted the instream flow rules for Water Resource Inventory Areas (WRIAs) 27 and 28, Ecology established reserves for future domestic uses in Clark County ²⁷ Enclosed with the paper original of this letter are an email, two spreadsheets

²¹ *King Cty v Cent Puget Sound Growth Mgmt Hearings Bd (Soccer Fields)*, 142 Wn 2d 543, 562, 14 P 3d 133, 143 (2000)

²² Proposed Table 40 210 010-1 Uses, aerial image of 20601 NE 167th Ave, Battle Ground, 98604 and Clark County Property Information Account Summary of 20601 NE 167th Ave, Battle Ground, 98604 both included with the paper original of this letter

²³ *Lewis Cty v W Washington Growth Mgmt Hearings Bd*, 157 Wn 2d 488, 509, 139 P 3d 1096, 1106 (2006)

²⁴ American Farmland Trust, *Saving American Farmland What Works* p 50 (Northampton, MA 1997) enclosed with the paper original of this letter, Gary Lettman, Katherine Daniels, Tim Trohumovich, Chapter 5 Protecting Working Farm and Forest Landscapes How Do Oregon and Washington Compare? in Jill Sterrett, Connie Ozawa, Dennis Ryan, Ethan Seltzer, and Jan Whittington eds *Planning the Pacific Northwest* pp 42 – 44 & pp 53 – 54 (American Planning Association, Chicago/Washington D C 2015) enclosed with the paper original of this letter

²⁵ Hal Bernton *The fall of a pesticide policeman* *Seattle Times* (Aug 31, 2004) accessed on May 12, 2016 at <http://community.seattletimes.nwsourc.com/archive/?date=20040831&slug=pesticide> and enclosed with the paper original of this letter

²⁶ *Kittitas Cty v E Washington Growth Mgmt Hearings Bd*, 172 Wn 2d 144, 178, 256 P 3d 1193, 1209 (2011)

²⁷ Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed, WRLA 27* p 1 (Publication Number 11-11-031 August 2012) accessed on Nov 17, 2015 at <https://fortics.wa.gov/ecy/publications/summarypages/1111031.html> and enclosed with the paper original of this letter, Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed, WRLA 28* p 2 (Publication Number 11-11-032 August 2012) accessed on Nov 17, 2015 at

and maps that show the status of those reserves as of the end of June 2015 Ecology estimates that the reserves can accommodate another 2,747 domestic wells with each well serving one house and with one household in the house, 1,627 households served by small community water systems, and Clark County Public Utilities can serve another 485 households outside cities ²⁸ This totals 4,859 new households or occupied housing units ²⁹ So Clark County should limit the number of currently vacant and new rural, agricultural, and forest land lots to about 4,859 and only in the parts of the county outside cities that have available reserves After the reserves are exhausted, new permit-exempt wells can only be used if the person proposing to use the well provides in-kind mitigation, which typically requires acquiring a water right senior to the instream flow rules ³⁰

However, Clark County currently has 5,042 existing vacant lots in the rural areas and on resource lands as of 2014 ³¹ Therefore the County already has more lots than can be supported by the surface and ground water resources available in the rural areas and on resource lands The Preferred Alternative will significantly increase the number of lots that can be created on rural and natural resource lands allowing another 8,024 new parcels ³² And this figure omits the new parcels that can be created on property in the Timber current use taxation program and land in the Designated Forest Land taxation program ³³ New lots are not prohibited in either of these tax categories ³⁴ So Alternative 4 does not regulate to assure that land use is not inconsistent with available water resources This violates the GMA and is a fatal flaw

Over development outside urban growth areas is already causing agricultural wells to go dry ³⁵ All of the new lots that the Preferred Alternative allows will make this problem even worse For the same reason, we recommend that the county not reduce the minimum lot size for 291 parcels zoned Rural 20 (R-20) to Rural 10 (R-10) for some parcels adjacent to AG-10 based zone resource lands The county does not have the water resources to support these increased densities

<https://fortress.wa.gov/ccy/publications/summarypages/1111032.html> and enclosed with the paper original of this letter

²⁸ The enclosed spreadsheet WRIA 27-28 Reservations ESTIMATES w Totals for Clark County by Category totals the Ecology data for Clark County

²⁹ The Spreadsheet WRIA 27-28 Reservations ESTIMATES w Totals for Clark County by Category

³⁰ *Foster v Washington State Dep't of Ecology*, 184 Wn 2d 465, 476 – 77, 362 P 3d 959, 963 (2015)

³¹ *Clark County Buildable Lands Report* p 13 (June 2015) accessed on May 12, 2016 at https://www.clark.wa.gov/sites/all/files/thc-grid/061015WS_2015BUILDABLELANDSREPORT.pdf and cited page enclosed with the paper original of this letter

³² *Final Supplemental Environmental Impact Statement* p 1-6 (April 2016)

³³ *Id*

³⁴ Chapter 40 210 CCC, Resource and Rural Districts

³⁵ Personal Communication from Coyote Ridge Ranch to Tim Trohimovich (April 02, 2015) enclosed with the paper original of this letter

Do not adopt the new FR-20 zone, reducing the minimum lot size for 2,499 parcels currently zoned Forest 40 (FR-40) to 20 acres because the new zone will not conserve forest land and will likely result in smaller lots and therefore increase the per acre price of forest land, hastening the conversion of forest land to vacant land or other uses. See proposed Clark County Code (CCC) 40.210.010, Forest, Agriculture and Agricultural-Wildlife Districts (FR-80, FR-40 20, AG-20 10, AG-2 WL), Table 40.210.010-2, Lot Requirements, and related amendments

The Preferred Alternative will create a new Forest 20 (FR-20) zone reducing the minimum lot size for 2,499 parcels currently zoned Forest 40 (FR-40) from 40 acres to 20 acres³⁶ The *Final Supplemental Environmental Impact Statement* (Final SEIS) claims that “[o]nly 25 of the 412 potential new parcels are a direct result of the changes proposed in the Preferred Alternative (see Table 1-2)”³⁷ But Table 1-2 omits the new parcels that can be created on property in the timber land current use taxation program and the Designated Forest Land tax classification³⁸ New lots are not prohibited in either of these tax categories³⁹

The reduced minimum lot size and density in the Preferred Alternative will not conserve forest land as the Growth Management Act requires⁴⁰ A twenty acre minimum lot size and density will not meet this standard Parcels smaller than 40 acres have much lower timber harvest rates and are more likely to be converted to residential land uses⁴¹ Parcels smaller than 50 acres have higher than average costs for preparing timber sales, harvesting trees, and reforesting the site⁴² Forest parcelization “can have profound impacts on the economics of forestry and lead to reduced forest management, even when land is not physically altered”⁴³ So reducing the minimum lot size and density below 40 or 50 acres will not protect forest land

³⁶ *Clark County Comprehensive Plan 2016 Update Planning for growth 2015 – 2035 Summary – Issue Paper 8* p 1

³⁷ *Final Supplemental Environmental Impact Statement* p 1-7 (April 2016)

³⁸ *Id* at p 1-6

³⁹ Chapter 40 210 CCC, Resource and Rural Districts

⁴⁰ RCW 36 70A 060(1)

⁴¹ Eric J Gustafson & Craig Loehle, *Effects of Parcelization and Land Divestiture on Forest Sustainability in Simulated Forest Landscapes* 236 *FOREST ECOLOGY and MANAGEMENT* 305, 313 (2006) Accessed on Sept 10, 2015 at http://nrs.fs.fed.us/pubs/jrnl/2006/nrs_2006_gustafson_001.pdf and enclosed with the paper original of this letter Forest Ecology and Management is a refereed scientific journal, see the Forest Ecology and Management webpage enclosed with the paper original of this letter and available at <http://www.journals.elsevier.com/forest-ecology-and-management/>

⁴² R Neil Sampson, *Implication for Forest Production in Responses to “America’s Family Forest Owners”* 102 *JOURNAL OF FORESTRY* 4, 12 (October/November 2004) Enclosed with the paper original of this letter The Journal of Forestry is a peer-reviewed scientific journal See the Journal of Forestry Guide for Authors webpage available at http://www.safnet.org/publications/jof/guide_for_authors.cfm and enclosed with the paper original of this letter

⁴³ Ralph Alig, Susan Stewart, David Wear, Susan Stein, and David Nowak, *Conversions of Forest Land Trends, Determinants, Projections, and Policy Considerations* Advances p 6 in John M Pye, H Michael Rauscher, Yasmeen Sands, Danny C Lee, Jerome S Beatty, tech eds *Advances in threat assessment and their application to forest and rangeland management Volume 1* (Gen Tech Rep PNW-GTR-802 2010) accessed on May 12, 2016 at http://www.fs.fed.us/pnw/pubs/gtr802/vol1/pnw_gtr802_vol1.pdf and cited pages enclosed with the paper original of this letter This study was peer-reviewed *Id* at p *11

as the Growth Management Act requires. Rather the existing minimum lot size and density should be retained. Further, we recommend that Clark County follow Whatcom County's example and prohibit residential uses in its zone that applies to forest land of long-term commercial significance except for living quarters for those who are engaged in forest management activities on the property, such as fire crews and logging crews, and watchpersons. These uses are reviewed as conditional uses.⁴⁴

In addition, research shows that the smaller the parcel of land, the higher the per acre cost of the land.⁴⁵ So by reducing the forest minimum lot sizes and allowing the subdivision of forest land into smaller lots, the Preferred Alternative will increase the per acre cost of forest land. This change may well increase the costs above what foresters can pay for resource lands, resulting in the conversion of forest land to other uses.

Finally, as was documented in the prior section, the additional FR-20 lots will allow more development than can be supported by existing water resources. This violates RCW 36 70A 070(1) and the *Kittitas County* decision.⁴⁶

Please do not include the urban growth area expansions in the Preferred Alternative

Urban growth areas may only be expanded to accommodate the County's need for housing and jobs.⁴⁷ The existing urban growth areas (UGAs) can already accommodate the County's housing and employment projections.⁴⁸ So the expansions are unneeded.

In addition, the proposed La Center and Ridgefield urban growth area expansions continue to qualify as agricultural lands of long-term commercial significance.⁴⁹ The La Center UGA

⁴⁴ Whatcom County Code (WCC) § 20 43 158, 159. Accessed on Sept. 10, 2015 at

<http://www.codepublishing.com/wa/whatcomcounty/> and enclosed with the paper original of this letter.

⁴⁵ Cynthia J. Nickerson and Lori Lynch, *The Effect of Farmland Preservation Programs on Farmland Prices* 83 AMLR J AGR ECON 341 p. 347 (May 2001) accessed on Sept. 8, 2015 at

<http://pubag.nal.usda.gov/pubag/downloadPDF.xhtml?id=43517&content=PDF> and enclosed with the paper original of this letter. This article was peer-reviewed. *Id.* at 341.

⁴⁶ *Kittitas City v E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 178, 256 P.3d 1193, 1209 (2011).

⁴⁷ *Thurston County v Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 351–52, 190 P.3d 38, 48–49 (2008). See RCW 36 70A 110 and RCW 36 70A 115 which limit the size of UGAs.

⁴⁸ *Clark County Buildable Lands Report* pp. 9–14 (June 2015) accessed on May 12, 2016 at

https://www.clark.wa.gov/sites/all/files/the-grid/061015WV_2015BUILDABLE_LANDS_REPORT.pdf and enclosed with Futurewise's Sept. 16, 2015 comment letter on the DSEIS.

⁴⁹ Futurewise letter to Clark County Community Planning on the Ridgefield urban growth area expansion (Sept. 16, 2015) enclosed with the paper original of this letter, *Comprehensive Growth Management Plan Ridgefield UGA – Map 1 Deliberation Components & Comprehensive Growth Management Plan Ridgefield UGA – Map 2 Deliberation Components* both enclosed with the paper original of this letter, July 5 2007 & August 14 2007 BOCC Tentative Land Use Map Agricultural Analysis Deliberation and Decision p. 2 (10/9/2007) enclosed with the paper original of this letter, USDA Natural Resources Conservation Service *Soil Map—Clark County, Washington (La Center UGA Expansion)* pp. 1–3 of 3 and enclosed Map Unit Descriptions all included with the paper original of this letter, *Comprehensive Growth Management Plan La Center UGA – Map 1 Deliberation Components & Comprehensive Growth*

expansion was part of LB-1 which the court of appeals found was improperly de-designated in 2007 and improperly incorporated into the La Center UGA ⁵⁰ Agricultural land of long-term commercial significance cannot be included in urban growth areas for the purpose of development ⁵¹

So we urge the Planning Commission and the Board of County Councilors to exclude the Battle Ground, La Center, and Ridgefield urban growth area expansions from the adopted comprehensive plan amendments. Maintaining properly sized urban growth areas will save money for taxpayers and ratepayers ⁵²

Do not allow clustering on Forest and Agricultural Resource Lands. See Chapter 2 Rural and Natural Resource Element new clustering policies and the CCC 40.210.010 Forest and Agriculture land clustering proposals

Clustering can be a worthwhile technique in urban and rural areas, but it will not protect agricultural and forest land of long-term commercial significance. There are several reasons that clustering does not protect forest and agricultural resource lands. First, “in farming areas, cluster zoning can lead to serious conflicts between farmers and nonfarm neighbors”⁵³

Second, for clustering to qualify as an “innovative zoning technique” under RCW 36 70A 177, it “must satisfy” the Growth Management Act’s “mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry”⁵⁴ The proposed optional and required clustering regulations fail to meet this standard. While proposed CCC 40 210 010E 3 b (7) requires that building envelopes be located to provide for buffers for agricultural land there is no standard for buffer widths. To protect residential uses from the adverse impacts of agricultural activities and farmers from complaints that can drive them out of business, a buffer 100 feet or wider may be necessary ⁵⁵ But there is no requirement for adequately protective buffers and no required buffer widths.

Management Plan La Center UGA – Map 2 Deliberation Components both enclosed with the paper original of this letter.

⁵⁰ *Clark Cty Washington v W Washington Growth Mgmt Hearings Review Bd*, 161 Wn App 204, 238, 254 P 3d 862, 878 (2011), vacated in part *Clark Cty v W Washington Growth Mgmt Hearings Review Bd*, 177 Wn 2d 136, 298 P 3d 704 (2013), this part of the decision was not vacated, *Comprehensive Growth Management Plan La Center UGA – Map 1 Deliberation Components & Comprehensive Growth Management Plan La Center UGA – Map 2 Deliberation Components*

⁵¹ *Clark Cty Washington v W Washington Growth Mgmt Hearings Review Bd*, 161 Wn App 204, 238, 254 P 3d 862, 878 (2011)

⁵² John Carruthers and Gudmaundur Ulfarsson, *Urban Sprawl and the Cost of Public Services* 30 ENVIRONMENT AND PLANNING B: PLANNING AND DESIGN 503, 518 (2003)

⁵³ Tom Daniels and Deborah Bowers, *Holding Our Ground: Protecting America's Farms and Farmland* p. 123 (Island Press Washington, D.C. Covelo, CA 1997) cited pages enclosed with this letter.

⁵⁴ *King Cty v Cent Puget Sound Growth Mgmt Hearings Bd (Soccer Fields)*, 142 Wn 2d 543, 560, 14 P 3d 133, 142 (2000)

⁵⁵ Prepared by the Resource Lands Review Committee of the Rogue Valley Regional Problem Solving process, *Guidelines for Establishing Effective Buffers Between Rural Agricultural and Urban Uses* p. 20 (June 6, 2006) accessed on May 12, 2016 at http://ryrcog.org/rps/pdf/np_buffers_guidelines.pdf, Department of Natural Resources, Queensland & Department of Local Government and Planning, *Queensland Planning Guidelines: Separating Agricultural and Residential Land Uses* p. 19 (DNRQ 97088 Aug 1997) accessed on May 12, 2016 at

The standards for the remainder parcel also do not conserve agricultural lands, they can be used for open space allowing the conversion of farmland⁵⁶ In addition, in the past Clark County cluster subdivisions have included drainage easements and drainage ways that limit agriculture use⁵⁷ These and similar uses are not clearly prohibited by the new regulations⁵⁸ Again, this would convert agricultural land to non-agricultural uses

Third, cluster subdivisions can actually encourage the urbanization of resource lands and rural areas because they create open space amenities that encourage the development of neighboring properties⁵⁹ Again, this will lead to the conversion of farm and forest land

Rather than allowing cluster subdivisions, we recommend that the agricultural and forest land zoning be improved as we recommend above This is necessary to comply with the Growth Management Act

Clarify and improve new policies 3.5.9 and 3.5.10. See Chapter 2 Rural and Natural Resource Element on page 28

We support revised policy 3.5.9's measures to protect agricultural from conflicts from nearby uses We do have three recommendations to strengthen the policy First, the first bullet in revised policy 3.5.9 calls on the county to "approximately" buffer residential development from agricultural activities We think that the intended word is "adequately" or perhaps "appropriately" So we suggest the word be clarified

Second, allowing additional development to access roads used for moving agricultural equipment increases incompatibilities⁶⁰ While in some areas farmers can use on-farm roads to minimize this impact, in other areas they cannot So we recommend that non-farm development be directed away from roads used to move farm equipment

<http://www.dilgp.qld.gov.au/resources/policy/plng-guide-ss-p-ag.pdf>, and Arthur C Nelson, *Preserving Prime Farmland in the Face of Urbanization Lessons from Oregon* 58 JOURNAL of the AMERICAN PLANNING ASSOCIATION 467, p 468 (1992) all enclosed with the paper original of this letter

⁵⁶ Proposed CCC 40 210 010E 3 c

⁵⁷ Bennett Valley Farms subdivision plats sheets 1 and 2 of 2, Clark County, Washington MapsOnline aerial images and zoning map all enclosed with the paper original of this letter

⁵⁸ Proposed CCC 40 210 010E 3 c

⁵⁹ Elena G Irwina and Nancy E Bockstael, *Land use externalities, open space preservation, and urban sprawl* 34 REGIONAL SCIENCE AND URBAN ECONOMICS 705, pp 723- 24 (2004) enclosed with the paper original of Futurewise's Sept 10, 2015, comment letter on the Draft SEIS Regional Science and Urban Economics in a peer-reviewed journal See the Regional Science and Urban Economics Author Information Pack p 6 enclosed with the paper original of Futurewise's Sept 10, 2015, comment letter on the Draft SEIS

⁶⁰ Arthur C Nelson, *Preserving Prime Farmland in the Face of Urbanization Lessons from Oregon* 58 JOURNAL of the AMERICAN PLANNING ASSOCIATION 467, p 468 (1992), Tom Daniels, *What to Do About Rural Sprawl?* p *1 (Paper Presented at The American Planning Association Conference, Seattle, WA April 28, 1999) copy enclosed with the paper original of this letter

Third, increased rural development has already led to agricultural wells drying up⁶¹ So we recommend that residential uses in and near agricultural areas be limited to protect senior agricultural water rights holders and reduce incompatible uses Our recommended additions to the policy are double underlined and our deletions are double struck through

- 3.5.9~~8~~ Land use activities within or adjacent to agricultural land shall be located and designed to minimize conflicts with agricultural management and other activities on agricultural land, to include the following.
- residential development adjacent to agricultural land shall be adequately ~~approximately~~ buffered from agricultural activities with the residential use providing the buffers,
 - public services and utilities within and adjacent to designated agricultural areas should be designed to prevent negative impacts on agriculture and allow for continued resource activity;
 - notification shall be placed on all plats and binding site plans that the adjacent land is in resource use and subject to a variety of activities that may not be compatible with residential development;
 - direct non-farm development away from roads used to move agricultural equipment;
 - limit dwellings in agricultural areas to those connected to agriculture and at a density in and near agricultural areas that protects agricultural water sources.

Revised policy 3 5 10 seems to limit the protections of right to farm laws to prevent agricultural activities from being found to be public nuisances But Washington's right to farm law applies to both public and private nuisances⁶² Policy 3 5 10 must be consistent with the state right to farm law and should apply to any nuisance claims Our recommended additions to the policy are double underlined and our deletions are double struck through

- 3 5.10~~9~~ Agricultural activities performed in accordance with county, state and federal laws should not be considered ~~public~~ nuisances nor be subject to legal action as ~~public~~ nuisances consistent with Washington's right-to-farm law.

Clarify new policy 3.6.7. See Chapter 2 Rural and Natural Resource Element on page 29

Proposed policy 3 6 7 seems to have a small typo, probably done by autocorrect We recommend the following clarification with our addition double underlined and our recommended deletion struck through

⁶¹ Personal Communication from Coyote Ridge Ranch to Tim Trohimovich (April 02, 2015) enclosed with the paper original of this letter
⁶² RCW 7 48 305

- 3 6.7 Surface mining other than Columbia River dredging shall not occur within any 100-year floodplain except for projects with an approved Habitat Conservation ~~Conversation~~ Plan

Update the Geohazard Protection Programs of Chapter 4 Environmental Element and chapter 40.430 CCC to better protect people and property from the adverse of landslide hazards

Since the adoption of the last comprehensive plan update and critical areas update we have experienced the Oso tragedy That tragedy, unfortunately, reminded us that landslide hazards can be deadly⁶³ Recent research shows that long runout landslides are more common in Cascade foothills than had been realized⁶⁴ This research documents that over the past 2000 years, the average landslide frequency of long runout landslides in the area near the Oso landslide is one landslide every 140 years⁶⁵

It is important to understand that homeowners insurance does not cover the damage from many natural hazards such as landslides “Insurance coverage for landslides is uncommon It is almost never a standard coverage, and is difficult to purchase inexpensively as a policy endorsement”⁶⁶

None of the Oso victims’ homes were covered by insurance for landslide hazards⁶⁷ And that is common when homes are damaged by landslides⁶⁸ For example, on March 14, 2011, a landslide damaged the home of Rich and Pat Lord⁶⁹ This damage required the homeowners

⁶³ Jeffrey R. Keaton, Joseph Wartman, Scott Anderson, Jean Benoit, John deLaChapelle, Robert Gilbert, David R. Montgomery, *The 22 March 2014 Oso Landslide, Snohomish County, Washington* p 1 (Geotechnical Extreme Events Reconnaissance (GEER) July 22, 2014) accessed on May 17, 2016 at

http://www.geclassassociation.org/index.php/component/quick_reports/view/quick_reports&id=30 and enclosed with the paper original of Futurewise’s Sept 10, 2015 letter to Clark County on the Draft SEIS

⁶⁴ Sean R. LaHusen, Alison R. Duvall, Adam M. Booth, and David R. Montgomery, *Surface roughness dating of long-runout landslides near Oso, Washington (USA), reveals persistent postglacial hillslope instability* GEOLOGY pp *2 – 3, published online on 22 December 2015 as doi 10.1130/G37267.1, Geological Society of America (GSA) Data Repository 2016029, *Data repository for Surface roughness dating of long-runout landslides near Oso, WA reveals persistent postglacial hillslope instability* p 4 both included with the paper original of this letter

⁶⁵ Sean R. LaHusen, Alison R. Duvall, Adam M. Booth, and David R. Montgomery, *Surface roughness dating of long-runout landslides near Oso, Washington (USA), reveals persistent postglacial hillslope instability* GEOLOGY p *2, published online on 22 December 2015 as doi 10.1130/G37267.1

⁶⁶ Robert L. Schuster & Lynn M. Highland, *The Third Hans Cloos Lecture Urban landslides socioeconomic impacts and overview of mitigative strategies* 66 BULLETIN OF ENGINEERING GEOLOGY AND THE ENVIRONMENT 1, p 22 (2007) accessed on April 13, 2016 at

http://193.134.202.10/pub/TRANNI/Workshop_L&S/Literature/Schuster_and_Highland_2007_Bulletin_of_Engineering_Geology_and_the_Environment.pdf and enclosed with the paper original of Futurewise’s Sept 10, 2015 letter to Clark County on the Draft SEIS

⁶⁷ Sanjay Bhatt, *Slide erased their homes, but maybe not their loans* The Seattle Times (April 2, 2014) accessed on April 13, 2016 at http://old.seattletimes.com/html/latestnews/202327858_mudslidefinancialsml.html

⁶⁸ *Id*

⁶⁹ Ian Terry, *Abandoned and trashed after mudslide, Edmonds house now for sale* The Herald (Feb 11, 2015) The house is for sale after the bank who held the Lord’s mortgage took ownership of the home *Id* accessed on April 13, 2016 at <http://www.heraldnet.com/article/20150211/NEWS01/150219829>

to abandon their home on Norma Beach Road near Edmonds, Washington. Because their homeowners insurance did not cover landslides, they lost their home.⁷⁰ This loss of what may be a family's largest financial asset is common when homes are damaged or destroyed by landslides or other geological hazards.

Landslide buyouts are rare and when they occur the property owner often only recovers pennies on the dollar. The property owners bought out after the Aldercrest-Banyon landslide in Kelso, Washington destroyed their homes received 30 cents on the dollar.⁷¹ This underlines why preventing development in landslide hazards is just plain, ordinary consumer protection. To address these hazards we recommend that Geohazard Protection Programs of Chapter 4 Environmental Element and chapter 40.430 CCC be updated to recognize the new science resulting from the Oso landslide.

First, we recommend that CCC 40.430.020D 1 and E 1 require review of any landslide capable of damaging the proposed development. Second, the buffers should not be limited by the slope height or an arbitrary short distance as CCC 40.430.020 currently does. Currently, CCC 40.430.020D 1 and E 1 only requires review of landslide hazards within 100 feet, in the case of D 1, or on a site containing a landslide hazard area for E 1. Landslide hazards are capable of damaging property much farther away than these distances. The 2014 Oso slide ran out for over a mile (6,562 feet), this was 10 times the vertical relief of the slope.⁷² All 25 of the North Fork of the Stillaguamish River valley landslides analyzed in the LaHusen article (which includes the 2014 Oso slide), ran out farther than the vertical relief of the slope or 100 feet.⁷³ They ranged from 1.45 times the vertical relief to ten times the vertical relief.⁷⁴ In a study of 38 large, catastrophic landslides that occurred in northern British Columbia in the last three decades, researchers were able to calculate height to length ratios for 17 of the landslides. Based on these height to length ratios, all of the landslides had runout distances longer than the height of the slope, many cases the runout was much longer than the height of the slope.⁷⁵ Clark County is vulnerable to similar landslides.

⁷⁰ *Id.* at p. *6

⁷¹ Isabelle Sarikhan, *Sliding Thought Blog, Washington's Landslide Blog* Landslide of the Week – Aldercrest Banyon Landslide July 29, 2009 accessed on April 13, 2016 at

<https://slidingthought.wordpress.com/2009/07/29/landslide-of-the-week-aldcrest-banyon-landslide/> and enclosed with the paper original of Futurewise's Sept. 10, 2015 letter to Clark County on the Draft SEIS.

⁷² Geological Society of America (GSA) Data Repository 2016029, *Data repository for Surface roughness dating of long-runout landslides near Oso, WA reveals persistent postglacial hillslope instability* p. 4.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Marten Geertsema, John J. Clague, James W. Schwab, Stephen G. Evans, *An overview of recent large catastrophic landslides in northern British Columbia, Canada* 83 *ENGINEERING GEOLOGY* 120, p. 120 & pp. 124 – 25 (2006) accessed on April 13, 2016 at <https://chip.northernhealth.ca/Portals/2/Documents/420Repository/2014%20updates/Recent%20catastrophic%20slides%20in%20Northern%20BC.pdf> and enclosed with the paper original of this letter. *Engineering Geology* is a peer-reviewed scientific journal. *Engineering Geology Author Information Pack* pp. 5 – 7 accessed on April 13, 2016 at <https://www.elsevier.com/journals/engineering-geology/0013-7952/content/enggeo> and enclosed with the paper original of this letter.

In fact, after analyzing many landslides and the scientific literature, Legros concluded in another peer-reviewed study that “[t]he ratio [height to length] H/L may therefore be physically meaningless. The good correlations between runout distance and volume, and area and volume, suggest that landslide spreading is essentially controlled by their own volume, and not by H.”⁷⁶ He also wrote that “hazard zonation for landslide events should rely on their area– volume relationship.”⁷⁷ But CCC 40 430 020 uses the unsubstantiated height of the slope to determine the required buffers. This failure to base the critical areas regulations on current science violates the Growth Management Act.⁷⁸

We recommend that the regulations explicitly require the site specific identification of the top of landslide slope and slope faces subject to failure and sliding, toe of slope areas subject to impact from down slope run-out, and buffers for areas subject to landslide hazards. The Joint SR 530 Landslide Commission recommends identifying “[c]ritical area buffer widths based on site specific geotechnical studies” as an “innovative development regulation[]” that counties and cities should adopt.⁷⁹

Third, we recommend that construction not be allowed on landslides, landslide run-out areas, and their buffers even if that means that a lot is unbuildable. As the over \$100 million spent in the Oso landslide remediation shows, allowing construction in these areas results in the creation of nuisances and so Clark County is not legally obligated to allow construction on these areas.⁸⁰ In the *Bayfield Resources Co v Western Washington Growth Management Hearings Board* decision, the State of Washington Court of Appeals upheld against a substantive due process challenge and other challenges a rural zoning district that required the deduction of landslide hazard areas and certain other critical areas from the land used to calculate the allowed number of housing units.⁸¹ The Court of Appeals agreed that landslide hazard areas are not to be built on.

Fourth, we recommend that Clark County require adequate public notice of landslide hazards. This can include mailings to property owners in tax statements, notices on plats, and signing landslide hazards on the ground. The SR 530 Landslide Commission also recommended similar actions.⁸²

⁷⁶ Francois Legros, *The mobility of long-runout landslides* 63 *ENGINEERING GEOLOGY* 301 p 328 (2002) accessed on April 13, 2016 at <https://www.researchgate.net/publication/222894450> *The mobility of long-runout landslides*, Eng. Geol. and enclosed with the paper original of this letter.

⁷⁷ *Id.* at pp 328 – 29.

⁷⁸ *Honesty in Environmental Analysis and Legislation (HEAL) v Central Puget Sound Growth Management Hearings Bd*, 96 Wn. App 522, 533, 979 P 2d 864, 870 – 71 (1999).

⁷⁹ The SR 530 Landslide Commission, *Final Report* p 31 (Dec 15, 2014) accessed on May 17, 2016 at http://www.govnet.wa.gov/sites/default/files/documents/SR530LC_Final_Report.pdf and enclosed with the paper original of this report.

⁸⁰ *Lucas v South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992) accessed on May 17, 2016 at <http://www.supremecourt.gov/opinions/bounds/volumes/505/bv.pdf>

⁸¹ *Bayfield Resources Co v Western Washington Growth Management Hearings Bd*, 158 Wn. App 866, 883, 244 P 3d 412, 420 (2010).

⁸² SR 530 Landslide Commission, *Final Report* p 33 (Dec 15, 2014).

Resolve the Transportation Facility Plan deficit in Chapter 5 the Transportation Element

The GMA, in RCW 36.70A.070(6)(a)(iv)(C), provides that if probable funding for transportation facilities “falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met” So RCW 36.70A.070(6)(a)(iv)(C) gives the county two choices: raise additional revenues, including grants, or change its land use projections.

The Transportation Element, on page 44, states that the “20-year transportation capital facilities plan is more speculative and is not required to be balanced.” While we agree that the 20-year plan is more general and less precise, we disagree that does not have to be balanced, although ranges of costs and revenues can be used to balance it. As the Growth Management Hearings Board recently wrote:

The GMA capital facilities and transportation elements require a general financing plan or range of funding sources for the 20-year period and a specific six-year CIP or TIP to ensure public facilities are available to serve development. RCW 36.70A.070(3) and 070(6).⁸³

We recommend that a range of revenues, or a range of costs, or both be prepared to balance the current estimated deficit of \$158,104,000.⁸⁴

Update the Capital Facilities Plan element to comply with state law and reduce costs for taxpayers and facility users. See *Clark County Comprehensive Plan 2015-2035 6 Capital Facilities and Utilities Element, Appendix G: Capital Facilities Financial Plan, and Appendix E Capital Facility Plans Review and Analysis*

RCW 36.70A.070(3) requires:

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the

⁸³ *Shoreline Preservation Society (SPS) v. City of Shoreline*, GMHB CPS Case No. 15-3-0002, Final Decision and Order (Dec. 16, 2015), at 26 of 55.

⁸⁴ *Clark County Comprehensive Plan 2015-2035 6 Transportation Element* p. 43.

capital facilities plan element are coordinated and consistent Park and recreation facilities shall be included in the capital facilities plan element

WAC 365-196-415(2)(a)(u) provides that “[c]apital facilities involved should include, at a minimum, water systems, sanitary sewer systems, storm water facilities, reclaimed water facilities, schools, parks and recreational facilities, police and fire protection facilities ”

Clark County’s capital facility plan element does not include many of what is required by RCW 36 70A 070(3) Some inventories are missing Little capacity information is provided for most capital facilities For schools, for example, only the number of schools are listed, not their capacities ⁸⁵ The forecast is unclear for many of capital facilities Costs are lump sums, even for the six-year plan No dollar amounts are assigned to the revenues sources and it is not clear if the revenues are adequate to meet the costs For some capital facilities, such as schools, passing mention is made to the capital facility plans of various providers But those plans, which could provide the supporting data, are not adopted by reference or incorporated by reference although we recognize some water and sewer plan are adopted by reference which we support ⁸⁶

Table E 23, Clark County School Districts’ 6-Year CFP Summary, identifies six year capital costs of a half billion dollars, \$585,479,377 ⁸⁷ But no corresponding table identifies how these costs will be funded The funding for the City of Vancouver’s law enforcement training center is “unknown ”⁸⁸

We were also unable to determine how capital facilities will be provided to the urban growth area expansions proposed by the comprehensive plan and how they will be funded This is required by the GMA ⁸⁹

We recommend that the capital facility plan be update to fully comply with RCW 36 70A 070(3) This will provide a clear picture as to whether Clark County taxpayers and ratepayers can afford the Preferred Alternative

⁸⁵ *Clark County Comprehensive Plan 2015-2035* Appendix E Capital Facility Plans Review and Analysis p 21

⁸⁶ *Skagit County Growthwatch v Skagit County*, WWGMHB Case No 07-2-0002, Final Decision and Order (Aug 6, 2007) at 20, “a comprehensive plan should either contain the relevant information from non-county owned capital facilities or reference the information clearly so that it is accessible to the public ”

⁸⁷ *Clark County Comprehensive Plan 2015-2035* Appendix E Capital Facility Plans Review and Analysis p 24

⁸⁸ *Id* at 32

⁸⁹ *Advocates for Responsible Development (ARD)/Diehl v Mason County*, Case No 06-2-0005, Compliance Order (Dec 9, 2008), at 23 of 33

The Capital Facility Plan needs to be clear whether water will be available for the planned growth and how it will be paid for

As this letter has documented, most of the water in Clark County has already been allocated.⁹⁰ Clark County already has more lots outside the urban growth areas than can be served by the reserves for future domestic water use in Clark County.⁹¹ While the Capital Facilities and Utilities Element states that “[p]rivate wells will continue to be the primary water source in the rural area,”⁹² the Capital Facilities and Utilities Element also changes the level of service for water in the rural areas from “[p]rivate wells” to “Private Public water or private wells.”⁹³

However, we were unable to find any information on how private or public water will be provided outside the urban growth areas or how it will be financed. Given the long distances water will have to be moved, this will likely be expensive. The Capital Facilities and Utilities element needs to provide information on how this water will be provided and paid for.

In addition, Appendix E Capital Facility Plans Review and Analysis, on page 45, states that:

Many of the jurisdictions and the service districts have identified the need for additional water rights in order to obtain an adequate water supply. However, many jurisdictions will be increasingly relying on CPU water provision which has acquired new reserves at the Carol J. Curtis Well Field, in the Vancouver Lake lowlands and the Paradise Point Well Field, at the confluence of the East and North Forks of the Lewis Rivers. Some jurisdictions only need additional water resources from CPU during peak times, or for major industrial users. Others will need the intertie to accommodate projected residential growth. Clark County can be instrumental in making the water available in a timely fashion by accommodating water mains within their right-of-ways and by expediting the review of site plans for wells, reservoirs, treatment buildings and booster stations.

Does Clark County Public Utilities (CPU) have the water to serve the “many” jurisdictions and service districts? It is unclear. We recognize that the Capital Facilities and Utilities element states that “Clark Public Utilities has reviewed the adopted county land use designations and the adopted countywide population target of 577,431 and has determined that the CPU Water System Plan is fully consistent with these the land use provisions and the additional service demands which they entail, subject to the timely issuance of approvals and permits by Clark

⁹⁰ Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed*, WRLA 27 p. 1 (Publication Number: 11-11-031 August 2012); Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed*, WRLA 28 p. 2 (Publication Number: 11-11-032 August 2012).

⁹¹ Spreadsheet WRIA 27-28 Reservations ESTIMATES w Totals for Clark County by Category totals the Ecology data for Clark County; *Clark County Buildable Lands Report* p. 13 (June 2015).

⁹² *Clark County Comprehensive Plan 2015-2035* Chapter 6 Capital Facilities and Utilities Element p. 8.

⁹³ *Id.* at p. 38.

County”⁹⁴ Does this amended provision from the prior plan include the “many” jurisdictions and service districts that now need water and the change to the rural level of service? Again, these are the questions the Capital Facilities and Utilities Element is meant to answer

Further, how will the interties, reservoirs, treatment buildings, and booster stations be financed and built? We were unable to find any listing for interties in the Capital Facilities and Utilities Element or the appendices for example The Capital Facilities and Utilities Element needs to answer these important questions

Amend Capital Facilities Policy 6.2.2 to comply with state law and to protect senior water rights holders and lot and home buyers. See *Clark County Comprehensive Plan 2015-2035 Capital Facilities and Utilities Element* p. 30

Given the very limited water resources in Clark County,⁹⁵ ensuring that new subdivisions and new buildings have the legal right to use the potable water proposed to support them is just basic consumer protection When a family buys a lot or house, they should have clean and healthy water that is adequate for the proposed use and they should have the legal right to use the water so it not cutoff in the future

This is also required by state law RCW 19 27 097 requires applicants for building permits for buildings that need potable water to provide evidence of an adequate water supply RCW 19 27 097(1) provides

(1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency An application for a water right shall not be sufficient proof of an adequate water supply

That RCW 19 27 097(1) requires as evidence a “water right permit” That a water right application is not sufficient proof of an adequate water supply shows that the legislature

⁹⁴ *Id* at p 8

⁹⁵ Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed*, WRLA 27 p 1 (Publication Number 11-11-031 August 2012), Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed*, WRLA 28 p 2 (Publication Number 11-11-032 August 2012)

intended that building permit applicants must have the legal right to use the water. The Attorney General agreed with this reading writing that:

In our opinion, an “adequate” water supply is one that is of sufficient quality and sufficient quantity to satisfy the demand created by the new building.

....

The pertinent exception to the permitting requirements is found in RCW 90.44.050, which allows the withdrawal of up to 5,000 gallons a day of ground water for specified purposes without a permit. If ground water is regularly used beneficially as provided in that statute, then the appropriator will be entitled to a “right equal to that established by a permit issued under the provisions” of chapter 90.44 RCW. *Id.* Consequently, any applicant for a building permit who claims that the building’s water will come from surface or ground waters of the state, other than from a public water system, must prove that he has a right to take such water.⁹⁶

RCW 19.27.097 applies to all building permits for buildings necessitating potable water, not just residential building permits.

RCW 58.17.110 also requires Clark County to assure adequate potable water supplies are available when approving subdivision applications. Further, the county must assure that development applications proposing to use exempt wells are within the withdrawal limits applicable to those wells. As the Washington State Supreme Court wrote:

¶ 61 Without a requirement that multiple subdivision applications of commonly owned property be considered together, the County cannot meet the statutory requirement that it assure appropriate provisions are made for potable water supplies. Instead, nondisclosure of common ownership information allows subdivision applicants to submit that appropriate provisions are made for potable water through exempt wells that are in fact inappropriate under *Campbell & Gwinn* when considered as part of a development, absent a permit. To interpret the County’s role under RCW 58.17.110 to only require the County to assure water is physically underground effectively allows the County to condone the evasion of our state’s water permitting laws. This could come at a great cost to the existing water rights of nearby property owners, even those in adjoining counties, if subdivisions and developments overuse the well permit exemption, contrary to the law.⁹⁷

⁹⁶ AGO 1992 No. 17 accessed on May 13, 2016 at: <http://www.atg.wa.gov/ago-opinions/requirement-adequate-water-supply-building-permit-issued> and enclosed with the paper original of this letter.

⁹⁷ *Kittitas County v. Eastern Washington Growth Management Hearings Bd.*, 172 Wn.2d 144, 178 – 81, 256, P.3d 1193, 1209 – 10 (2011) footnote omitted.

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We suggest that Capital Facilities Policy 6 2 2 on page 30 be amended to comply with these requirements. Our recommended additions are double underlined.

6 2 2 Private wells may be used in the rural area or resource lands, subject to the review of the Clark County Public Health and the following requirements. Before the county approves of a land division or building permit, the applicant must prove.

- they have the legal right to use the water source;
- the water source will provide an adequate, permanent, year-round supply for the intended use; and
- The water source meets drinking water standards.

All land currently or formerly in a common ownership is entitled to one permit-exempt well system for each type of use authorized to use permit-exempt wells.

Clark County should update its development regulations to incorporate these requirements.

Thank you for considering our comments. If you require additional information please contact me at telephone 206-343-0681 Ext. 118 and email tim@fulwiderwise.org

Very Truly Yours,



Tim Trohimovich, AICP
Director of Planning & Law

Enclosures