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From: Tim Trohimovich <Tim@futurewise.org>
Sent: Monday, June 20, 2016 11:38 AM
To: Cnty Board of County Councilors General Delivery; Cnty 2016 Comp Plan
Subject: Futurewise Comments for June 21st Comp Plan Public Hearing
Attachments: Futurewise Comments on Comp Plan PC Recommendation June 20 2016.pdf

Dear Sirs and Madams:

Enclosed please find Futurewise's comments for the Board of Councilors' June 21 public hearing on the 2016 comprehensive plan update. In short, Futurewise supports the Planning Commission's June 2, 2016, recommendation with some recommended changes.

Thank you for considering our comments.

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June 20, 2016

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

Dear Council Chair Boldt and Councilors Madore, Mielke, Olson, and Stewart:

Subject: Please support the Planning Commission recommendation on the Comprehensive Plan with improvements.

Sent via email to: boardcom@clark.wa.gov; comp.plan@clark.wa.gov

Thank you for the opportunity to comment on the Planning Commission Recommendation for the Clark County Comprehensive Plan 2016 Update. In short, Futurewise supports the Planning Commission's June 2, 2016, recommendation with some recommended changes. This modified recommendation meets community needs at the lowest cost. We urge the Board of County Councilors to adopt this the Planning Commission recommendation with our suggested improvements.

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.

Why the Planning Commission recommendation with our suggestions should be adopted

The Planning Commission recommendation will save taxpayers and ratepayers money

Compact urban growth areas (UGAs) save taxpayers and ratepayers money. In a study published in a peer-reviewed journal, John Carruthers and Gudmaundur Ulfarsson analyzed urban areas throughout the United States including Clark County.¹ They found that the per capita costs of most public services declined with density and increased where urban areas were large.² Compact urban growth areas save taxpayers and ratepayers money.

¹ John Carruthers and Gudmaundur Ulfarsson, *Urban Sprawl and the Cost of Public Services* 30 ENVIRONMENT AND PLANNING B: PLANNING AND DESIGN 503, 511 (2003). Enclosed with the paper original of Futurewise's Sept. 10, 2015 letter commenting on the DSEIS.

² *Id.* at 518.

Conserving farm and forest land also saves taxpayers money. Farm and forest land pays more in taxes than it requires in public services. For every dollar farm or forest land pays in taxes it only requires 35 cents in public services. For every dollar residential development pays in taxes, it requires \$1.16 in public services.³

The Planning Commission recommendation will protect water quality

Marylynn Yates, in a peer-reviewed scientific journal, analyzed ground water pollution from septic tanks. She concluded that septic tanks are major contributors of waste water, septic tanks are the most frequently reported cause of ground water contamination, and the most important factor influencing ground water contamination from septic tanks is the density of the systems.⁴ Lot sizes associated with ground water contamination cases ranged from less than a quarter acre to three acres.⁵ More recent studies support these conclusions. For example, an “observational study identified septic system density as a risk factor for sporadic cases of viral and bacterial diarrhea in central Wisconsin children.”⁶ The greater the density of septic tanks the greater the likelihood of diarrheal disease.⁷ And the highest septic tank densities studied were one septic tank per 11 acres.⁸ By limiting the small lots susceptible to ground water contamination, the Planning Commission recommendation will protect water quality.

The Planning Commission recommendation will protect property owners’ wells

The Washington State Department of Ecology (Ecology) has determined that “[t]here is limited water available for new uses in [Water Resource Inventory Area] WRIA 27” the Lewis

³ American Farmland Trust Farmland Information Center, *Cost of Community Services Studies* p. 6 (August 2010) accessed on June 19, 2016 at http://www.farmlandinfo.org/sites/default/files/C.C.S.S. 08-2010_1.pdf and enclosed with the paper original of Futurewise’s Sept. 10, 2015 letter commenting on the DSEIS. These numbers are median values and include Cost of Community Services Studies in Skagit and Okanogan Counties. *Id.* at p. 5.

⁴ Marylynn V. Yates, *Septic Tank Density and Ground-Water Contamination* 23 *GROUND WATER* 586, p. 590 (1985) accessed on June 19, 2016 at <http://info.ngwa.org/gwol/pdf/852537546.PDF> and enclosed with the paper original of Futurewise’s Sept. 10, 2015 letter commenting on the DSEIS. *Ground Water* is a peer reviewed scientific journal. See the *Ground Water* Peer Review enclosed with the paper original of Futurewise’s Sept. 10, 2015 letter commenting on the DSEIS.

⁵ Marylynn V. Yates, *Septic Tank Density and Ground-Water Contamination* 23 *GROUND WATER* 586, p. 590 (1985).

⁶ Mark A. Borchardt, Po-Huang Chyou, Edna O. DeVries, and Edward A. Belongia, *Septic System Density and Infectious Diarrhea in a Defined Population of Children* 111 *ENVIRONMENTAL HEALTH PERSPECTIVES* 742, p. 745 (2003) accessed most recently on June 19, 2016 at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241485/pdf/chp0111-000742.pdf> and enclosed with the paper original of Futurewise’s Sept. 10, 2015 letter commenting on the DSEIS. *Environmental Health Perspectives* is a peer reviewed scientific journal. See the *Environmental Health Perspectives* Journal Information accessed on June 19, 2016 at <http://ehp.niehs.nih.gov/journal-information/> and enclosed with the paper original of Futurewise’s Sept. 10, 2015 letter commenting on the DSEIS.

⁷ Mark A. Borchardt, Po-Huang Chyou, Edna O. DeVries, and Edward A. Belongia, *Septic System Density and Infectious Diarrhea in a Defined Population of Children* 111 *ENVIRONMENTAL HEALTH PERSPECTIVES* 742, pp. 745 – 47 (2003).

⁸ *Id.* at 747.

River Watershed and “much of the water in the Lewis River Watershed has already been spoken for”⁹ The situation is the same in the Salmon-Washougal Watershed, WRIA 28 “There is limited water available for new uses”¹⁰ and “much of the water in this watershed has already been spoken for”¹⁰ In fact, water is in such short supply that there is already evidence that the overdevelopment of rural lands has caused wells to run dry¹¹

When Ecology adopted the instream flow rules for WRIs 27 and 28, Ecology established reserves for future domestic uses¹² The reserved in Clark County can serve another 4,859 new households or occupied housing units¹³ However, Clark County currently has 5,042 existing vacant lots in the rural areas and on resource lands as of 2014¹⁴ Clark County Utilities prepared a map identifying potential water source for tax lots outside the urban growth areas That map identified 6,175 vacant lots outside of urban growth areas not adjacent to public water mains¹⁵ So 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 Since the Planning Commission recommendation allows a more moderate level of new lot creation than alternatives that reduce minimum lots zones on some resource lands, it will better protect existing water rights holders who may otherwise see their wells or their diversions run dry

The county’s water providers are not planning on serving most of the rural area with piped water The *Clark County Coordinated Water System Plan Update Regional Supplement* calls for serving rural development outside of “rural centers” with private wells¹⁶ The *Clark County Coordinated Water System Plan Update* states that the rural areas “are not expected to

⁹ Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed, WRIA 27* p 1 (Publication Number 11-11-031 August 2012) accessed on Nov 17, 2015 at https://fortress.wa.gov/ecy/publications/summary_pages/1111031.html and enclosed with the paper original of Futurewise’s Sept 10, 2015 letter commenting on the DSEIS

¹⁰ Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed, WRIA 28* p 1 (Publication Number 11-11-032 August 2012) accessed on Nov 17, 2015 at https://fortress.wa.gov/ecy/publications/summary_pages/1111032.html and enclosed with the paper original of Futurewise’s Sept 10, 2015 letter commenting on the DSEIS

¹¹ Personal Communication from Coyote Ridge Ranch to Tim Trohimovich (April 02, 2015) enclosed with the paper original of Futurewise’s Sept 10, 2015 letter commenting on the DSEIS

¹² Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed, WRIA 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, WRIA 28* p 2 (Publication Number 11-11-032 August 2012)

¹³ Spreadsheet “WRIA 27-28 Reservations ESTIMATES w Totals for Clark County by Category” enclosed with the paper original of Futurewise’s May 18, 2016, letter to the Planning Commission and Board of Councilors

¹⁴ *Clark County Buildable Lands Report* p 13 (June 2015) accessed on June 19, 2016 at https://www.clark.wa.gov/sites/all/files/the-grid/061015WS_2015BUILDABLELANDSREPORT.pdf and enclosed with the paper original Futurewise’s Sept 16, 2015, comment letter on the DEIS for the Comprehensive Plan

¹⁵ Clark County Public Utilities, *Water Sources for Tax Lots Outside UGAs* accessed on June 19, 2016 at <https://www.clark.wa.gov/sites/all/files/community-planning/2016-update/Plan%20Adoption/07%20Water%20Sources%20for%20TaxLots%20Outside%20UGA.pdf>

¹⁶ Clark County Water Utility Coordinating Committee, *Clark County Coordinated Water System Plan Update Regional Supplement* p 25 & p 36 (Nov 2011) enclosed with the paper original of Futurewise’s Sept 10, 2015 letter commenting on the DSEIS

accommodate large amounts of population growth”¹⁷ So the Planning Commission recommendation is more consistent with the plans of the county’s water providers

Changes we recommend to the Planning Commission Recommendation

Please do not combine the three rural comprehensive plan designations into one “Rural” designation

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 densities¹⁸ 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 densities¹⁹ 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 requirement²⁰

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, 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

¹⁷ *Id* at p 15

¹⁸ RCW 36 70A 070(5), *Thurston County v Western Washington Growth Management Hearings Board*, 164 Wn 2d 329, 357, 190 P 3d 38 (2008)

¹⁹ *Kittitas Cnty v E Washington Growth Mgmt Hearngs Bd*, 172 Wn 2d 144, 167, 256 P 3d 1193, 1204 (2011)

²⁰ *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 ”

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 rezoning²¹

The recommended single rural comprehensive plan designation is just like the single rural designation in Kittitas County Like Kittitas County, 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 designations

Please do not adopt the urban growth area expansions

Urban growth areas may only be expanded to accommodate the County’s need for housing and jobs²² The existing urban growth areas can already accommodate the County’s housing and employment projections²³ So we urge the Board of County Councilors to exclude the urban growth area expansions, including 2 a (Battle Ground), 3 a and 3 b (La Center), and 4 a Ridgefield Maintaining properly sized urban growth areas will save money for taxpayers and ratepayers²⁴

In addition, the proposed La Center and Ridgefield urban growth area expansions continue to qualify as agricultural lands of long-term commercial significance²⁵ The La Center UGA 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 UGA²⁶ Agricultural land of long-term

²¹ *Kittitas Cnty*, 172 Wn 2d at 169, 256 P 3d at 1205

²² *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

²³ *Clark County Buildable Lands Report* pp 9 – 14 (June 2015) accessed on Nov 17, 2015 at

http://www.clark.wa.gov/ihgpid/documents/061015WS_2015BUILDABLELANDSREPORT.pdf and enclosed with Futurewise’s Sept 16, 2015 comment letter on the DSEIS

²⁴ John Carruthers and Gudmaundur Ulfarsson, *Urban Sprawl and the Cost of Public Services* 30 ENVIRONMENT AND PLANNING B PLANNING AND DESIGN 503, 518 (2003)

²⁵ Futurewise letter to Clark County Community Planning on the Ridgefield urban growth area expansion (Sept 16, 2015) enclosed with the paper original of Futurewise’s May 18, 2016, letter to the Planning Commission and Board of Councilors, Futurewise letter to the Planning Commission and Board of Councilors on the La Center urban growth area expansion (May 23, 2016)

²⁶ *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*

commercial significance cannot be included in urban growth areas for the purpose of development²⁷ So we urge the Board of County Councilors to exclude the Battle Ground, La Center, and Ridgefield urban growth area expansions from the adopted comprehensive plan amendments

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

Futurewise supports 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 incompatibilities²⁸. While in some areas farmers can use on-farm roads to minimize this impact, in other areas they cannot. So we recommend that those uses be directed away from roads used to move farm equipment.

Third, increased rural development has already led to agricultural wells drying up²⁹. So we recommend that residential uses in and near agricultural areas be limited to protect senior agricultural water rights holders. Our recommended additions to the policy are double underlined and our deletions are double struck through.

- 3.5.9⁸ 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;

maps enclosed with the paper original of Futurewise's May 18, 2016, letter to the Planning Commission and Board of Councilors

²⁷ *Clark City v Washington Growth Mgmt Hearings Review Bd.*, 161 Wn. App. 204, 238, 254 P.3d 862, 878 (2011)

²⁸ 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) and Tom Daniels, *What to Do About Rural Sprawl?* p. *1 (Paper Presented at The American Planning Association Conference, Seattle, WA April 28, 1999) copies of both enclosed with the paper original of Futurewise's May 18, 2016, letter to the Planning Commission and Board of Councilors

²⁹ Personal Communication from Coyote Ridge Ranch to Tim Trohimovich (April 02, 2015) enclosed with the paper original of Futurewise's May 18, 2016, letter to the Planning Commission and Board of Councilors

- 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 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 nuisances.³⁰ Policy 3 5 10 must be consistent with the state right to farm law³¹ and should apply to any nuisance claims. Our recommended additions to the policy are double underlined and our deletions are double struck through.

3 5 10⁹ 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.

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 deadly.³² Recent research shows that long runout landslides are more common in

³⁰ RCW 7 48 305

³¹ *Davis v Taylor*, 139 Wn. App. 715, 720, 132 P.3d 783, 785 (2006) *review dismissed and remanded Davis v Taylor*, 161 P.3d 379 (2007)

³² 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 June 20, 2016 at http://www.geerassociation.org/index.php/component/geer_reports/view=geereports&id=30 and enclosed with the paper original of Futurewise's Sept. 10, 2015 letter to Clark County on the Draft SEIS

Cascade foothills than had been realized³³ 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 years³⁴

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."³⁵

None of the Oso victims' homes were covered by insurance for landslide hazards³⁶ And that is common when homes are damaged by landslides³⁷ For example, on March 14, 2011, a landslide damaged the home of Rich and Pat Lord³⁸ This damage required the homeowners to abandon their home on Norma Beach Road near Edmonds, Washington. Because their homeowners insurance did not cover landslides, they lost their home³⁹ 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.⁴⁰ 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

³³ 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 enclosed with the paper original of Futurewise's May 18, 2016, letter to the Planning Commission and Board of Councilors.

³⁴ 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

³⁵ 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/IRAM/Workshop_FWS/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.

³⁶ 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/2023278858_mudslidefinancial.xml.html

³⁷ *Id.*

³⁸ 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>

³⁹ *Id.* at p. *6

⁴⁰ 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-aldercrest-banyon-landslide/> and enclosed with the paper original of Futurewise's Sept. 10, 2015 letter to Clark County on the Draft SEIS.

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).⁵²

We recommend that a range of revenues, or a range of costs, or both be prepared to balance the current estimated deficit of \$158,104,000.⁵³

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 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)(ii) 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.⁵⁴ 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, water, and sewer, passing mention is made to the capital facility plans of various

⁵² *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.

⁵³ *Clark County Comprehensive Plan 2015-2035* 6 Transportation Element p. 43.

⁵⁴ *Clark County Comprehensive Plan 2015-2035* Appendix E Capital Facility Plans Review and Analysis p. 21.

providers But those plans, which could provide the supporting data, are not adopted by reference or incorporated by reference ⁵⁵

Table E 23, Clark County School Districts' 6-Year CFP Summary, identifies six year capital costs of a half billion dollars, \$585,479,377 ⁵⁶ 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" ⁵⁷

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 ⁵⁸

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

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 ⁵⁹ 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 ⁶⁰ While the Capital Facilities and Utilities Element states that "[p]rivate wells will continue to be the primary water source in the rural area," ⁶¹ 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" ⁶²

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

⁵⁵ *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"

⁵⁶ *Clark County Comprehensive Plan 2015-2035* Appendix E Capital Facility Plans Review and Analysis p 24

⁵⁷ *Id* at 32

⁵⁸ *Advocates for Responsible Development (ARD)/ Diehl v Mason County*, Case No 06-2-0005, Compliance Order (Dec 9, 2008), at 23 of 33

⁵⁹ 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)

⁶⁰ 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) enclosed with the paper original of Futurewise's May 18, 2016, letter to the Planning Commission and Board of Councilors

⁶¹ *Clark County Comprehensive Plan 2015-2035* Chapter 6 Capital Facilities and Utilities Element p 8

⁶² *Id* at p 38

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.⁴¹ All 25 of the North Fork of the Sullagumish 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.⁴² They ranged from 1.45 times the vertical relief to ten times the vertical relief.⁴³ 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.⁴⁴ Clark County is vulnerable to similar landslides.

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.”⁴⁵ He also wrote that “hazard zonation for landslide events should rely on their area– volume relationship.”⁴⁶ 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.⁴⁷

⁴¹ 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

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 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/Document%20Repository/2014%20Updates/Recent%20Catastrophic%20Landslides%20in%20Northern%20BC.pdf> and enclosed with the paper original of Futurewise’s May 18, 2016, letter to the Planning Commission and Board of Councilors. *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?generatepdf=true> and enclosed with the paper original of Futurewise’s May 18, 2016, letter to the Planning Commission and Board of Councilors.

⁴⁵ 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_in_B.C and enclosed with the paper original of Futurewise’s May 18, 2016, letter to the Planning Commission and Board of Councilors.

⁴⁶ *Id.* at pp. 328 – 29.

⁴⁷ *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).

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.⁴⁸

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 Snohomish County is not legally obligated to allow construction on these areas.⁴⁹ 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.⁵⁰ 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.⁵¹

Address 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 it 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:

⁴⁸ The SR 530 Landslide Commission, *Final Report* p. 31 (Dec. 15, 2014) accessed on May 17, 2016 at http://www.govinfo.gov/servlets/id/fault/hlcs/documents/SR530LC_Final_Report.pdf and enclosed with the paper original of Futurewise’s May 18, 2016, letter to the Planning Commission and Board of Councilors.

⁴⁹ *Lucas v South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992) accessed on May 17, 2016 at <http://www.supremecourt.gov/opinions/11bound/volumes/v505by.pdf>

⁵⁰ *Bayfield Resources Co v Western Washington Growth Management Hearings Bd.*, 158 Wn. App. 866, 883, 244 P.3d 412, 420 (2010).

⁵¹ SR 530 Landslide Commission, *Final Report* p. 33 (Dec. 15, 2014).

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 County.”⁶³ 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 built and financed. 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 in Clark County,⁶⁴ 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

⁶³ *Id.* at p. 8.

⁶⁴ 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).

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 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 ⁶⁵

RCW 19 27 097 applies to all building permits for buildings necessitating potable water, not just residential building permits

⁶⁵ AGO 1992 No 17 accessed on May 13, 2016 at <http://www.aig.wa.gov/ago-opinions/requirement-adequate-water-supply-building-permit-issued> and enclosed with the paper original of Futurewise's May 18, 2016, letter to the Planning Commission and Board of Councilors

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.⁶⁶

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, 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 only 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@futurewise.org

⁶⁶ *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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Very Truly Yours,

The image shows two instances of a handwritten signature in black ink. The signature is stylized, starting with a large, sweeping 'T' that loops back to the left, followed by a smaller 'T' and a 'V'. The lines are somewhat shaky, characteristic of a handwritten signature.

Tim Trohimovich, AICP
Director of Planning & Law