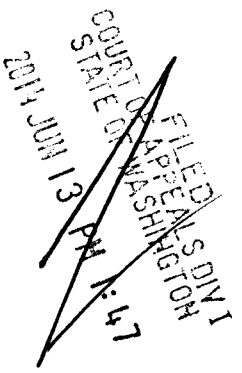
SUPREME COURT OF THE STATE OF WASHINGTON

No. 90398-1

Court of Appeals, Division I
No. 71363-9-I



SAVE OUR SCENIC AREA and
FRIENDS OF THE COLUMBIA GORGE,

Appellants,

v.

SKAMANIA COUNTY,

Respondent.

Received
Washington State Supreme Court

JUN 18 2014

Ronald R. Carpenter
Clerk

SKAMANIA COUNTY'S PETITION FOR REVIEW

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FOCG	Friends of the Columbia Gorge and Save Our Scenic Area
GMA	Growth Management Act, Ch. 36.70A RCW

1. INTRODUCTION

Skamania County ("County") is a small, rural jurisdiction with limited resources.[1] It made two final land use decisions in 2005 and 2007.[2] Despite a 60-day appeal period, FOCG waited five years before appealing in 2012.[3] The Superior Court properly dismissed the appeal as time barred, but the Court of Appeals reversed, holding that the County's moratoria on development could toll the appeal period.[4]

Because the County only partially plans under GMA, planning is largely voluntary. In addition, the County is under severe economic stress due to tax base erosion, high unemployment,[5] and the fact that the federal and state governments own 90% of the land base.[6] As result, the County faces very real questions as to whether it can afford to engage in land use planning. Given the costs associated with defending untimely appeals, the County may be forced to abandon its planning efforts altogether. Consequently, the doctrine of finality with respect to land use decisions is of particular importance to Skamania County and other local governments.

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[1] CP 71-80, 393.
[2] Appendices 3 and 4, also at CP 37-9 and 34-5.
[3] CP 1-18.
[4] Appendices 1 and 2, Superior Court decision at CP 413-16.
[5] CP 71-80, 393.
[6] CP 73:9-13.

2. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

Skamania County requests this Court to accept review of the Court of Appeals' March 31, 2014 decision. The Court of Appeals denied the County's timely motion for reconsideration on May 16, 2014, Appendix 1.

3. ISSUES PRESENTED FOR REVIEW

Error 1. Under GMA, and established appellate precedent, land use legislation must be appealed within 60 days.[7] Did the Court of Appeals err in failing to uphold dismissal of FOCG's 2012 appeal (filed seven years after the County adopted its 2005 GMA decision designating natural resource lands and five years after the County adopted its 2007 Comprehensive Plan), when it reasoned there were disputed material facts as to whether a separately enacted development moratorium that prevented application processing could suspend the 60-day appeal period for years?

Error 2. Did the Court of Appeals err in deciding disputed material facts precluded dismissal of FOCG's claim that the County had

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[7] RCW 36.70A.290(2); *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007) (GMA consistency challenge must be brought within 60 days; rezone appeal could not be later used as a "back door" to raise GMA issues); *Brutsche v. City of Kent*, 78 Wn. App. 370, 898 P.2d 319 (1995), (untimely appeal of 305 acre area-wide rezone dismissed); *Montlake Community Club v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 110 Wn. App. 731, 43 P.3d 57 (2002) (appeal of new plan could not be used to challenge previously adopted legislation); *Concerned Organized Women and People Opposed to Offensive Proposals, Inc. v. The City of Arlington*, 69 Wn. App. 209, 847 P.2d 963 (1993) (untimely appeal of comprehensive plan and other permits dismissed).

not completed its 2005 GMA periodic review of its natural resource lands designation pursuant to RCW 36.70A.130 where: (1) the County complied with this requirement in 2005 when it designated its GMA natural resource lands through Resolution 2005-35; and, (2) FOCG failed to address this issue in Superior Court?

4. STATEMENT OF THE CASE

4.1. **Background**

Skamania County is a rural, sparsely populated county with limited resources. Its tax base is eroding, it suffers from rural poverty, and its unemployment rate is high.[8] 90% of the County is owned by the state and federal governments, and is in forest use.[9] The County only partially plans under the GMA, so most planning is voluntary.[10] "The GMA does not require [a partially planning county] ... to adopt a comprehensive land use plan or development regulations...."[11] Yet, despite its limited resources, and the largely voluntary nature of planning, Skamania County does wish to plan for its future. But, without finality on land use decisions made years ago, the County will not have the resources to do so.

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[8] CP 71-80, 393.
[9] CP 73:9-13 (Skamania County is 85% National Forest; an additional 60,000 acres are held by the State as State Trust Lands).
[10] CP 28 (map of counties subject to only GMA's natural resource lands and critical areas requirements); *see also* RCW 36.70A.040, .170.
[11] *Moore v. Whitman County*, 143 Wn.2d 96, 98-99, 18 P.3d 566 (2001).

4.2. **Key Decisions and Appeals**

2005 Natural Resource Lands Designation. In 2005, the County designated its GMA natural resource lands and determined that with this action it had complied with GMA's natural resource designation requirements.[12] "[T]he Skamania County Board of Commissioners has determined the designation of forest and agricultural lands ... meets the requirements of the Growth Management Act ... for the conservation of forest, agricultural, and mineral resource lands."[13] This action occurred the same year as the County's GMA 2005 review deadline.[14] The County's GMA action complied with that requirement, and the next required updates are governed by RCW 36.70A.130.

2007 Voluntary Comprehensive Plan Update. The County updated its Comprehensive Plan in 2007.[15] "[T]he Skamania County Board of Commissioners **adopts and endorses the Final 2007 Comprehensive Plan** and Associated Plan Maps as recommended by the Planning Commission."[16] This action was taken pursuant to the Planning Enabling Act, Ch. 36.70 RCW, which provides for planning but, unlike GMA, does not require it.

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[12] CP 34-35, Appendix 4.
[13] CP 34.
[14] RCW 36.70A.130(4)(b).
[15] CP 37-39, Appendix 3.
[16] CP 38.

2007-2012 Moratorium Ordinances. The County adopted a series of moratorium ordinances, starting in 2007 with Plan adoption, which were continued, allowed to lapse, re-initiated, and partially lapsed in 2012.[17] With these ordinances, the County explained it was continuing to work on land use issues and considering whether to designate additional area as commercial forest land pursuant to GMA.[18] But, as 90% of the County is owned by the state and federal governments and is in forestry use, the County has not elected to do so.[19] Nevertheless, the County will be considering this issue again, pursuant to GMA's periodic review schedule, RCW 36.70A.130. However, as for GMA's 2005 requirements, the County complied with those in 2005, and the Superior Court properly dismissed.

FOCG's 2008 Appeal. FOCG filed an appeal in 2008 challenging the County's 2005 GMA Decision and 2007 Comprehensive Plan. FOCG did not contest the Clark County Superior Court's dismissal for want of prosecution.[20]

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[17] CP 287 (staff report, documenting lapse and re-establishment); CP 323 (staff report, noting 2012 rezone); CP 21 (describing rezone action). The County allowed the moratorium to finally lapse as the concerns raised in 2007 proved not to be an issue. The real issue for the County was not development, but the lack of it. CP 393.
[18] CP 31.
[19] CP 73:9-13.
[20] CP 371-381.

2012 40,000+ Acre Rezone. The County adopted a 40,000+ acre rezone in 2012.[21] FOCG did not appeal the rezone.

2012 Moratorium Ordinance. After the appeal period for the rezone had lapsed,[22] the County adopted Ordinance 2012-08, which continued the moratorium for 4,500 acres within the County, but otherwise allowed the moratorium to lapse.[23]

FOCG's 2012 Moratorium Appeal. Following moratorium lapse, in 2012, FOCG appealed the moratorium. FOCG filed this appeal not to challenge the moratorium ordinance,[24] but to reach back in time and challenge the County's GMA 2005 Natural Resources designation and the County's voluntary 2007 Comprehensive Plan Update.

4.3. **Procedural Facts**

The Superior Court dismissed as time barred FOCG's 2012 Moratorium Appeal, as it was being used not to challenge the moratorium[25] but to challenge the County's 2005 and 2007 decisions.[26] FOCG appealed the Superior Court decision dismissing its untimely

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[21] CP 21, ¶ 3 (42,663 acres rezoned in March, 2012).
[22] CP 287 (staff report, documenting lapse and re-establishment); CP 323 (staff report, noting 2012 rezone - "The subarea plan final zoning was adopted in May 2012 so the moratorium can be modified."); CP 21, ¶ 3 (describing rezone action).
[23] CP 30-32 (Ordinance 2012-08), attached at Tab 5; *see also* CP 22, ¶ 4.
[24] Except with regard to SEPA, a claim the Superior Court dismissed, as moratoria are exempt from SEPA. The Court of Appeals affirmed.
[25] Excepting the dismissed SEPA claim.
[26] CP 413-416, Appendix 2.

appeal to the Court of Appeals. Despite the 60-day appeal period and FOCG's failure to comply with it, the Court of Appeals determined there were material facts in dispute preventing a summary judgment decision, and remanded to the Superior Court. The Court of Appeals did so under the novel theory that moratorium ordinances can suspend appeal periods on final land use decisions.

5. ARGUMENT SUPPORTING ACCEPTANCE OF REVIEW

5.1. The Court of Appeals Departed from Established Precedent in Holding a Development Moratorium May Toll a 60-Day Time Limit for Appealing a Land Use Decision

The Court should grant review and hold that a development moratorium does not toll the 60-day appeal period on final land use decisions enacting legislation pursuant to GMA and the Planning Enabling Act, Ch. 36.70 RCW. The Court of Appeals' decision "is in conflict with" established Supreme Court and Court of Appeals precedent with respect to the finality of land use decisions.[27] There is not one appellate decision, published or unpublished, which supports the Court of Appeals' departure from established precedent.

This Court's consistent precedent, and that of the Court of Appeals, supports finality with respect to land use decisions. In non-GMA counties

[27] RAP 13.4(b)(1) and (2).

such as Skamania County, GMA appeals are filed in Superior Court within at most 60 days.[28] In Washington, land use decisions are to be "promptly determined."[29] If an appeal period is not statutorily set forth, the analogous appeal period is 30 days.[30]

> [W]here ... there is no other appeal period prescribed by statute or local ordinance governing the type of land use action involved, the appeal must be brought within 30 days of the municipality's or agency's final decision. ... We are not persuaded ... that the policy reasons for having shorter appeal periods in land use cases do not apply to areawide rezones.[31]

"The consistent policy in this state is to review decisions affecting use of land expeditiously so that legal uncertainties can be promptly resolved....[32] Even where an appeal is days late, not years, the courts have dismissed. For example, where a challenge to an ordinance was not commenced until 38 days after enactment, and an indispensable party not named until 78 days after enactment, the appeal was dismissed based on timeliness.[33] Although dealing with 38 days rather than five years, the court reasoned,

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[28] *Moore v. Whitman County*, 143 Wn.2d 96, 18 P.3d 566 (2001); RCW 36.70A.290(2); Note that shorter appeal periods are found in the Land Use Petition Act, RCW 36.70C.040(3) (21 day appeal period), and the Administrative Procedures Act, RCW 34.05.542(2) (30 day appeal period).
[29] *Federal Way v. King County*, 62 Wn. App. at 540.
[30] *Concerned Organized Women and People Opposed to Offensive Proposals, Inc. v. The City of Arlington*, 69 Wn. App. 209, 215-216, 847 P.2d 963 (1993).
[31] *Brutsche v. City of Kent*, 78 Wn. App. 370, 380 and FN 11, 898 P.2d 319 (1995), internal citations omitted (applying 30 day appeal period to 305 acre area-wide rezone).
[32] *Federal Way v. King County*, 62 Wn. App. 530, 538, 815 P.2d 790 (1991).
[33] *Federal Way v. King County*, 62 Wn. App. at 540.

"[g]iven the requirement that decisions directly affecting the use of land be promptly determined we can only **hold that this lengthy delay in challenging the ordinance was unreasonable** ...."[34] Similarly, in *Brutsche v. City of Kent*, an appeal filed 38 days after an ordinance adopting a 305 acre area-wide rezone was dismissed.[35] With land use decisions, the appeal period is finite and predictable, and it runs from the decision date. "The same considerations that support a uniform 30-day period for appeals from land use decisions also support a uniform 'triggering event.'"[36] Over two decades of appellate decisions have so held.

- *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007) (GMA consistency challenge must be brought within 60 days; rezone appeal could not be later used as a "back door" to raise GMA issues);

- *Montlake Community Club v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 110 Wn. App. 731, 43 P.3d 57 (2002) (where city incorporated portions of previously adopted plan into new planning document, no new appeal period was triggered)[37];

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[34] *Federal Way v. King County*, 62 Wn. App. at 540, emphasis added.
[35] *Brutsche v. City of Kent*, 78 Wn. App. 370, 372, 380 and FN 11, 898 P.2d 319 (1995), internal citations omitted.
[36] *Concerned Organized Women and People Opposed to Offensive Proposals, Inc. v. The City of Arlington*, 69 Wn. App. 209, 219, 847 P.2d 963 (1993).
[37] *See also Twin Bridge Marine Park, LLC v. Dept. of Ecology*, 162 Wn.2d 825, 175 P.3d 1050 (2008) (Ecology could not collaterally attack county land use decision and impose penalties on development authorized by local permit when it did not timely appeal the local shoreline decision); *Samuel's Furniture v. Dept. of Ecology*, 147 Wn.2d 440, 54 P.3d 1194 (2002) (Ecology's failure to timely appeal decision determining project was outside shoreline jurisdiction precluded its use of enforcement authority to enjoin construction).

- *Chelan County v. Nykreim,* 146 Wn.2d 904, 52 P.3d 1 (2002) (County issued boundary line adjustment decision in error, but could not withdraw the decision as it failed to timely appeal);

- *Concerned Organized Women and People Opposed to Offensive Proposals, Inc. v. The City of Arlington*, 69 Wn. App. 209, 847 P.2d 963 (1993) (appeal of comprehensive plan amendment, rezone, plat, and shoreline permit not filed within 30 days of ordinance adoption dismissed).

Skamania County updated its Comprehensive Plan in 2007. The County adopted the GMA Resolution in 2005. Appeals filed years later are time barred, as the Superior Court correctly determined.

5.2. **No Court in the State of Washington Has Ever Held a Series of Moratorium Ordinances Can Suspend the Duty to Appeal a Land Use Decision Made Years Earlier**

Faced with established precedent barring FOCG's untimely appeal, the Court of Appeals excused FOCG's multi-year delay by asserting, without any case support, that moratorium ordinances can suspend the duty to appeal. For years. This is not the law. Moratorium ordinances do not suspend appeal periods on other final land use decisions. As this Court addressed in *Mellish v. Frog Mountain Pet Care*, the clock for

appealing a land use decision always starts ticking once a final, appealable decision is made.[38]

The County's 2007 Plan revisions were final in 2007. The County's 2005 GMA Decision was final in 2005. The County enacted a series of moratoria over a five year period, which, over that time period completely lapsed, were re-established,[39] and partially lapsed in 2012.[40] These ordinances prohibited application submittal and processing. They did not prevent any County land use decision, including the Comprehensive Plan, from being final and appealable.

The appellate courts have repeatedly refused to inject such uncertainty into determining applicable appeal periods. Opponents must timely appeal the decision actually issued. If FOCG believed the 2007 Plan and Zoning Code were inconsistent under RCW 36.70.545, FOCG's duty to appeal was triggered in 2007, not five years later after a separate planning decision - a moratorium - partially lapsed. If FOCG believed the 2005 GMA Decision was not consistent with a GMA periodic review deadline in place in 2005, it had a duty to appeal then.

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[38] *Mellish v. Frog Mountain Pet Care, Inc.*, 172 Wn.2d 208, 257 P.3d 641 (2011) (once hearing examiner decided reconsideration motion, appeal period began to run as decision at that point was final).
[39] CP 287 (staff report noting adoption dates of moratoria).
[40] CP 30-32; *see also* CP 323 (given un-appealed rezone, "moratorium can be modified.").

Lacking appellate precedent to support this extraordinary contention, FOCG pointed only to a Growth Board decision.[41] The decision in fact supports the County as a moratorium was directly challenged through a timely filed appeal. In fact, there is no case where the Washington appellate courts have taken jurisdiction over comprehensive plan and development regulation consistency issues in the absence of a timely filed appeal, meaning one filed within at most 60 days.[42] As a result, there is no authority supporting the proposition that an appeal period may be suspended based on a litigant's hope, well founded or not, that at some point during a five year period, a local jurisdiction might address a litigant's concerns, thereby avoiding the need for an appeal. Once a decision is final, the appeal period begins to run.

Even if moratorium ordinances could suspend appeal periods, the notion that they do so by "curing" inconsistencies between a plan and development regulations is unfounded. Moratoria do not fix substantive defects in a regulatory structure. A moratorium is not even a development regulation. As the Supreme Court unanimously held, Skamania County's

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[41] *Master Builders Ass'n of King & Snohomish Counties v. City of Sammamish*, Growth Management Hearings Board No. 05-3-0030c (August 4, 2005).

[42] *See e.g., Woods v. Kittitas County*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007) (GMA consistency challenge must be brought within 60 days and rezone could not be used as a "back door" to raise such challenges).

"moratorium does not regulate how land is *used.*"[43] All the moratorium did was place a hold on development. Rather than being curative, if anything, moratoria create inconsistencies with the planning structure. They do so because they prohibit the acceptance and processing of permit applications on development which is otherwise allowed. [44]

In contrast, comprehensive plans "plan" for development. Development regulations "regulate" those planned for uses. To provide an example, unlike the moratorium, even the County Comprehensive Plan's Conservancy designation identifies uses appropriate for the Conservancy designation.[45] The Plan also identifies the unmapped "zoning designation" as a zoning designation which may implement the Plan's Conservancy designation.[46] If FOCG disagreed with this planning structure, its duty to appeal was triggered upon Plan adoption.

FOCG was aware of the imperative to appeal. FOCG appealed the County's 2005 and 2007 decisions in 2008,[47] and the appeal was ultimately dismissed for want of prosecution.[48] If FOCG wished to

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[43] *Friends of the Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council,* 178 Wn.2d 320, 347, 310 P.3d 780 (2013), emphasis in original.
[44] RCW 36.70.795; AR 32.
[45] CP 213-14 (telecommunication facilities, utility substations, recreational vehicle parks, surface mining, logging and mining camps, aircraft landing strips); *see also* FOCG's 2008 Complaint, CP 375.
[46] AR 368-70.
[47] CP 372-381.
[48] CP 381.

contest dismissal, and request that the court stay the litigation so it could assess whether further County action would address its concerns, FOCG could have done so. FOCG failed to. A moratorium does not cure that failure by creating a five year appeal period. The County updated the Plan in 2007. It took GMA action in 2005. FOCG did not appeal until 2012. Appellant precedent requires affirmation of the Superior Court dismissal.

5.3. **The Court of Appeals, Contrary to Established Precedent, Failed to Accord Finality to the County's 2005 GMA Decision, and Erred in Entertaining an Issue Not Raised in Superior Court**

The Court of Appeals compounded its failure to adhere to established precedent according finality to GMA decisions by entertaining FOCG's new "periodic review" issue, which it raised for the first time in the Court of Appeals. Allowing a party to overturn a local government's land use decision by raising new issues for the first time in the Court of Appeals not only disregards established precedent, RAP 13.4(b)(1), (2), but undermines the strong public policy according finality to land use decisions by encouraging parties to gamble on the outcome before stating all of their objections. RAP 13.4(b)(4).

Skamania County determined in 2005 that with respect to GMA's natural resource land designation requirements it was in complete compliance with GMA.

> **NOW THEREFORE, BE IT RESOLVED,** that the Skamania County Board of Commissioners has determined the designation of forest and agricultural lands within the National Scenic Area and the development regulations adopted under SCC Title 22 meets the requirements of the Growth Management Act (RCW 36.70A) for the conservation of forest, agricultural, and mineral resource lands.[49]

With this Resolution, the County designated its natural resource lands and complied with GMA's review requirements.[50] In Superior Court, FOCG argued only that the County had not adequately designated its natural resource lands.[51] On appeal, FOCG reversed course. The Court of Appeals erred in simply quoting from FOCG's briefing, without comparing the argument with the County's[52]:

> Friends' opening brief states, "[Friends] argued below that the County failed to meet both its 1991 deadline to designate resource lands and its 2008 deadline to complete its first round of periodic review of these designations. On appeal, [Friends] assign[s] error only to the County's failure to meet the latter deadline."[53]

Compliance with this latter deadline was **not** an issue FOCG raised before the Superior Court. This issue was originally included in FOCG's

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[49] CP 34-35, emphasis in text, Appendix 4.
[50] CP 34-35, Appendix 4.
[51] CP 141-144 (section of FOCG's Superior Court briefing addressing natural resources claim); *see also* TR (transcript from summary judgment hearing, November 9, 2012).
[52] Response Brief of Skamania County, pgs. 6, 13-14, and 19.
[53] Court's Opinion, FN 1. (The original statutory deadline was 2005. The legislature provided a three year optional extension.)

complaint,[54] which the County sought summary judgment dismissal on, and the Superior Court dismissed the claim. FOCG did not present any argument to the Superior Court contesting dismissal of the periodic review issue in briefing or in oral argument.[55] The only arguments before the Superior Court concerning the County's natural resources designation were whether the County should have designated more or less land, **not** whether the County should have completed a virtually simultaneous "review" of the 2005 decision. It was only before the Court of Appeals that FOCG took the position that the County should have immediately "reviewed" its 2005 designation pursuant to RCW 36.70A.130's 2005 "periodic review" requirement.

The Court of Appeals disregarded established precedent in entertaining an argument that had never been presented to the Superior Court. If a party does not raise a legal argument or call evidence to the Court's attention establishing a disputed, material fact, it may not raise those arguments or disputed facts on appeal.[56] "On review of an order

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[54] Appellants' Opening Brief, pgs. 17 and 19, FN 24. FOCG cites to CP 3-5, 11-12, and 16-17, which are citations to its complaint.

[55] CP 141-144 (section of FOCG's Superior Court briefing addressing the natural resources claim); *see also* TR (Transcript from summary judgment hearing, November 9, 2012).

[56] *See Bankston v. Pierce County*, 174 Wn. App. 932, 941-42, 301 P.3d 495 (2013); *Griffin v. Thurston Cnty.*, 137 Wn. App. 609, 622, 154 P.3d 296, 302 (2007) *aff'd on other grounds*, 165 Wash. 2d 50, 196 P.3d 141 (2008) (citing *Buechel v. Dep't of Ecology*, 125 Wash.2d 196, 201 n. 4, 884 P.2d 910 (1994)).

granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court."[57] Any other approach allows arguments and evidence to lay in wait, and "spring to life" on appeal, which is fundamentally unfair to opposing parties and precludes efficient dispute resolution, an issue of considerable importance given the overriding public policy in favor of finality in land use decisions. This is of added concern here, given FOCG's earlier 2008 appeal challenging the County's 2005 decision.[58] FOCG should not be afforded a third opportunity to litigate the natural resources designation claim.

5.4. **This Case Will Determine Whether Land Use Planning is Feasible in Skamania County**

The Court of Appeals' decision raises "an issue of substantial public interest" to local governments throughout the State of Washington and those who are impacted by their land use decisions.[59] The degree to which land use decision finality is respected directly impacts the quantum of resources available for local land use planning. It is an unfortunate fact that land use in Washington is heavily litigated. For small jurisdictions

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[57] RAP 9.12; *Schreiner Farms, Inc. v. American Tower, Inc.*, 173 Wn. App. 154, 158, 293 P.3d 407 (2013) (on appeal, only issues "called to the trial court's attention" may be addressed).
[58] CP 372-381, *see* specifically CP 373, ¶ 3.4 (FOCG's complaint challenges Resolution 2005-35, the County's GMA Decision designating the County's natural resource lands).
[59] RAP 13.4(b)(4).

this can present an enormous barrier to planning. This barrier, and in particular, the unique burden on rural areas of the state, such as Skamania County, is not always fully appreciated. However, this case will determine whether or not Skamania County can afford to plan under the Planning Enabling Act, Ch. 36.70 RCW, a statute which encourages, but does not require, land use planning.

Washington's established doctrine of finality, which affords great respect to appeal periods, is consistent with the over-riding legislative objectives behind the Planning Enabling Act, Ch. 36.70 RCW. Those objectives are to help a jurisdiction plan for the future.[60] A jurisdiction cannot do that without resources. And, a key purpose of finality is to conserve those resources. In Skamania County, those resources are at the breaking point.

This case arises in a rural jurisdiction which has cut half its Planning Department (it now has two employees), is on federal life support, is 90% owned by the state and federal governments,[61] and has

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[60] RCW 36.70.010.

[61] CP 26 (map of County); CP 73:9-13; CP 71-80 (testimony on economic conditions); CP 393 (declaration addressing budget cuts).

done all the voluntary planning it can accomplish (including the 2012, 40,000+ acre rezone, which took enormous political capital[62] to enact).[63]

The County understands addressing timely appeals can be a price of planning, even planning which is voluntary. The County does, however, object to litigation filed years after decisions are made. Allowing such actions to be appealed in violation of established precedent forces valuable resources needed for planning to be allocated to legal defense, eroding a jurisdiction's ability to plan.

In areas of the state with greater access to resources, citizens often take planning for granted, so it can be difficult to appreciate what this case really means in a rural jurisdiction like Skamania County. When a jurisdiction is on the ropes, when domestic violence and subsidized school lunch rates are high, resources matter.[64] They matter a lot. And, when considerable work is put into a comprehensive plan update which is voluntary, and then five years later that decision is appealed and the courts accept jurisdiction, the message sent back to the local jurisdiction is bleak.

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[62] The Board of County Commissioners which enacted the 2007 Comprehensive Plan update and the 2012, 40,000 acre rezone is not the same Board in office today. *See e.g.*, Reply Brief of Appellants, pg. 19.

[63] CP 21, ¶ 3 (description of rezone action).

[64] *See* generally AR 71-80, 393; specifically, AR 79:16-22 (77 bed nights at County's domestic violence shelter in one month alone; this figure is within a jurisdiction with only 11,000 residents, AR 393, ¶ 4), AR 80:3-8 (subsidized school lunch rates).

Such a situation forces the jurisdiction to ask if planning for the future is worth the cost.

This is not consistent with the objectives behind the Planning Enabling Act. And, it certainly is not consistent with decades of precedent respecting finality in land use. As this case will impact if not determine what occurs with regard to planning in Skamania County, and other similarly situated jurisdictions, it is of "substantial public interest."

6. CONCLUSION

The Court of Appeals, in failing to affirm the Superior Court's dismissal of FOCG's 2012 appeal of two decisions made in 2005 and 2007, rests its holding on analysis directly contrary to appellate law established in this State for decades. The County asks this Court to accept review, reverse the Court of Appeals, and affirm the Superior Court's dismissal of FOCG's appeal as time barred.

RESPECTFULLY SUBMITTED this 13th day of June, 2014.

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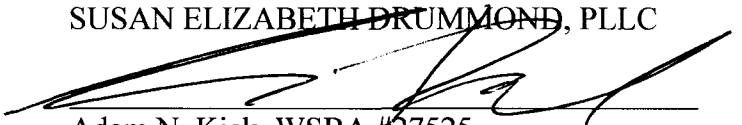

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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2014, I arranged to have the foregoing SKAMANIA COUNTY'S PETITION FOR REVIEW served on the parties listed below by first class U.S. mail and messenger delivery:

Nathan J. Baker Friends of the Columbia Gorge 522 SW 5th Avenue, Suite 720 Portland, OR 97204-2100 nathan@gorgefriends.org	J. Richard Aramburu Aramburu & Eustis, LLP 720 Third Avenue, Suite 2000 Seattle, WA 98104-1825 rick@aramburu-eustis.com
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I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Signed June 13, 2014, at Kirkland, Washington.

Susan Drummond

APPENDIX 1

Court of Appeal's Decision (March 31, 2014),
Reconsideration denied (May 16, 2014)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SAVE OUR SCENIC AREA and FRIENDS OF THE COLUMBIA GORGE, Respondent, v. SKAMANIA COUNTY, Appellant.	)	NO. 71363-9-I DIVISION ONE UNPUBLISHED OPINION FILED: March 31, 2014

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 MAR 31 AM 11:25

LAU, J. — Friends of the Columbia Gorge and Save Our Scenic Area (collectively "Friends") sued Skamania County (County) for declaratory and injunctive relief, alleging the County (1) violated the Growth Management Act (GMA), chapter 36.70A RCW, by failing to complete periodic review of its natural resource lands ordinance, (2) violated the Planning Enabling Act (PEA), chapter 36.70 RCW, by failing to ensure consistency between its 1986 zoning ordinance and its 2007 comprehensive plan, and (3) violated the State Environmental Policy Act (SEPA), chapter 43.21C RCW, by narrowing the geographic scope of a five-year development moratorium without environmental review. The trial court granted the County's motion for summary judgment dismissal, ruling that the GMA and PEA claims were untimely and that SEPA did not apply to the moratorium

modification. We affirm dismissal of the SEPA claim but remand for further proceedings on Friends' GMA periodic review and PEA consistency claims.

FACTS

Skamania County is a rural, heavily forested jurisdiction in southwestern Washington. The County adopted its first comprehensive plan in 1977, under the authority of the PEA. In 1986, it adopted a zoning ordinance codified at Skamania County Code (SCC) title 21. The zoning ordinance included a classification titled "Unmapped," which applied to "[t]hose areas of the county where no formal adoption of any zoning map has taken place . . . ." The ordinance provided, "In the areas classified as unmapped (UNM) all uses which have not been declared a nuisance by statute, resolution, ordinance, or court of jurisdiction are allowable."

In 1993, the County adopted zoning classifications and development regulations, codified at Skamania County Code title 22 (Title 22), to implement the requirements of the federal Scenic Area Act, 16 U.S.C. § 544, and of the associated Columbia River Gorge Management Plan. Title 22 applies exclusively to County land located within the Columbia River Gorge National Scenic Area.

Under the GMA, all counties must designate "[n]atural resource lands." RCW 36.70A.170. In 2005, the County adopted Resolution 2005-35, which declared "the designation of forest and agricultural land within the [Columbia River Gorge] National Scenic Area and the development regulations adopted under SCC Title 22 meets the requirements of the Growth Management Act (RCW 36.70A) for the conservation of forest, agricultural, and mineral resource lands." For purposes of this

appeal, Friends acknowledges that the County's adoption of Resolution 2005-35 satisfied its statutory obligation to designate natural resource lands.[1]

On July 10, 2007, the County adopted a new comprehensive plan that designated much of the County's land "conservancy." The plan provided, "The Conservancy land use area is intended to provide for the conservation and management of existing natural resources in order to achieve a sustained yield of these resources, and to conserve wildlife resources and habitats." Following the new comprehensive plan's adoption, some of the County's land carried both an unmapped zoning classification and a conservancy plan designation.

That same day, the County also enacted an ordinance that established a six-month development moratorium applicable to approximately 15,000 acres of unzoned (unmapped), private land within the unincorporated portion of the County. The ordinance stated the moratorium's purpose was "to maintain the status quo of the area pending the County's consideration of developing zoning classifications for the areas covered by the newly adopted 2007 Comprehensive Plan and completing the Critical Areas Update Process . . . ." The County intended the moratorium to remain in effect "until the zoning classifications related to the 2007 Comprehensive Plan and the Critical Areas Update Process are complete."

The County renewed the full moratorium every six months for five years. The last full renewal occurred on June 12, 2012. Approximately two months into the six-

[1] Friends' opening brief states, "[Friends] argued below that the County failed to meet both its 1991 deadline to designate resource lands and its 2008 deadline to complete its first round of periodic review of these designations. On appeal, [Friends] assign[s] error only to the County's failure to meet the latter deadline." Br. of Appellants at 19 (citations omitted).

month term, the County substantially modified the moratorium. Enacted on August 21, 2012, Ordinance 2012-08 extended the moratorium for an additional six-month term but narrowed its scope to an approximately 4,500-acre region known as the "High Lakes." The ordinance stated the County was still "in the process of updating zoning classification for all land within unincorporated Skamania County to be consistent with the adopted Comprehensive Plan . . . ."

Save Our Scenic Area and Friends of the Columbia Gorge are Washington nonprofit organizations whose members claim an interest in environmental protection, preservation, and restoration. In September 2012, Friends sued the County for declaratory and injunctive relief, alleging, among other claims not at issue here, that the County (1) violated the GMA by failing to complete periodic review of its natural resource lands ordinance, (2) violated the PEA by failing to ensure consistency between its 1986 unmapped zoning classification and its 2007 conservancy comprehensive plan designation, and (3) violated SEPA by narrowing the geographic scope of its unzoned lands development moratorium without environmental review. Friends sought an injunction requiring the County, among other actions, to "adopt zoning regulations for the Unmapped lands consistent with the [County] Comprehensive Plan," and to reinstate, in substance, the unzoned lands development moratorium.

The trial court granted the County's motion for summary judgment on all claims relevant here.[2] It ruled Friends' GMA and PEA claims were time barred and SEPA did not apply to the County's enactment of Ordinance 2012-08.[3] Friends appeals.

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[2] Friends also alleged that the County violated the GMA by failing to conduct periodic review of its critical areas ordinance. On that claim, the County conceded a

ANALYSIS

The trial court dismissed Friends' GMA and PEA claims as time barred. Based on our review of the summary judgment record, we conclude the court improperly resolved the timeliness issues as a matter of law. We agree, however, that SEPA does not apply to the modification of the County's unzoned lands development moratorium.

Standard of Review

When reviewing an order granting summary judgment, we consider whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). "We engage in the same inquiry as the trial court." Int'l Longshore & Warehouse Union, Local 19 v. City of Seattle, 176 Wn. App. 512, 519, 309 P.3d 654 (2013). "[A] trial is absolutely necessary if there is a genuine issue as to any material fact." Jacobsen v. State, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977).

GMA Periodic Review

Friends' first claim involves the GMA's requirement under RCW 36.70A.130(1)(b) that the County conduct periodic review of its natural resource lands ordinance. Friends claims the County never completed review. The County contends the trial court properly dismissed this claim as time barred.

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violation and agreed to complete review by December 1, 2013. On appeal, Friends raises no issue regarding critical areas periodic review.

[3] In ordering Friends' complaint "dismissed with prejudice," the trial court simultaneously relied on CR 12(b)(1), CR 12(b)(6), and CR 56(c), which authorizes summary judgment. For purposes of this appeal, the parties agree the trial court functionally granted summary judgment under CR 56(c).

The court agreed with the County's argument that its August 2, 2005 adoption of Resolution 2005-35 satisfied the periodic review requirement, thereby triggering a limitations period. As stated above, Resolution 2005-35 declared that "the designation of forest and agricultural land within the [Columbia River Gorge] National Scenic Area and the development regulations adopted under SCC Title 22 meets the requirements of the Growth Management (RCW 36.70A) for the conservation of forest, agricultural, and mineral resource lands." The court ruled:

> With respect to the County's GMA Natural Resource Designation and Update requirements, the County addressed these GMA requirements in 2005, through Resolution 2005-35. It is now 2012. GMA contains a 60-day appeal period, and land use decisions are to be reviewed expeditiously. With seven years having past [sic], it is now too late for an appeal to be filed.

Based on our de novo review of the summary judgment record, we conclude the court improperly decided this issue as a matter of law.

On July 10, 2007, the County enacted a moratorium ordinance "to maintain the status quo of the [County's unzoned private lands] pending the County's consideration of developing zoning classifications for the areas covered by the newly adopted 2007 Comprehensive Plan and completing the Critical Areas Update Process . . . ." The County renewed the moratorium ordinance every six months for five years. The County contends its August 2, 2005 adoption of Resolution 2005-35 satisfied the periodic review requirement. On summary judgment, we view the evidence and any reasonable inferences from the evidence in a light most favorable to the nonmoving party—Friends.

The July 10, 2007 moratorium ordinance indicated the County was still working to review its commercial forest lands designation.[4] It contained a finding stating, "[T]he County Commissioners are determining which areas will be designated as commercial forest land and protected from the encroachment of residential uses as required by the Growth Management Act." Each renewal ordinance—including the August 21, 2012 ordinance that narrowed the moratorium's geographic scope—contained an identical finding. When viewed in context, these findings reveal a genuine issue of material fact as to whether the County actually completed periodic review on August 2, 2005. The trial court improperly decided this question as a matter of law. We reverse the trial court's time bar ruling and remand for further proceedings.

Planning Enabling Act Consistency Requirement

Friends' second claim involves the PEA's mandate that "the development regulations of each county that does not plan under RCW 36.70A.040 [the GMA] shall not be inconsistent with the county's comprehensive plan." RCW 36.70.545. Friends claims the unmapped zoning classification in the County's 1986 zoning ordinance conflicted with the conservancy designation in its 2007 comprehensive plan. The County contends the trial court properly dismissed this claim as time barred.

The trial court agreed with the County's argument that a limitations period commenced on July 10, 2007, the date the County adopted the allegedly inconsistent conservancy comprehensive plan designation. It ruled:

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[4] Under the GMA, designation of natural resource lands involves designation of "[f]orest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber." RCW 36.70A.170(1)(b).

> The County adopted the regulations applicable to Unzoned lands 27 years ago, and updated its Comprehensive Plan to address and provide for the designation of lands as Unzoned, in 2007. Washington policy is to review decisions affecting use of land expeditiously. The usual appeal period for land use decision is 21-30 days. If GMA's analogous appeal period is used, an appeal must be filed within 60-days. Either way, the appeal period has past [sic].

(Footnote omitted.) Viewed in a light most favorable to Friends, the evidence here raises genuine material issues of fact. The court improperly decided this issue as a matter of law.

The record shows a fact question remains as to the date on which the inconsistency, if any, arose between the unmapped zoning classification and the conservancy plan designation. On the day the County adopted the conservancy plan designation, it also enacted the first in a series of moratorium ordinances that effectively prohibited development on "any parcel located within unincorporated Skamania County that is not currently located within a zoning classification . . . ." The challenged unmapped zoning classification applied to "[t]hose areas of the county where no formal adoption of any zoning map has taken place . . . ." Accordingly, the moratorium ordinances effectively prohibited development on the County's unmapped lands.

With development prohibited on the unmapped lands, a genuine issue of material fact exists as to whether any genuine inconsistency existed between the unmapped classification and the conservancy designation—and, if so, when the inconsistency arose. Reasonable minds could differ on whether the moratorium ordinances rendered the unmapped zoning classification practically inoperative, thereby temporarily eliminating any actionable inconsistency between the classification and the 2007

conservancy plan designation. We reverse the trial court's time bar ruling and remand for further proceedings.

SEPA

Friends also contends, "The Superior Court erred in holding that Skamania County's decision to repeal its five year development moratorium from thousands of acres of land was not subject to review under the State Environmental Policy Act." Br. of Appellants at 34 (boldface omitted). The dispositive issue is whether the County's August 21, 2012 enactment of Ordinance 2012-08, which narrowed the geographic scope of the County's unzoned lands development moratorium, was an "action" triggering SEPA's environmental review procedures. We conclude that SEPA does not apply.

As discussed above, the County enacted Ordinance 2012-08 on August 21, 2012. This ordinance renewed the County's development moratorium for an additional six-month term but narrowed its geographic scope. The modified moratorium applied solely to a 4,500-acre portion of the County known as the High Lakes. It thus applied to approximately 10,000 fewer acres than did its predecessors.

Friends argues, "[B]ecause Ordinance 2012-08 modified and partially repealed the five-year moratorium, it was an 'action' under SEPA, thus requiring environmental review of its impacts." Br. of Appellant at 35. The County responds premised on three alternative grounds: (1) Friends lacked standing to challenge its SEPA compliance; (2) moratorium modification, under the circumstances present here, was not an "action" for SEPA purposes; and (3) to the extent modification was an "action," it was subject to

SEPA's exemptions for emergencies or procedural actions. Assuming without deciding that Friends had standing, we conclude the County took no "action" for SEPA purposes.

"One of SEPA's purposes is to provide consideration of environmental factors at the earliest possible stage to allow decisions to be based on complete disclosure of environmental consequences." King County v. Wash. State Boundary Review Bd. for King County, 122 Wn.2d 648, 663, 860 P.2d 1024 (1993). To this end, SEPA requires certain governmental entities to prepare an environmental impact statement (EIS) "on proposals for legislation and other major actions having a probable significant, adverse environmental impact." RCW 43.21C.031(1). But "SEPA does not compel environmental review of a decision that is not an 'action.'" See Int'l Longshore, 176 Wn. App. at 522. Therefore, we must decide whether the County's enactment of Ordinance 2012-08 constituted an "action" for SEPA purposes.

Friends relies on WAC 197-11-704, a SEPA rule providing that the term "action" includes both "[p]roject" and "[n]onproject" actions. The rule states, "Nonproject actions involve decisions on policies, plans, or programs." WAC 197-11-704(2)(b). Under WAC 197-11-704(2)(b)(i), the term "nonproject action" includes "[t]he adoption or amendment of legislation, ordinances, rules, or regulations that contain standards controlling use or modification of the environment . . . ." Friends asserts the County's enactment of Ordinance 2012-08 was a "nonproject action" within the meaning of WAC 197-11-704(2)(b)(i). It argues, "Ordinance 2012-08 meets this definition, because it is an ordinance modifying the County's five-year moratorium and thereby dictating which lands may or may not be developed." Br. of Appellants at 40. We disagree.

Contrary to Friends' contention, Ordinance 2012-08 contained no "standards controlling use or modification of the environment." WAC 197-11-704(2)(b)(i). It merely directed reversion to preexisting standards, established by the 1986 zoning ordinance and the 2007 comprehensive plan. The preexisting zoning ordinance and comprehensive plan embodied the County's "decisions on policies, plans, or programs." WAC 197-11-704(2)(b). Ordinance 2012-08 did not.

Although Friends fears Ordinance 2012-08 will facilitate "unplanned development" on "thousands of acres of unzoned lands throughout the County," it identifies no project, or even a phase of a project, that derives authorization directly from the ordinance. Br. of Appellant at 34. On our record, approval of future project proposals will proceed entirely under preexisting development regulations.

Friends relies on Byers v. Board of Clallam County Commissioners, 84 Wn.2d 796, 529 P.2d 823 (1974), but that case is unhelpful. In Byers, the court held that adoption of a detailed interim zoning ordinance, scheduled to remain in effect for four years, required preparation of an EIS. It did not analyze whether enactment of an ordinance narrowing the scope of a moratorium triggered the same requirement. Byers is not controlling.

We conclude that the enactment of Ordinance 2012-08 was not an "action" for SEPA purposes. Accordingly, we affirm the grant of summary judgment on this issue.

CONCLUSION

For the reasons discussed above, we reverse the trial court's timeliness rulings and remand for further proceedings consistent with this opinion on Friends' GMA

periodic review and PEA consistency claims. We affirm the court's dismissal of Friends' SEPA challenge.

Ian, J.

WE CONCUR:

Spearman, A.C.J.

Becker, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

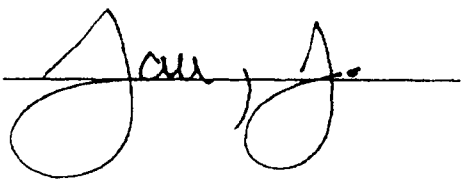
SAVE OUR SCENIC AREA and FRIENDS OF THE COLUMBIA GORGE, Appellants, v. SKAMANIA COUNTY, Respondent.	)	NO. 71363-9-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, Skamania County, moved on April 21, 2014, to reconsider the court's March 31, 2014 opinion. The court has determined that the motion should be denied. Therefore, it is

ORDERED that the motion for reconsideration is denied.

DATED this 16th day of May 2014.

FOR THE COURT:



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STATE OF WASHINGTON
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APPENDIX 2

Superior Court Summary Judgment Dismissal of FOCG's Appeal as Time Barred

CP 413-16

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Hearing:	November 9, 2012 (special setting)
Time:	1:30 P.M.
Judge:	Judge Diane M. Woolard

FILED
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Scott G. Weber, Clerk, Clark Co

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

SAVE OUR SCENIC AREA and FRIENDS OF THE COLUMBIA GORGE,

Plaintiffs,

v.

SKAMANIA COUNTY,

Defendant.

Cause No. 12-2-03496-0

ORDER OF DISMISSAL

This matter comes before the Court on Skamania County's Motion to Dismiss, Or In The Alternative, Summary Judgment ("Motion") on November 9, 2012, to dismiss Save Our Scenic Area and Friends of the Columbia Gorge's ("Friends") Complaint For Declaratory And Injunctive Relief ("Complaint"). The Court considered the briefing and pleadings filed herein, including the Motion; Declaration of Susan Drummond (with Attachments 1-11); Declaration of Karen Witherspoon; Plaintiffs' Response To Defendant's Motions To Dismiss And For Summary Judgment; Declaration Of Richard J. Aramburu In Opposition To Defendant's Motion To Dismiss And For Summary Judgment (with Attachments); Declaration Of Keith Brown (with Attachments); Declaration of Tom Drach (with Attachments); Skamania County's Reply Brief

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0-000000413

Supporting Motion to Dismiss, Or In The Alternative, Summary Judgment; Declaration Of Karen Witherspoon In Support Of Reply On Motion To Dismiss; Declaration Of Susan Drummond In Support Of Reply On Motion To Dismiss (with Attachments 1-4); and the Court finds as follows:

FINDINGS AND ORDER

1. Background/Review Standard. A motion to dismiss for failure to state a claim upon which relief can be granted is dismissed under CR 12(b)(6) where "there is some insuperable bar to relief,"[1] and under CR 12(b)(1) for lack of jurisdiction. Summary judgment is granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[2] "Summary judgment is proper when a reasonable person could come to only one conclusion based on the evidence."[3] Relief is barred for several reasons, and judgment in the County's favor is warranted, with the following exception. The County does not object to officially completing its Growth Management Act, Ch. 36.70A RCW ("GMA") Critical Areas Update by December 1, 2013, and the Court will remand to the County on this one issue.

2. GMA Natural Resources. With respect to the County's GMA Natural Resource Designation and Update requirements, the County addressed these GMA requirements in 2005, through Resolution 2005-35. It is now 2012. GMA contains a 60-day appeal period, and land use decisions are to be reviewed expeditiously. With seven years having past, it is now too late for an appeal to be filed.

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[1] *West v. Stahley*, 155 Wn. App. 691, 696, 229 P.3d 943 (2010).
[2] CR 56(C).
[3] *Imperato v. Wenatchee Valley College* 160 Wn. App. 353, 358, 247 P.3d 816 (2011).

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3. Unzoned Lands/Comprehensive Plan Consistency. The County adopted the regulations applicable to Unzoned lands 27 years ago, and updated its Comprehensive Plan to address and provide for the designation of lands as Unzoned, in 2007. Washington policy is to review decisions affecting use of land expeditiously. The usual appeal period for land use decision is 21-30 days.[4] If GMA's analogous appeal period is used, an appeal must be filed within 60-days. Either way, the appeal period has past.

4. Moratorium/SEPA. Friends challenges moratorium compliance with the the State Environmental Policy Act, Ch. 43.21C RCW ("SEPA"). However, the moratorium is exempt from SEPA. The moratorium is a procedural matter as it does not adopt substantive standards. It was also adopted on an emergency basis, as the County Ordinance notes. Both procedural and emergency actions are exempt from SEPA. In addition, Friends is challenging not moratorium enactment, but moratorium cessation. A moratorium lapses by operation of statute unless extended by the local government, so its cessation is not an "action" for purposes of SEPA review.

The Court ORDERS that the Complaint for Declaratory and Injunctive Relief be dismissed with prejudice, with one exception: The County shall complete its GMA Critical Areas Update by December 1, 2013.

DONE IN OPEN COURT this 9th day of November, 2012.

Judge Diane M. Woolard

[4] Ch. 36.70C RCW, Land Use Petition (21-day appeal period); Ch. 34.05 RCW, Administrative Procedures Act (30-day appeal period).

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Presented by:

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Attorneys for Defendant Skamania County

Approved as to Form; ONLY

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APPENDIX 3

2007 Comprehensive Plan Adoption
(Resolution 2007-25),
and Plan/Zoning Excerpts

CP 37-39, CP 368-70

RECEIVED
SKAMANIA COUNTY
JUL 11 2007
DEPT OF PLANNING AND
COMMUNITY DEVELOPMENT

RESOLUTION 2007-25

(Adopting, Endorsing and Certifying by Motion the Skamania County 2007 Comprehensive Plan and Associated Maps)

WHEREAS, RCW 36.70 authorizes Counties to engage in creation of Comprehensive Plans and the adoption and certification thereof by motion; and,

WHEREAS, the creation, adoption and certification of Comprehensive Plans and subarea plans are considered a legislative process and not subject to RCW 36.70C; and,

WHEREAS, the Washington State Legislature in 1990 Passed the Growth Management Act (RCW36.70A) requiring all counties to prepare or update their Comprehensive Plans to provide guidance to bring their ordinance into compliance with the Critical Areas requirements and the Commercial Resource Protection requirements and,

WHEREAS, on March 20, 2007 the Board of County Commissioner's (BCC) initiated the draft of the 2007 Comprehensive Plan. This draft includes the Critical Areas Best Available Science guidance and,

WHEREAS, on March 28, 2007 a Determination of Non-Significance (DNS) was issued and reviewed under the State Environmental Policy Act (SEPA) was completed, since no appeals were filed and,

WHEREAS, on March 27, 2007 a draft plan and a 60-day notice of intent to adopt were sent to Washington State reviewing agencies meeting the notice requirements of the Growth Management Act and,

WHEREAS, the Planning Commission held a workshop on April 17, 2007 to discuss the draft plan and associated maps and,

WHEREAS, the Planning Commission, having provided proper notice in the official newspaper of general circulation, and with a quorum present, conducted a public hearing on the March 20, 2007 BCC Initiated Comprehensive Plan and associated maps on May 1, 2007 at the Rock Creek Center at 7:00 p.m. and,

WHEREAS, After all those attending the hearing were given the opportunity to speak, the public hearing was closed to public testimony at the end of the evening on May 1, 2007. The public hearing was continued to May 15, 2007 for the Planning Commission deliberations on map and text and,

WHEREAS, Due to constraints, no deliberations were held on May 15, 2007, so at the conclusion of the May 15, 2007 public hearing; the public hearing was continued a second time to May 22, 2007 for deliberations on the map and text and,

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WHEREAS, On May 22, 2007 after reviewing the public testimony, both written and oral, discussing and analyzing the testimony, the Planning Commission recommended to accept the 2007 Board of County Commissioner's Initiated Draft Comprehensive Plan and to recommend that the County Commissioners review and accept the following changes:

A. Correct all reference to the Swift Subarea Plan throughout the document to be pending Swift Subarea Plan.
B. Modify the land use designation map Figures 2-2 and 2-3 to remove the Swift Subarea on the map and in the Legend (the area should be shown as Conservancy).
C. Modify Policy E.2.2 to state - review the effects of development on fish species, which include anadromous fish and other species protected under the Federal Endangered Species Act and require mitigation such as riparian habitat enhancement and water quality treatment.
D. Add new sentence to end of Policy E.4.1, however, unmapped wildlife habitat areas and sites may be identified during the development review process.
E. The words Mt. Adams should be added on page 41 after the words Mt. St. Helens and before the words Columbia River Gorge in the paragraph and Policy E.3.6 should be amended to remove the words, "enter at your own risk."
F. Add new Policy E.4.6 - Encourage All Terrain Vehicle (ATV) use and motorized off road vehicle (ORV) use to be located in appropriate areas of private land outside of critical resource areas.
G. Add map of Mt. St. Helens Volcanic Hazard Area and Mt. Adams Area into Chapter 3 as Figures 3-1 and 3-2 with reference included on page 42.

WHEREAS, the Board of County Commissioners reviewed the Planning Commission proposed changes at workshop on June 25, 2007; and,

WHEREAS, RCW 36.70.440 allows the Board of County Commissioners to approve by motion and certify the Comprehensive Plan, after receipt of the report and recommendation of the planning agency without further reference to the planning commission, provided that the plan conforms either to the proposal as initiated by the county commissioners or the recommendation thereon by the planning commission. No further pubic hearings are required since the planning agency issued its report within 90 days of the Board of County Commissioners Initiating the draft text and maps; and,

NOW THEREFORE, BE IT RESOLVED, that the Skamania County Board of Commissioners adopts and endorses the Final 2007 Comprehensive Plan and Associated Plan Maps as recommended by the Planning Commission.

PASSED IN REGULAR SESSION this 10th day of July 2007.

SKAMANIA COUNTY
BOARD OF COMMISSIONERS

Chairman

Commissioner

Commissioner

BOARD OF COMMISSIONERS
SKAMANIA COUNTY
WASHINGTON
CLERK OF THE BOARD

ATTEST:

Clerk of the Board

Approved as to form only:

Skamania County Prosecuting Attorney

AYE 3
NAY ___
ABSTAIN ___
ABSENT ___

CHAPTER 2: LAND USE ELEMENT

Introduction

The Land Use Element of the Skamania County 2007 Comprehensive Plan provides policy guidance for the uses of land throughout the entire unincorporated county, which range from residential, commercial and industrial structures to farm and forestry activities, to open spaces and undeveloped environmentally sensitive areas. The goals and policies contained in the Land Use Element provide the guidance as to how and where these uses should be located, and what type of overall land use pattern should evolve as Skamania County develops over the next 20 years. However, because of several unique conditions and policy issues, the analysis and policies for each of the four subareas are contained in separate subarea plans. Figure 2-1 shows the geographical location of the four subarea plans within Skamania County.

The Comprehensive Plan provides the overall community vision, goals, and general policies for future development in Skamania County. It does not, however, provide all the details. Precise standards, such as building setbacks, permitted uses within a particular zoning district or appropriate types of stormwater management systems are included in the various implementing ordinances (official controls).

The Land Use Element provides a guide to public development toward which public utilities and public services planning can be directed and provides a guide to private development by indicating those areas most suitable and economical for development.

Land Use Designations

There are three (3) land use designations in unincorporated Skamania County, outside of the specific subarea plans. These three designations are Rural I, Rural II, and Conservancy, and are differentiated from one another by intensity and types of uses, which may occur in each area. The idea of three different developmental areas was the central concept of the 1977 Comprehensive Plan "A" and has been continued in the 2007 Comprehensive Plan.

Table 2-1 shows the comprehensive plan designations and the consistency of each potential zoning classification. The Plan Designation to Zoning Classification table is provided to identify those zoning districts that are consistent with each plan designation. Those districts, which are not consistent with the plan designations, are not permitted within that plan designation. This information is necessary to determine when, where and under what circumstances these designations should be applied in the future. The table indicates consistency (C) and non-consistency (NC).

0-000000368

Table 2-1. Plan Designation to Zoning Classification Consistency Chart

Zoning Classifications	Comprehensive Plan Designations		
	Rural I	Rural II	Conservancy
Residential 1 (R-1)	C	NC	NC
Residential 2 (R-2)	C	C	NC
Residential 5 (R-5)	C	C	NC
Residential 10 (R-10)	C	C	C
Rural Estates 20 (RES-20)	C	C	C
Community Commercial (CC)	C	NC	NC
Commercial Recreation (CR)	C	NC	NC
Industrial (MG)	C	NC	NC
Forest Land 20 (FL20)	C	C	C
Commercial Resource Land 40 (CRL40)	C	C	C
Natural (NAT)	C	C	C
Unmapped (UNM)	C	C	C

Rural I

The Rural I land use area is intended to foster the optimum utilization of land within the growing areas of the county through provision of public improvements and the allocation of a greater variety of uses than allowed in the other two land use designations. As shown in Table 2-1, all zoning classifications are consistent with Rural I Designations. To provide protection of rural character and separation of incompatible uses, the actual allowable uses, review uses and conditional permitted uses will be further refined in each specific zoning classification (official controls).

The Rural I land use area is that area which is best able to support growth. All of the existing, denser development is within this area. The character of this existing development is essentially rural, and it is not the intention of the plan to significantly alter this character. However, the potential for future development is greater here than other lands within the county. The natural limitations are fewer and water systems, roads and electricity serve most areas. More varied and denser development could take place within this land use category. Therefore, growth in these areas would be encouraged.

The following uses, depending upon on adopted zoning classifications, are appropriate within the **Rural I designation**:

1. Residential (Single, duplex or multi family units)
2. Accessory uses normally associated with an authorized use
3. Home business (cottage occupations or light home industry)
4. Mobile home parks

0-000000369

SECTION V RELATIONSHIP TO COMPREHENSIVE PLAN

5.0.10 PURPOSE AND INTENT

To implement the Skamania County Comprehensive Plan A in a manner which shall be consistent with the Rural I, Rural II, and Conservancy Land Use Areas.

5.0.20 ZONE CLASSIFICATIONS

Zones shall be shown on the Zoning map and its revisions. Zones implement the intent of the three land use area designations of the Comprehensive Plan A and shall be uniformly interpreted and mapped within appropriate area designations. Where the abbreviated designation is used it has the same meaning as the entire zone classification title.

5.0.30

ZONE CLASSIFICATION TITLE	ABBREVIATED DESIGNATION/ MAPPING SYMBOL
Residential 1	R-1
Residential 2	R-2
Residential 5	R-5
Residential 10	R-10
Rural Estate 20	RES-20
Community Commercial	CC
Industrial	MG
Resource Production Zone	For-Ag 10 For-Ag 20
Natural	NAT
Unmapped	UNM

5.0.40 CONSISTENCY OF ZONE CLASSIFICATIONS WITH LAND USE AREA

The series of zones that shall be adopted herein shall be consistent with the Comprehensive Plan A Land Use Area designations. The matrix indicates consistency (C) and nonconsistency (NC) in the table below.

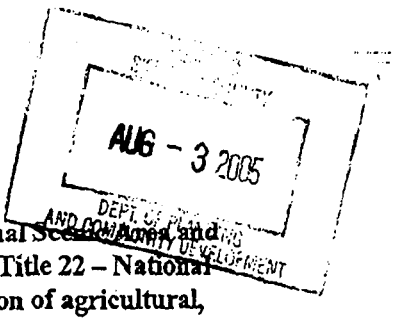
	Rural I	Rural II	Conservancy
R-1	C	NC	NC
R-2	C	C	NC
R-5	NC	C	NC
R-10	NC	C	C
RES-20	NC	C	C
CC	C	NC	NC
MG	C	NC	NC
For-AG 10	NC	C	C
For-AG 20	NC	C	C
NAT	C	C	C
UNM	C	C	C

0-000000370

APPENDIX 4

2005 GMA Decision
(Resolution 2005-35)

CP 34-35



RESOLUTION 2005-35

(Determining the designation of forest and agricultural land in the National Scenic Area and the adoption of development regulations under Skamania County Code Title 22 – National Scenic Area, meets the requirements of RCW 36.70A for the conservation of agricultural, forest and mineral resource lands)

WHEREAS, pursuant to the Growth Management Act (RCW 36.70A), each county shall adopt development regulation to assure the conservation of agricultural, forest, and mineral resource lands, and that such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals; and,

WHEREAS, over eighty percent (88%) of the land within Skamania County is in public ownership either within the Gifford Pinchot National Forest or is owned by the State of Washington; and,

WHEREAS, half of the remaining twenty percent (12%) is located within the Columbia River Gorge National Scenic Area and is regulated locally with development regulations that are consistent with the Columbia River Gorge Management Plan and the National Scenic Area Act; and,

WHEREAS, the development regulations in Skamania County Code (SCC) Title 22 – National Scenic Area designated 39,416.10 acres as forest land (SMA Forest, GMA Commercial Forest, and GMA Large Woodland) meeting the intent of RCW 36.70A, and designated 4,240.23 acres as agricultural land (SMA Agriculture and GMA Large-Scale Agriculture) meeting the intent of RCW 36.70A; and,

WHEREAS, the forest and agricultural designations provide for the conservation of land to be used for forest, agriculture, and mineral resource uses, the protection from encroachment of residential uses from adjacent lands, requires a 500 foot notification to surrounding property owners, and has specific setbacks on adjacent uses to assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals; and,

WHEREAS, the County adopted SCC Title 22 on December 21, 1993, and the provision have been in effect since adoption;

NOW THEREFORE, BE IT RESOLVED, that the Skamania County Board of Commissioners has determined the designation of forest and agricultural lands within the National Scenic Area and the development regulations adopted under SCC Title 22 meets the requirements of the Growth Management Act (RCW 36.70A) for the conservation of forest, agricultural, and mineral resource lands.

0-000000034

PASSED IN REGULAR SESSION this 2nd day of ~~July~~ August 2005.

BOARD OF COMMISSIONERS
SKAMANIA COUNTY
WASHINGTON
CLERK OF THE BOARD

SKAMANIA COUNTY
BOARD OF COMMISSIONERS

Chairman

Commissioner

Commissioner

ATTEST:

Clerk of the Board

Approved as to form only:

Skamania County Prosecuting Attorney

AYE 3
NAY 0
ABSTAIN 0
ABSENT 0

APPENDIX 5

Moratorium Ordinance 2012-08

CP 30-32

ORDINANCE 2012-08

(AN ORDINANCE TO MODIFY AND EXTEND ON ANY PARCEL LOCATED WITHIN TOWNSHIP 10 NORTH, RANGE 5 EAST AND/OR TOWNSHIP 10 NORTH, RANGE 6 EAST IN UNINCORPORATED SKAMANIA COUNTY: A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF ANY BUILDING, MECHANICAL AND/OR PLUMBING PERMITS AND/OR SITE ANALYSIS LEVEL II (SALII) APPLICATIONS ON ANY PARCEL OF LAND THAT IS 20 ACRES OR LARGER; THE ACCEPTANCE AND PROCESSING OF LAND DIVISIONS (SUBDIVISION AND SHORT SUBDIVISION); AND THE ACCEPTANCE AND PROCESSING OF STATE ENVIRONMENTAL POLICY ACT (SEPA) CHECKLISTS RELATED TO FOREST PRACTICE CONVERSIONS)

WHEREAS, the Board of County Commissioner adopted the 2007 Comprehensive Plan on July 10, 2007; and,

WHEREAS, the Board of County Commissioner, on December 30, 2008, extended for the third time, the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

WHEREAS, on July 28, 2009, the Board of County Commissioners re-established the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits on any parcel of land 20 acres or larger that was created by deed since January 1, 2006, the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions for any parcel located within unincorporated Skamania County that is not currently located within a zoning classification or the area generally known as the Swift Subarea of Skamania County.

WHEREAS, Skamania County is in the process of updating zoning classification for all land within unincorporated Skamania County to be consistent with the adopted Comprehensive Plan; and,

WHEREAS, most of the area within unincorporated Skamania County that is not currently covered by a zoning classification is currently used as commercial forest land or within the Gifford Pinchot National Forest; and,

WHEREAS, the Growth Management Act requires all counties in the State of Washington to provide protections for commercial forest land from the encroachment of residential uses; and,

WHEREAS, between January 1, 2006 and July 10, 2007, over 230 new parcels (20 acres or larger) have been created through the deed process, which is exempt from the subdivision and short subdivision (short plat) regulations and other environmental review processes; and,

WHEREAS, several comments submitted during the public comment periods related to the draft Comprehensive Plan expressed concern on the number of exempt parcels that have been created since the planning process began and that the exempt parcels do not have any level of review related to critical resource protection, design standards, road maintenance, stormwater or other checks and balances required for residential lots created through the subdivision or short subdivision (short

plat) process; and,

WHEREAS, these new exempt parcels are located in existing forest land areas that during the review process of the Comprehensive Plan and pending zoning classification process, the County Commissioners are determining which areas will be designated as commercial forest land and protected from the encroachment of residential uses as required by the Growth Management Act; and,

WHEREAS, allowing new construction on these parcel created through an unregulated exempt process prior to the County Commissioners completing the zoning classification process essentially is circumventing the legislative process and could endanger the public's safety, health and general welfare; and,

WHEREAS, the development within many locations of unincorporated Skamania County, outside of the areas with zoning classifications is located on rugged mountainous terrain, is only accessed though United States Forest Service Roads and private roads, and does not currently have access to electrical power service and land-line telephone service; and,

WHEREAS, continued unplanned and uncontrolled residential growth in the areas of commercial forest lands and the Gifford Pinchot National Forest could potentially increase the risk of forest fires and other emergency events; and,

WHEREAS, during the visioning process of the Comprehensive Plan information was gathered to help determine where the best locations are for future residential development, taking into considerations the terrain, access roads, location of critical area resources, location of commercial forest lands, future service needs of residents, and future water usage for residential development; and,

WHEREAS, the Board of County Commissioners has the authority pursuant to RCW 36.70.795 to adopt a moratorium without holding a public hearing (as long as a public hearing is held on the adopted moratorium within at least 60 days of its adoption) and whether or not there is a recommendation on the matter from the Planning Commission or the Community Development Department, that may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such longer period. A moratorium may be renewed for one or more six-month period(s) if a subsequent public hearing is held and finding of fact are made prior to each renewal; and,

WHEREAS, a work plan for the zoning classification process has been developed; and,

WHEREAS, the Board of County Commissioners finds a sufficient basis to extend the moratorium, believe that the above mentioned circumstances constitute an emergency, and that it is in the public's best interest (to protect the public's safety, health and general welfare) to maintain the status quo of the area pending the County's consideration of developing zoning classifications for the areas covered by the adopted 2007 Comprehensive Plan; and,

WHEREAS, the Board of County Commissioners intends for these recitals to constitute its "findings of fact" as required by RCW 36.70.795; and,

NOW, THEREFORE BE IT HEREBY ORDAINED AND ESTABLISHED BY THIS BOARD OF COUNTY COMMISSIONERS AS FOLLOWS: the Board of County Commissioners hereby adopts Ordinance 2012-08 to modify and extend for six months on any parcel located within Township 10 North, Range 5 East and/or Township 10 North, Range 6 East in unincorporated Skamania County: the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits and/or Site Analysis Level II (SALII) applications on any parcel of land 20 acres or larger; the acceptance and processing of land divisions (subdivisions and short subdivisions); and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions.

ORDINANCE NO. 2012-08 IS HEREBY PASSED INTO LAW THIS 21st DAY OF AUGUST 2012.

BOARD OF COUNTY COMMISSIONERS
SKAMANIA COUNTY, WASHINGTON

BOARD OF COMMISSIONERS SKAMANIA COUNTY WASHINGTON CLERK OF THE BOARD

Chairman

Commissioner

Commissioner

ATTEST:

Clerk of the Board

APPROVED AS TO FORM ONLY:

Skamania County Prosecuting Attorney

AYE 3
NAY
ABSTAIN
ABSENT 1