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I.
INTRODUCTION

Does the Board of County Commissioners relinquish its authority as the final land use decision maker merely because it reviews land use decisions in an appellate role? In this case, the Clark County hearings examiner approved a site plan for the Salmon Creek Commercial Center¹ together with certain conditions not contained in the Clark County Code. Because the Board of County Commissioners concluded that the hearings examiner misapplied a code to the facts, the Board reversed the hearings examiner's decision and denied the project. Wal-Mart raises several challenges to the Board's exercise of its appellate authority.

Wal-Mart's choice of location for its newest store raised numerous difficult issues. The site is irregularly shaped and located south of NE 134th Street, a limited-access arterial, and east of Interstate 205. Due to these unique site characteristics and Wal-Mart's configuration of its development, Wal-Mart could not comply with the Road Standards. The extent of those transportation issues will be discussed below.

Moreover, due to the extent of impervious surface and the soils present on the site, Wal-Mart opted for stormwater detention and delayed

¹ The project applicants were renamed as "Wal-Mart," following the filing of the LUPA appeal.

release, as opposed to the preferred method of treatment and infiltration. The ability to approve the preliminary stormwater plan hinged upon Wal-Mart's ability to use an admittedly private stormwater line located off-site. Wal-Mart claimed it had a right to use the line because the private line was located within a public easement.

Wal-Mart received conditional preliminary site plan approval on January 30, 2007. A timely notice of appeal was filed by the Fairgrounds Neighborhood Association and Bridget Schwartz on February 13, 2007. This appeal alleged that the examiner erred in finding procedural and substantive SEPA compliance, failure to comply with the Clark County Stormwater Ordinance, and Wal-Mart's failure to comply with the Road Standards contained in Chapter CCC 40.350.

The Board of County Commissioners reviewed this development application on two occasions. First, on April 3, 2007, the Board reviewed and remanded the matter to clarify the burden and standard of proof. Later, the Board considered appellate arguments on the substantive issues.

Neighborhood opponents challenged the application on multiple grounds, including SEPA compliance. The Board rejected virtually all of those challenges with two exceptions. First, the Board considered whether Wal-Mart could use an admittedly private stormwater line, over the

objection of the owners of that pipe, Waters Edge Condominium Association. Second, appellants challenged Wal-Mart's entitlement to road modifications. The Board concluded that Wal-Mart had offered no evidence of a right to use an off-site stormwater line constructed and owned by the Waters Edge Condominium association. Therefore, the Board concluded that Wal-Mart's preliminary stormwater plan was deficient.

The second issue, compliance with the road standards, was also raised by the Fairgrounds Neighborhood Association. Based on the factual record of the hearings examiner, the Board concluded that the examiner erred in applying the Code. Road modifications under the Clark County Code are not mandatory, but discretionary. The Board concluded that the location of the driveway access onto NE Rockwell Road, with a limited sight distance, did not justify a road modification. Based upon its discussion during the appeal meeting and the Board's conclusions contained in its resolution, the Board of Clark County Commissioners granted the appeal and denied the preliminary site plan approval in this matter.

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II.
STATEMENT OF THE CASE

Wal-Mart seeks approval for the development of a Store on a 12.2 acre parcel in the Salmon Creek area of unincorporated Clark County. Pursuant to RCW 36.70B.120 (2), the Clark County Land Use Hearings Examiner conducted the single open record hearing under RCW 36.70B.050 and established the factual record under review by this Court.² While general issues ranging from stormwater to SEPA compliance were raised before the land use hearings examiner in the open record hearing, only two primary areas remain for this appeal: stormwater and traffic. Specifically, opponents challenged Wal-Mart's attempt to use a private stormwater line as part of its stormwater facility³. In addition, opponents argued that Wal-Mart had failed to demonstrate it was entitled to relief from the Road Standards (by way of a road modification), and that the applicant should be required to comply with the same Road Standards as other developers⁴.

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² The administrative record (AR) is the record of documents filed and considered by the land use hearings examiner in making its decision. The Final Order of the hearings examiner can be found at AR 2431 - 2487.

³ AR 2434.

⁴ Id.

During the land use hearing, residents of Waters Edge Condominium Development individually, and through their attorney, John Karpinski, testified in opposition to the neighboring property being used as a Wal-Mart site. The Waters Edge Condominium Homeowners Association, through its attorney-of-record, has claimed ownership of the stormwater line. The examiner accepted the opponent's testimony, finding that:

The stormwater conveyance systems downstream of the site proposed to receive stormwater from this development, is a privately owned facility constructed by Waters Edge Condominium Development. The downstream conveyance system consists of a pipe system within a 20-foot easement in a creek within a 35-foot public easement.⁵

The examiner considered numerous exhibits in making this determination, including Exhibits 189, 142, 143, 144, 160 and 161.⁶ Finally, even Wal-Mart accepts the examiner's finding that the downstream conveyance system is privately owned.⁷ No evidence was offered by Wal-Mart regarding an alternative to the use of the private stormwater line.

Transportation issues exist for all large scale developments, but were aggravated in this case due to the unique location of this property in

⁵ AR 2442.

⁶ AR 2443. (For ease of review, the above-referenced exhibits can be found in the Administrative Record as AR 1679 - 1730 and AR 1826 - 1840.

⁷ See Clerk's Papers (CP) No. 6 at p. 7, lines 1-8.

relation to nearby interstate highways and arterials, the number of trips generated, and the irregular shape of Wal-Mart's property. As a result, Wal-Mart found it necessary to apply for relief from the Clark County Road Standards, including a reduction in the corner site distance standards and for increased driveway width for the access onto NE Rockwell Drive from the maximum 40 feet to 73 feet.⁸ According to Wal-Mart, the site has obstructed site distance off of NE Rockwell Drive between NE 27th Avenue and NE 129th Street.⁹ The support for Wal-Mart's proposed modification can be found at AR 408 – 410. The facts as found by the hearings examiner are found at AR 2456-2460.

III. ARGUMENT

A. Standard of Review.

1. **LUPA.** This court acts in appellate capacity and may only grant relief under LUPA (RCW 36.70C.130) if the party seeking relief has carried the burden of establishing error under one of the applicable standards:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

⁸ Ex. 92, AR 879 - 880.

⁹ AR 408.

- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (d) The land use decision is a clearly erroneous application of the law to the facts;
- (e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or
- (f) The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1).

The decision under review is the decision of the Clark County Board of Commissioners as the body with the highest level of authority to make the determination. RCW 36.70C.020(1) (definition of a land use decision). Review is based on the factual record made by the Hearings Examiner. North Pacific Union Conference v. Clark County, 118 Wn.App.22, 28 74 P.3d 140 (2003).

To challenge the County's legal conclusions under LUPA, Wal-Mart must demonstrate that the County's decision is "an erroneous interpretation of the law, after allowing for such deference as is due the construction of the law by a local jurisdiction with expertise." RCW 36.70C.130(1)(b). Issues raised under subsection (b) are questions of law,

reviewed *de novo*. Schofield v. Spokane County, 96 Wn.App. 581, 586, 980 P.2d 277 (1999). If the statute is unambiguous, construction is not necessary and the plain meaning controls. McTavish v. City of Bellevue, 89 Wn.App. 561, 565, 949 P.2d 837 (1998). Where a statute is ambiguous, the agency's interpretation is accorded the greatest deference in determining legislative intent. Waste Management of Seattle v. Utilities and Transportation Commission, 123 Wn.2d 621, 628, 869 P.2d 1034 (1994).

Issues regarding application of law to facts under RCW 36.70C.130 (hereinafter "LUPA") law are governed by RCW 36.70C.130(1)(d). To be entitled to relief, Wal-Mart must demonstrate that "the land use decision is a clearly erroneous application of the law to the facts." North Pacific Union Conference v. Clark County, 118 Wn.App.22, 28 74 P.3d 140 (2003), City of University Place v. McGuire, 144 W.2d 640, 652, 30 P.3d 453 (2001). The test for "clear error" is whether the court is left with a firm and definite conviction that a mistake has been committed. Wenatchee Sportsman Assoc. v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). Deference is granted to the agency with the highest authority to make the decision; in this case, the Board of County Commissioners. RCW 36.70C.020(1).

To challenge factual findings, Wal-Mart must demonstrate that the finding in question “is not supported by evidence that is substantial when viewed in the light of the whole record before the court.” RCW 36.70C.130(1)(c). “Substantial evidence” is “a sufficient quantity of evidence to persuade a fair minded person of the truth or correctness of the order.” Benchmark Land Co. v. City of Battleground, 146 Wn.2d 685, 694, 49 P.3d 860 (2002). Under this standard, an appellate court is not to substitute its judgment for that of the fact finder. Instead, review under the standard “necessarily entails acceptance of the factfinder’s views regarding the credibility of witnesses and the weight to be given to reasonable but competing inferences.” Hilltop Terrace Owner’s Assoc. v. Island County, 126 Wn.2d 22, 30, 891 P.2d 29 (1995). When reviewing issues of fact, deference is due the Hearings Examiner as the factfinder.

2. Site Plan Approval. At the time this application received protection from changes in the code (“vested”), site plan approval was governed by CCC 40.520.040¹⁰. The responsible official was required to grant approval of applications that demonstrated compliance with the code or applications that could, **with conditions**, comply. CCC 40.520.040(E)

¹⁰ See code attached as Appendix “A”.

(1)(a). However, if the site plan, even with conditions of approval, cannot be shown to comply with code requirements, denial is warranted.

Alternatively, if the project requires the approval of entities other than the county the code prohibits approval until that third party approval is granted. CCC 40.520.040(E)(1)(b) and (c).

3. Stormwater Review. Property owners seeking to develop their property are required to demonstrate that stormwater from their development would not adversely impact their neighbors or the public generally. Applicants for preliminary approval are required to provide a preliminary stormwater plan under CCC 40.380.060(C)(1). Preliminary plans are required to show the approximate location and size of the proposed stormwater facilities. The plan, while only a preliminary plan, must demonstrate that the proposal can meet the requirements of the storm water ordinance, i.e. that the plan is feasible¹¹.

4. Road Modification.

(1) Modifications to the standards contained within Ch. 40.350 **may** be granted in accordance with the procedures set out herein when any one of the following conditions is met:

- a. Topography, right of way, existing construction or physical conditions or other geographic conditions impose an unusual

¹¹ CCC 40.380.060C(2)(i) attached as Appendix “B”.

hardship on the applicant, and an equivalent alternative which can accomplish the same design purposes available.

- b. A minor change to a specification or standard is required to address a specific design or construction problem, which, if not enacted, will result in an unusual hardship.
- c. An alternative design is proposed which will provide a plan equal to or superior to these standards.
- d. Application of the standards of 40.350 to the development would be grossly disproportional to the impacts created.

(2) In reviewing a modification request, consideration shall be given to **public safety, durability, cost of maintenance, function, appearance and other appropriate factors** such as to advance the goals of the comprehensive plan as a whole. **Any modification shall be the minimum necessary to alleviate the hardship or disproportional impact.** Self-imposed hardship shall not be used as a reason to grant a modification request. **(Emphasis added)**¹²

B. Commissioners correctly concluded that Wal-Mart failed to demonstrate the feasibility of its preliminary stormwater plan. Wal-Mart's failure to obtain permission rendered its preliminary plan deficient. Denial was warranted under CCC 40.520.040 and CCC 40.380.060(C)(2)(h)(2).

Preliminary stormwater plans are required by CCC 40.380.060(C).

The purpose of this plan is to determine whether a proposal can meet the

¹² See CCC 40.550.010(A) attached as Appendix "C".

requirements set forth in Chapter 40.380. The preliminary plan must provide both quantity and quality control. The quantity of water, if it is not infiltrated, must be transferred off-site at the same rate of flow as pre-development. Quality control requires sufficient filtration to comply with substantive standards contained in CCC 40.380.040(B).

The key requirement of a preliminary stormwater plan is that it “can work”. More specifically, CCC 40.380.060(C)(2)(i) requires a demonstration that the stormwater plan is feasible. Issues of where the system is finally located, how many water filters are required or the final design drawings for the system need not be finalized for a project to obtain preliminary site plan approval. The plan must, however, be able to work. In this case, Wal-Mart’s preliminary stormwater plan hinges on its use of property owned by a third party, permission to use that pipe is a necessary prerequisite to show the plan “can work”. Use of the offsite system is discretionary with the owner, in this case the owner objected to use of the pipe.

The BOCC concluded that a private storm water pipe albeit in a public easement required the permission of the owner of the pipe, here the Waters Edge Condominium Association. No one challenged the Examiner’s factual determination that the pipe was private and it is a

verity on appeal. First Pioneer Trading Co. v. Pierce County, 146 Wn.App 606, 191 P.3d 928, 943 (2008). Because Wal-Mart gave up trying for infiltration onsite, an offsite conveyance system is critical.

In reviewing this issue, this Court reviews the decision of the Clark County Board of Commissioners. The legislature defined a land use decision as:

A final determination by a local jurisdictions body or officer with the highest level of authority to make the determination, including those with authority to hear appeals. ...¹³

Under LUPA and Clark County Code 40.510.030(I)(3), the BOCC is charged with consideration of appeals from the Land Use Hearings.

Therefore, the Board's application of its code to the facts as found by the Examiner is subject to deference under the clearly erroneous test provided in RCW 36.70C.130 and its interpretation of the law is similarly entitled to deference under LUPA.

Wal-Mart has gone to great pains to point out that the BOCC lacks fact finding authority. This is true. In its appellate role, the Board is required to review the findings of the Examiner and determine whether those findings are supported by substantial evidence. In this case, the

¹³ 36.70C.020 (1).

BOCC concluded that there was no evidence, much less substantial evidence, to support a conclusion that Wal-Mart had a right to use a private stormwater pipe. Counsel for the Waters Edge Condominium Association objected to Wal-Mart's use of the pipe and challenged this project's compliance with the stormwater ordinance.¹⁴ The evidence Wal-Mart presented to the Hearings Examiner fundamentally relied upon stormwater easement conveyed by Waters Edge developers to Clark County.¹⁵ Wal-Mart may possess a right to use the easement; this fact does not give Wal-Mart the right to use the private pipe constructed within the easement.

Wal-Mart has been quick to point out that its neighbor, Waters Edge Condominium association, was required to provide for downstream flows from owners uphill. The obligation to provide for upstream stormwater drainage does not equal a requirement of granting access to a private stormwater pipe. The Clark County Code authorizes various alternatives for the release of stormwater. First, Waters Edge granted Clark County an easement for the construction of a public-ditch or

¹⁴ TR P.28 ln 9-12, (09/07/06); TR P.8 ln. 17-22, P.14 ln. 12-20, 69 ln 15-20, (10/24/06).

¹⁵ AR 1509. While the conveyance document is titled as a utility easement, it is clear that the easement was limited to use of the property for a drainage ditch or line for water drainage.

stormwater line.¹⁶ The easement allows upstream owners to convey water by ditch or line. Second, while the pipe was designed to accommodate Wal-Mart's flows, this fact only means that the owners could have sold access to the pipe as an alternative to construction. There is simply no evidence in the record that Wal-Mart has any legal right to use this admittedly private pipe.

Without the private pipe, there is no evidence in the record demonstrating that Wal-Mart's stormwater system is feasible or what it will take to make it feasible.¹⁷ Therefore, CCC 40.520.040(E)(1)(b) authorized the denial of site plan approval as the preliminary stormwater plan was not feasible. Finally, as approval of a key element of the project, the right to use the pipe had not been acquired, so the project could not be approved until that permission was obtained under CCC 40.380.060C(2)(1).

Attempts to delay compliance have frustrated the public and its ability to meaningfully participate. In response, the BOCC adopted stormwater procedural requirements. The code required preliminary

¹⁶ AR 1509.

¹⁷ Similarly, Wal-Mart's own reports recognize that infiltration is not a viable alternative in the event that permission to use the neighboring pipeline is unavailing.

stormwater plans to be submitted timely to provide a fair opportunity for the public to comment. Specifically, CCC 40.380.060C(2)(1)(2) provides:

“To ensure adequate public review and avoid multiple reviews of preliminary plans by county staff, the preliminary stormwater plan shall not be significantly modified after public notice of the final SEPA determination without issuance of a new SEPA determination.”

The purpose was to avoid late submittals that kept staff and the public from knowing what proposal was actually under consideration.

In this case, public notice had been given. Wal-Mart received the one and only open record hearing authorized by RCW 36.70B.050. The Board concluded that it was inappropriate for Wal-Mart to simply put off demonstrating compliance until some later time. If the plan was changed after approval, the public protection provided by CCC40.380.060C(2)(1)(2) would be thwarted. The BOCC noted that Wal-Mart was given an opportunity to demonstrate code compliance and failed to prove it had a workable stormwater system. TR P.5-6, (10/03/07). CCC 40.520.040(E)(1)(a) supported the BOCC’s denial decision.

Rather than address the issue of legal access, Wal-Mart has raised three additional issues to support its claim for preliminary site plan approval:

- a. Proof that Wal-Mart has a right to use the Waters Edge stormwater pipe is inconsistent with preliminary stormwater review;¹⁸
 - b. Wal-Mart has a right to use a private pipe simply because it is located within an easement conveyed to Clark County; and
 - c. The failure to appeal the short plat approval gives Wal-Mart the right to use the property of a non-appealing third party.
- Upon analysis, each of these arguments will be found wanting.

First, Wal-Mart argues that the focus should be whether a condition of approval will suffice.¹⁹ This statement is true in many circumstances. If a preliminary stormwater plan can meet the requirements set forth in CCC 40.380, the fact that there are math errors or minor issues, it is appropriate to approve the plan with conditions of approval. In contrast, proof of the right to use the offsite stormwater pipe or an alternative is a prerequisite to finding that the preliminary stormwater plan can meet the requirements of CCC 40.380. There must be a demonstration that the preliminary stormwater plan is feasible. Unlike some site conditions, permission to use the offsite stormwater pipe is not a condition under the control of Wal-Mart; the authority to grant

¹⁸ CP No.18, p 36, lines 1-26.

¹⁹ Opening Brief of Petitioner, p. 18, lines 3 & 4.

approval is within the control of Waters Edge Condominium development who, on the record, opposed Wal-Mart's use of the pipe.

Wal-Mart next claims that the right to use a private stormwater pipe is included within the right to use the easement conveyed to Clark County. Wal-Mart bases its arguments on the easement document and the final engineering drawings recorded with the condominium declaration for Waters Edge Condominium. (Wal-Mart mistakenly referred to this drawing as a plat.) First a review of the easement clarifies what was conveyed. The easement conveyed the right to "construct, install, reconstruct, repair, operate and maintain a drainage ditch and/or line and all necessary related facilities, over, under, upon and across the following described property"²⁰ There is absolutely no discussion of using anything, only constructing and installing a ditch or line.

Although Wal-Mart has referred to this conveyance as a dedication, no dedication ever occurred. Waters Edge was not developed as a subdivision under RCW 58.17, but under RCW 64.32, the Horizontal Regimes Act. A dedication is treated under RCW 58.17.165 as a quit claim deed and would have been significant had it occurred. The only

²⁰ See AR 1509-1511 attached as Appendix "D".

rights of the person dedicating are limited to those of the public as a whole. In contrast, the grantor of an easement retains all rights to use the property for purposes not inconsistent with the easement.²¹ Since an easement was at issue and not a dedication, Waters Edge had every right to place a private pipe within the public easement. Thompson, supra. Such action does not convert a private pipe into a public one.

In fact, a review of the easement grant is inconsistent with an interpretation that the stormwater pipe is public. If a right to use the existing pipe was intended, it was unnecessary to grant a right to construct a line or ditch, it would have already existed. The pipe was private, as found by the Hearings Examiner, and the County only possesses a right to construct its own ditch or line. Wal-Mart right to use the easement is limited to the rights granted to Clark County.

Wal-Mart places great weight on the fact that the private pipe was shown on what Wal-Mart believes was a plat. Again, because this condominium development was recorded under the Horizontal Regimes Act, it was exempt from the subdivision laws under RCW 58.17.040(7). Moreover, the drawing upon which Wal-Mart relies did not exist when the easement was granted. It would be incredible to rely on the engineered

²¹ Thompson v. Smith, 59 Wn.2d 397, 407, 367 P.2d 798 (1962).

drawings as evidence that the easement was intended to include the private stormwater line. First, this drawing was never attached to the easement document. Second, the engineer's document, cited *AR 1537*, **wasn't prepared until thirteen years after conveyance of the easement**. In fact, the engineer's document appears to have been prepared May of 2000 and the engineer's stamp is 3/00.

Even the hearings examiner made no firm findings or conclusions on Wal-Mart's right to use the private pipe. The examiner mistakenly referred to the condominium engineer drawings as "the final plat for Waters Edge Condominiums."²² From this, the examiner concluded that the stormwater pipe to which Wal-Mart planned to connect were within a publicly-dedicated utility easement. Again, it must be recalled that no dedication has ever occurred; only the grant of an easement. The examiner went on to conclude that:

As such, legal access **appears** to exist and the Waters Edge unit owners **appear** to lack the legal ability to prevent this project from discharging stormwater into this publicly-dedicated system.²³ (Emphasis added.)

²² AR 2444.

²³ AR 2444.

To the extent the examiner was merely interpreting the easement, deeds are reviewed as a matter of law.²⁴ The Board had every right to substitute its views for that of the Examiner.

Ultimately, the question is simply whether Wal-Mart has demonstrated a right to use a privately-owned pipe contained within a public easement. Wal-Mart does not claim that the pipe was conveyed with the easement; it could not make such a claim based on the easement language. Therefore, the only question is whether Wal-Mart has demonstrated its right to use the stormwater pipe in question. This issue does not require the interpretation of an easement document but only proof of whether permission has been granted to Wal-Mart or a right of use has been acquired either by adverse possession or other means. Wal-Mart has presented no evidence to support any of these claims. Therefore, this argument does not support their claim to use the off site stormwater pipe.

Finally, Wal-Mart claims that because its stormwater plan for its short subdivision provided for the off-site connection to the stormwater pipe and no one appealed, no one can challenge its use of the pipe. While our courts have approved developments that otherwise violate zoning laws for failure to appeal, no court in the State of Washington has authorized a

²⁴ Niemann v. Vaughn Cemetery Church, 154 Wn.2d 365, 374, 113 P.3d 463 (2005).

private takings merely because a neighboring property owner failed to appeal. Wal-Mart essentially claims that it can convert to its own use private property merely because the neighbor failed to challenge a land use determination. Our constitution prohibits the public taking of property for private purposes.²⁵ Certainly Wal-Mart has no such right without complying with the law.²⁶ Collateral Estoppel does not further Wal-Mart's cause.

Collateral Estoppel is not presumed. The party making such a contention must satisfy the elements. When a subsequent action is on a different claim, yet depends on issues which were determined in a prior action, the relitigation of those issues may be barred by collateral estoppel.

Collateral estoppel, or issue preclusion requires:

- (1) Identical issues;
- (2) A final judgment on the merits;
- (3) The party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and
- (4) Application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

²⁵ In re: Seattle, 96 Wn.2d 616, 624-625, 638 P.2d 549 (1981).

²⁶ See e.g., RCW 8.24.010.

Shoemaker v. City of Bremerton, 109 Wn.2d 504, 507, 745 P.2d 858 (1987).

In addition, the issue to be precluded must have been actually litigated and necessarily determined in the prior action.²⁷

In this case, Wal-Mart cannot demonstrate that the right to use the private line owned by Waters Edge Condominium Association was decided or even that Waters Edge was a party to the land use determination. At the time of the prior subdivision approval, Clark County possessed no knowledge that Wal-Mart lacked a legal right to use the private stormwater pipe. Application of collateral estoppel simply cannot be used to justify a private takings of property based on the limited arguments made by Wal-Mart in this case. Clark County requests this Court reject this argument as unsupported by the record and based on Wal-Mart's failure to sustain its burden of proof.

In summary, absent proof that Wal-Mart had a legal right to use the private stormwater pipe, it was required to either obtain permission prior to preliminary site plan approval or develop an alternative to using the pipe. As Wal-Mart has made it abundantly clear, the failure to appeal findings of fact renders them verities on appeal. Wenatchee Sportsman

²⁷ City of Arlington v. Central Puget Sound Growth Management Hearings Board, 164 Wn.2d 768, 792, 193 P.3d 1077 (2008).

Assoc. v. Chelan County, 141 Wn.2d. 169, 4 P.3d 123 (2000) and Chelan County v. Nykreim, 146 Wn. 2d 904, 933, 52 P.3d 1 (2002).

Wal-Mart has failed to prove that the BOCC committed clear error in applying the site plan and stormwater codes to the facts supported by substantial evidence as found by the Examiner. Clark County requests the Court affirm the Board's determination on this ground.

C. BOCC properly applied the road modification standards to this application. Wal-Mart failed to prove it was entitled to exemption from the road standards.

Preliminarily, Clark County will address Wal-Mart's contention that the County first raised the issue of road standard elements at the trial court oral argument. A review of the Brief of Clark County clearly shows that the County included the road modification requirements in its first responsive brief. First in discussing the codes in the standard of review, the County included the issue in bold letter for emphasis.²⁸ Later, in its argument, the County referenced the necessary criteria for road modifications at page 13.²⁹ Again, however, this Court reviews the decision of the BOCC and not that of the trial court.³⁰

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²⁸ CP No. 20 at p. 6, lines 20-27.

²⁹ CP No. 20 at p. 13 line 22 through p.14, line 2.

³⁰ North Pacific Union, supra, at 28.

1. BOCC did not err in rejecting road modification requests.

a. Procedural standards. Prior to analyzing the allegations of Wal-Mart and the facts supporting or rejecting their arguments, it is first necessary to look at the local condition of the road in question, the standards applicable to this development, and the conditions under which those standards may be modified as public safety is a consideration for granting a road modification. The hearings examiner, in reviewing the Wal-Mart application, found and concluded that the roads in issue, NE 27th Avenue /NE Rockwell Road/NE 129th Street, were subject to the standards contained in Clark County Code Table 40.350.030-6³¹. The sight distance standards are contained in Table 40.350.030-11. Where the posted speed limit is 25 mph, the minimum corner sight distance is 250 feet or 10 feet for every mile per hour.

Under CCC 40.550.010(A), a property owner seeking exception from the road standards may request a modification of those standards. In this case, the applicant sought a road modification based on CCC 40.550.010. That subsection authorizes a modification of standards.

A. Criteria.

³¹ See a copy of CCC 40.350.030 attached as Appendix "E".

1. Modifications to the standards contained within Ch. 40.350 may be granted in accordance with the procedures set out herein when any one of the following conditions is met:
 - a. Topography, right of way, existing construction or physical conditions or other geographic conditions impose an unusual hardship on the applicant, and an equivalent alternative which can accomplish the same design purposes available.
 - b. A minor change to a specification or standard is required to address a specific design or construction problem, which, if not enacted, will result in an unusual hardship.
 - c. An alternative design is proposed which will provide a plan equal to or superior to these standards.
 - d. Application of the standards of 40.350 to the development would be grossly disproportional to the impacts created.

2. In reviewing a modification request, consideration shall be given to **public safety, durability, cost of maintenance, function, appearance and other appropriate factors** such as to advance the goals of the comprehensive plan as a whole. **Any modification shall be the minimum necessary to alleviate the hardship or disproportional impact.** Self-imposed hardship shall not be used as a reason to

grant a modification request. (Emphasis added).”³²

b. Burden of Proof. Procedurally, Wal-Mart bears the burden of proving it has satisfied the minimum standards contained in the code. Christianson v. Snohomish Health District, 82 Wn.App. 284, 288, 917 P.2d 1093 (1996) (burden upon applicant to show entitlement to waiver of standards for septic permit). If Wal-Mart does not justify a modification to the road standards, the road standards apply. That is, Wal-Mart was required to prove that topography, right-of-way or other basis in CCC 40.550.010(A)(1)(a) imposed an unusual hardship and that an equivalent alternative was available that can accomplish the same design purpose. In making this analysis, the Examiner is required to consider public safety. A modification must be the minimum necessary to alleviate the hardship. Finally, the code prohibits self-imposed hardships as a basis for a road modification.

It is Wal-Mart’s burden to satisfy these standards if it wanted a road modification. Christianson, supra. It is not the burden of the County to prove the opposite. The fact that the Wal-Mart failed to offer evidence on all necessary points is not attributable to Clark County. The applicant

³² CCC 40.550.010(A)(1) and (2).

has the burden of proof to demonstrate its entitlement to a permit especially when the applicant is seeking a variance from the code.

Douglass v. Spokane, 25 Wn.App. 823, 829, 609 P.2d 983 (1980).

c. Safety issues supported denial of modification.

Factually, it is clear from the examiner's decision and the testimony presented at the public hearing that there were significant safety issues at the Wal-Mart site. First, while Wal-Mart seeks to disregard citizen testimony because citizens are not experts, this argument is unavailing. Residents who routinely utilize local roads are often in the best position to be aware of near accidents and other traffic safety problems. These individuals are not required to be experts to provide such factual testimony. Specifically, ER 701 authorizes opinion testimony by lay witnesses where the opinion or inference is "rationally based on the perceptions of the witness if it is helpful to a clear understanding of the witnesses' testimony or the determination of a fact in issue." The Examiner erred in applying an expert witness standard under ER 702 to persons testifying based on their personal observations under ER 701.

In fact, even the examiner raised issues regarding the access roads surrounding the Wal-Mart site. Specifically, "NE Rockwell Road and NE

129th Street are partially-paved narrow roadways in poor condition.”³³

Moreover, the examiner concluded that:

The minimum half-width improvements along these roads [NE Rockwell Road and NE 129th Street] will **not** be adequate for serving the proposed development. See Condition A-3B. In accordance with CCC Table 40.350.030-6, the minimum center line radius for flat primary industrial roads is 575 feet. The center line radius of the existing curved section of NE 27th Avenue/NE Rockwell Road/NE 127th Street does not conform to this requirement.³⁴ (Emphasis added.)

Finally, the examiner found that the “site driveway access off of NE Rockwell Drive, between NE 27th Avenue and NE 129th Street, had an obstructed sight distance triangle to the northwest.”³⁵ If the proposed modification does not at least maintain current levels of safety, CCC 40.550.010 authorizes denial of the road modification.

The examiner was sufficiently concerned that Wal-Mart had not adequately addressed the long-term safety issues, that he imposed specialized conditions as a condition to granting the road modification.

Specifically, the examiner noted that:

Although the road modifications for reduced sight distance and increased width of proposed truck delivery driveway onto NE Rockwell Road are approved below, staff remains unconvinced that the applicant has adequately addressed the

³³ AR-2456.

³⁴ Id.

³⁵ AR-2457-58.

long-term safety issues due to the location of the proposed driveway access on NE Rockwell Road. The examiner shares these concerns.³⁶

Therefore, the examiner required Wal-Mart to relocate its driveway when traffic volumes exceeded 600 vehicles per day. While the code does not expressly provide for such a condition, the examiner attempted to find a way to “fit a round peg into a square hole”. The simple answer is that the examiner erred in approving the modification as Wal-Mart has not shown that the modification will achieve the same level of safety as would be achieved under the road standards.

It is within this context that the Board was required to exercise its appellate authority in reviewing the decision of the lands use hearings examiner. The Board recognized and accepted the findings of the hearings examiner.³⁷ The Board, however, concluded that the examiner committed clear error in approving a road modification to allow placement of a non-conforming driveway in an area lacking adequate sight distance. The BOCC in issuing its land use decision raised the following issues:

Commissioner Morris discussed the standard for road modifications:

³⁶ AR-2456-2457.

³⁷ See Resolution 2007-10-14.

A (sic) road modification language is permissive. It's very clear you may grant a road modification. You are not obliged to grant a road modification.

TR p. 7, l. 23-25, (10/03/07).

In her motion to overturn the hearings examiner, Commissioner Morris based her motion on the hearings examiner's grant of a road modification in the presence of safety issues and that the submission requirements were not met.³⁸ After discussion, a majority of the Board concluded that no road modification was warranted. The fact remains that Wal-Mart was obligated and failed to satisfy all the elements necessary to issue a road modification.

In addition to safety issues, Wal-Mart offered no evidence why it could not comply with the road standards simply by relocating its driveway. Wal-Mart has simply assumed that it had no obligation to reconsider its design. It is unclear whether a road modification is even needed.

Finally, Wal-Mart has failed to offer any evidence that this modification is the "minimum necessary to alleviate the hardship" CCC

³⁸ TR p.18, l. 20 through p. 19, l. 3-4 (10/03/07).

40.550.010A.2. Without such proof Wal-Mart did not satisfy its burden of proof.

Wal-Mart cannot exempt itself from complying with the code merely because staff didn't object. Again, it is Wal-Mart's burden to show it is entitled to relief. The Examiner does not possess the authority to waive the code notwithstanding the language in the administrative decision. CCC 40.100.060³⁹ makes clear that the Examiner is not authorized to exempt the code and that any permit or use authorized in violation of the code is void. Wal-Mart argues that the Board may only deny a development due to offsite road safety issues under very limited circumstances citing CCC 40.350.030(B)(6)(a). Wal-Mart is correct that the county may not deny this development, under this code, based on the facts as found by the Examiner. Denial under this section is not the issue, however. The question is whether an exception should be made. The BOCC concluded that given the safety issues and the submittal issues no exception was warranted.

Reversal of the Board's lands use decision is subject to the standards contained in RCW 36.70C.130. The land use decision is the Board's decision pursuant to RCW 36.70C.020(1). Thus, Wal-Mart must

demonstrate to the Court that the Board's lands use decision represents "a clearly erroneous application of the law to the facts."^{40 41} This court should affirm the decision of the BOCC and its denial of the road modification.

D. Board issued findings and conclusions sufficient to comply with county code especially where no findings are required by state law.

In J.L. Storedahl & Sons, Inc. v. Clark County, 143 Wn.App. 920, 180 P.3d 848 (2008), this Court required findings and conclusions based on Clark County code, where the County Commissioners modified or reversed a decision of the Examiner. In this case, the BOCC did explain the rationale behind its decision. First and foremost, it should be noted that while acting in its appellate role, the BOCC is not a fact finder. Under the Clark County Code, the Hearings Examiner conducts the open record hearing and acts as fact finder.⁴² In an appeal from a decision of the hearings examiner, the BOCC is required to enter findings if it seeks to modify, reject or remand the examiner's decision.⁴³

³⁹ See CCC 40.100.060 attached as Appendix "F".

⁴⁰ RCW 36.70C.130(1)(d).

⁴¹ Kettle Range Conservation Group v. Washington Dept. of Natural Resources, 120 Wn.App. 434, 456, 85 P.3d 894 (2003).

⁴² CCC 40.510.030 D.

⁴³ CCC 2.51.170.

In compliance with Clark County Code, the BOCC had extensive discussion⁴⁴ regarding the hearings examiner's finding that the stormwater pipe was privately owned and the effects that finding had on the remainder of the Wal-Mart preliminary stormwater plan.⁴⁵ These conclusions were memorialized in Resolution 2007-10-14. Conclusions 1 and 2 address Wal-Mart's burden of proof and the Board's analysis of the stormwater issue. The Board concluded that:

The Examiner erred in approving a preliminary stormwater plan which proposed use of an existing stormwater line to which the applicant failed to establish right of use. Although located within a public stormwater easement, the Examiner found that such line was privately owned. Such finding is amply supported by substantial evidence in the record; the Examiner's conflicting finding that the applicant has a right to use such line is not supported by substantial evidence in the record.⁴⁶

Two important points regarding the Board's conclusions bear mentioning. First, the findings of an appellate body in a land use appeal are generally regarded by appellate courts as surplusage.⁴⁷ While surplusage the conclusions contained in the Board's resolution serve to

⁴⁴ The transcript is available as CP No. 15 date October 3, 2007.

⁴⁵ See transcript of Board of County Commissioners October 3, 2007, p. 5, line 2 through p. 7, line 11.

⁴⁶ Id.

⁴⁷ Storedahl and Sons, Inc. v. Cowlitz Co., 125 Wn..App. 1, 8, 103 P.3d 802 (2004).

explain the Board's decision and are consistent with CCC 2.51.170.⁴⁸

These requirements are county code requirements; nothing in RCW 36.70B.010 et seq. requires such findings. Clark County submits that the BOCC explain the Board's analysis sufficient for appellate review.

In *Storedahl*, supra, this court analogized the case with its analysis in *Maranatha Mining v. Pierce County*, 59 Wn.App. 795, 801 P.2d 985 (1990). Clark County submits that review under certiorari is substantially different than review under LUPA. Under LUPA, the final decision under review is that of the BOCC. Deference and review are different under RCW 7.16 and RCW 36.70C. See also, *Sunderland Services v. Pasco*, 127 Wn.2d 782, 788, 903 P.2d 986 (1995).

In the event this Court concludes that the findings and conclusions of the BOCC are deficient, our Supreme Court has required a remand for entry of corrected findings. In *Cougar Mountain Associates v. King County*, 111 Wn.2d 742, 757-58, 765 P.2d 264 (1988), the Supreme Court concluded that King County's findings and conclusions did not support its decision.⁴⁹ The court did not reverse but remanded for reconsideration. In

⁴⁸ It is acknowledged that the Board entered no findings but only conclusions. Our courts have made it clear that the mixing of findings with conclusions is not error and review in courts will treat them accordingly. *City of Tacoma v. William Rogers Co.*, 148 Wn. 2d 169, 181, 60 P.3d 79 (2002).

⁴⁹ *Sunderland Services v. Pasco*, 127 Wn.2d 782, 798, 903 P.2d 986 (1995).

contrast, in Maranatha Mining v. Pierce County, 59 Wn.App. 795, 805-806, 801 P.2d 985 (1990), this Court reversed with instructions to grant the permit. Of significance is the Court's conclusion that:

Given the posture of this case, it would be pointless to remand for further Council proceedings, for the examiner's findings and the controlling law will support nothing other than issuance of the permit. Accordingly, we reverse and remand with instructions to grant the permit in accordance with the examiner's decision, including the conditions specified by the examiner.

Even if this Court requires more complete findings the remedy is remand not reversal given the stormwater deficiencies and the lack of evidence justifying a road modification.

V. CONCLUSION

Wal-Mart has gone to great lengths to "paint" this case as a neighborhood driving the BOCC to action, yet the Board rejected virtually all of the challenges of the neighborhood. It has failed to accept its own failures to demonstrate compliance with County Code requirements; requirements other developers and property owners must meet. It is undisputed that Wal-Mart lacked any legal document granting it a right to use an offsite stormwater pipe yet clung to the hope that a private pipe within a public easement would authorize such a connection. Similarly,

Wal-Mart failed to review the code requirements for a road modification contained in CCC 40.550.010.

The legislature has assigned burdens and standards of proof in a LUPA appeal. In this case, Wal-Mart bears the burden of proof to satisfy the standards contained in RCW 36.70C.130 (1). Wal-Mart has simply failed to show that the BOCC committed clear error in applying the code to the facts as found by the examiner. While Wal-Mart has claimed that substantial evidence supported the examiner's findings, this conclusion does not justify errors in applying the code to those facts.

Specifically, the BOCC correctly concluded that Wal-Mart's preliminary stormwater plan was not feasible. No evidence has been offered that permission has been granted to Wal-Mart to use this private conveyance system. While Wal-Mart may possess a right to use the easement, this fact does not carry with it right to use a private pipe contained within the easement absent permission of the owner. Moreover, no alternatives have been presented as a backup plan to this private conveyance system. This deficiency is not a simple math error; it involves the inability of Wal-Mart to demonstrate a working system to convey its water offsite given that infiltration is not an available option.

Similar issues are presented by the denial of the road modification. Even given the factual findings entered by the hearings examiner, those findings failed to show that the alternative design proposed by Wal-Mart is justified given the traffic safety issues present. Using the language contained in the Clark County Code, Wal-Mart was required to show that:

An equivalent alternative which can accomplish the same design purpose is available.”⁵⁰

In addition, Wal-Mart failed to show that the modification was the minimum necessary to alleviate the site hardship. Finally, Wal-Mart was required but failed to demonstrate that the hardship was not self-imposed through its location of its access along NE Rockwell.

Reversal of the Board’s decision requires this Court to conclude that it is left with a definite and firm conviction that a mistake has been committed. Upon a review of the decision of the Board of County Commissioners, Clark County submits that there is not sufficient evidence

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⁵⁰ CCC 40.550.010(A)(1)(a).

to show that the Board committed clear error in entering its land use decision.

Respectfully submitted:

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APPENDIX A

CCC 40.520.040

40.520.040 Site plan review.

- A. Applicability and Review Process.
1. Site plan review is required for all new development and modifications to existing permitted development, unless expressly exempted by this title.
 2. A site plan is subject to a Type II review process as provided in Section 40.510.020 if it is subject to one (1) or more of the following:
 - a. Conditional use;
 - b. Planned unit development;
 - c. New development in all urban holding, contingent zone, urban residential, office residential, business park, office campus, mixed use, university, commercial, industrial, surface mining and airport zones, unless expressly exempted by this title;
 - d. A modification to existing permitted development or a permitted modification to an existing nonconforming use if it will cause any of the following:
 - (1) An increase in density or lot coverage by more than ten percent (10%) for residential development;
 - (2) A significant change in the type of dwelling units proposed in a residential development (e.g., a change from detached to attached structures or a change from single-family to multifamily);
 - (3) An increase of more than ten percent (10%) in on-site parking required by this chapter or an increase of more than forty (40) on-site parking space;
 - (4) An increase in the height of a structure(s) by more than ten percent (10%);
 - (5) A change in the location of access ways to frontage roads where off-site traffic would be affected, or a change in the location of parking where the parking is closer to land zoned or used for residential or mixed residential/other purposes;
 - (6) An increase in vehicular traffic to and from the site of more than twenty (20) average daily trips, based on the latest edition of the International Transportation Engineer's (ITE) Trip Generation Manual or substantial evidence by a professional engineer licensed in the state of Washington with expertise in traffic engineering;
 - (7) An increase in the floor area of a structure used for nonresidential purposes by more than ten percent (10%) and at least five thousand (5,000) square feet;
 - (8) A SEPA determination is required by Chapter 40.570;
 - (9) A reduction in the area used for recreational facilities, screening, buffering, landscaping and/or open space by more than ten percent (10%); and
 - (10) A modification other than one (1) listed in this section if subject to Type II review based on the post-decision procedures in Section 40.520.060 or based on other sections of this title.
 3. A site plan is subject to a Type I review process as provided in Section 40.510.010 if:
 - a. It is not subject to Type II review under subsection (A)(2) of this section;
 - b. It is not exempt under subsection (A)(4) of this section; or
 - c. It is expressly listed below:
 - (1) Portable, walk-up vendors such as espresso and coffee carts, flower stands and food carts, which meet the following criteria:
 - (a) The use shall be portable (not permanently connected to public or private sewer or water facilities and equipped with mechanisms to readily remove structure);
 - (b) The structure shall not exceed three hundred (300) square feet;
 - (c) The use shall not incorporate a drive-through.
 4. The following land uses and development are exempt from site plan review, provided the applicable standards of this title are met:

a. A single-family detached dwelling and modifications to it.
 b. A duplex or triplex and modifications to it on a lot created and approved for such use.
 c. Development exempt from review under CCC 14.04.050 and CCC 14.04.125.
 d. Modifications to the interior of existing structures that do not change the use or the amount of a use.
 e. Changes in use that do not require a need for an increased number of parking spaces over those required for the existing use, based on Table 40.340.010-4. The proposed change in use must also be a permitted use in the zoning district and may not violate the existing site plan approval. The existence of on-site parking greater than the minimum number of spaces required for a new use does not exempt a development from site plan review. Existing additional parking spaces can be used to meet any new parking requirements for the new use.

f. Land divisions.

g. School modulars or portables, provided that the applicant takes on lead agency status for SEPA.

h. Other development the responsible official finds should be exempt, because it does not result in an increase in land use activity or intensity or in an adverse impact perceptible to a person of average sensibilities from off-site, and because the county can assure the development complies with applicable standards without site plan review.

B. Binding Site Plans.

1. The purpose of binding site plan approval is to provide an alternative to the standard subdivision process for specific types of development. The binding site plan shall only be applied for the purpose of dividing land for:

a. Sale or for lease of commercially or industrially zoned property as provided in RCW 58.17.040(4);

b. Lease as provided in RCW 58.17.040(5) when no other structure other than manufactured homes or travel trailers are permitted to be placed upon the land; provided, that the land use is in accordance with the requirements of this title; and

2. In addition to the requirements of a standard site plan, a binding site plan shall contain:

a. Inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land; and

b. Provisions making any development conform to the site plan.

C. Pre-Application Submittal Requirements.

1. A site plan subject to a Type I review is not subject to pre-application review unless requested by the applicant.

2. A site plan subject to a Type II review is subject to pre-application review unless waived. See Section 40.510.020(A) regarding pre-application review.

3. An applicant for a pre-application review of a site plan shall comply with the submittal requirements in Section 40.510.050.

D. Application Submittal Requirements for Site Plan Review. An application for a review of a site plan shall comply with the submittal requirements in Section 40.510.050.

E. Approval Criteria.

1. Generally.

a. If the responsible official finds that a site plan application does or can comply with the applicable approval and development standards, the responsible official shall approve the site plan, or approve the site plan subject to conditions of approval that ensure the proposed development will comply with the applicable standards.

b. If the responsible official finds that a site plan application does not comply with one (1) or more of the applicable approval or development standards, and that such compliance cannot be achieved by imposing a condition or conditions of approval, the responsible official shall deny the site plan application.

c. If a site plan is subject to a standard(s) over which the responsible official does not have sole jurisdiction, then the responsible official shall not make a final decision regarding the site plan until the related decision(s) regarding the applicable standard(s) has been received.

d. The responsible official may modify or waive any of the site plan review standards for specific development within the commercial districts if the responsible official finds that a specific design guideline(s) within Section 40.230.010(E) cannot be implemented in the proposed development without granting the modification.

2. **Site Plan Approval Criteria.** In addition to other applicable provisions of this code, a site plan application shall comply with the following standards or modifications or variations to those standards permitted by law:

- a. Use and development standards of the applicable base zones and overlay zones in this title;
- b. Sign standards in Chapter 40.310;
- c. Landscaping and screening design standards in Chapter 40.320;
- d. Crime prevention guidelines in Chapter 40.330;
- e. Parking and loading standards in Chapter 40.340;
- f. Transportation and circulation standards in Chapter 40.350;
- g. Solid waste and recycling standards in Chapter 40.360;
- h. Sewer and water standards in Chapter 40.370;
- i. Stormwater and erosion control standards in Chapter 40.380;
- j. Critical areas standards in Subtitle 40.4; and
- k. Fire safety standards in Chapter 15.12.

(Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.520.050 Sign permits.

A. A sign permit shall only be issued if it complies with all of the applicable provisions of Chapter 40.310 and the county code. One (1) sign permit application may include all signs proposed for the premises. In addition, a temporary sign permit may include all temporary signs proposed within one (1) year. Although permits are not required for other types of signs such as those indicated in Section 40.310.010(F), all signs are required to conform to the provisions of this chapter. Additionally, a building permit may be required for the installation of a sign pursuant to CCC Title 14.

B. **Application Requirements.** Applications for sign permits must be submitted with the following information:

1. Completed application form containing:
 - a. Applicant's name, address and phone number;
 - b. Contractor's license number, if the sign is not being installed by the owner;
 - c. Owner name;
 - d. Section, township, range and tax lot(s) and serial number(s) of the lot(s) on which the sign(s) are to be located;
 - e. Description of all signs proposed in the application, including number of signs, area and height; and
 - f. Applicant certification that the information submitted is correct and the sign will not block any existing solar feature pursuant to Section 18.409.095.
2. Site plan to scale which identifies:

- a. All the boundaries of the property;
- b. General location of all buildings, driveways, parking areas;
- c. The name and location of all streets;
- d. The location of all existing freestanding signs; and
- e. The location of all proposed signs including the minimum distance to the property line and center of abutting streets and driveways, as applicable.

3. Front elevation view of sign which identifies:

- a. Size and shape of sign;
- b. Height of sign;
- c. Types of support(s);
- d. All permanent graphics; and
- e. Type of lighting, if any, such as direct, indirect, internal or ground mounted.

4. Side elevation required for building signs which project more than one (1) foot beyond the building line or one (1) foot above the eave of the building.

5. Any other information requested by the responsible official which is necessary to determine compliance with the provisions of this section, or the vision clearance requirements of Section 40.350.030(B)(8).

C. Sign Permit Review. The responsible official shall approve, approve with conditions, deny or return plans to the applicant for revisions within five (5) working days from the receipt of a fully complete application. If the decision is not rendered within five (5) working days, the applicant may meet with the responsible official to discuss the application and may appeal the decision or lack of decision to the hearings examiner.

D. Appeals. Appeals shall follow the process described under Chapter 40.510.

(Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.520.060 Post-decision procedures.

A. Generally.

1. Except for final plats and final site plans, post-decision procedures may change decisions without necessarily subjecting the change to the same procedure as the original decision. Such changes may be warranted by ambiguities or conflicts in a decision and by new or more detailed information, permits or laws.

2. At any time prior to final site plan or final plat approval, a party to a decision made under this chapter or their successor in interest may file with the responsible official an application for post-decision review of a Type I, II or III decision, describing the nature of the proposed change to the decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application by the board.

3. An application for post-decision review is not subject to pre-application review. It is subject to counter complete and fully complete determination; provided, the responsible official shall not require an application for post-decision review to contain information that is not relevant and necessary to address the requested change or the facts and law on which it is based.

4. As part of a determination of completeness of an application for post-decision review of a Type II or III decision, the responsible official shall classify the application as a Type I, II or III process and advise the applicant in writing of that classification. The recommended classifications of certain common changes are included as Appendix B, "Guidelines for Post-Decision Changes." The classifications in the table are recommended, but the classification of each post-decision review shall be based on the circumstances of that decision and the guidelines in subsection B of this section. The decision classifying the application shall be subject to appeal as part of the decision on the merits of the post-decision review.

5. Post-decision review cannot substantially change the nature of development proposed pursuant to a given decision. As part of a determination of completeness of an application for post-decision review of a Type

APPENDIX B

CCC 40.380.060

40.380.060 Submittal requirements for stormwater, erosion control and development plans.**A. General.**

1. All applicants proposing development activities and redevelopment governed by this chapter shall submit the plans, studies, and information as provided herein.

2. Signatures. All plans, studies, and reports shall be stamped, signed and dated by the professional civil engineer(s), registered in the state of Washington, and registered soil scientist, if appropriate, responsible for their preparation, and by the project engineer responsible for preparation of the preliminary stormwater plan.

B. Abbreviated Preliminary Stormwater Plan Submittals. An abbreviated preliminary stormwater plan is allowed for certain projects specified in Section 40.380.030. All maps shall contain a scale and north arrow. Insuring the accuracy of all the information is the applicant's responsibility. Abbreviated preliminary stormwater plan submittals shall include:

1. Vicinity Maps. All vicinity maps shall clearly show the site of the development activity or drainage project.

2. Site Location Map. Minimum USGS (one to twenty-four thousand (1:24,000) quadrangle topographic map showing natural and man-made drainage features adjacent to site including existing and proposed (if known) stormwater facilities.

3. Other Maps. The following additional vicinity maps shall be required in the situations noted below:

a. Floodplains. If a floodplain mapped by FEMA exists on or adjacent to the site; and

b. Shoreline Management Area. If the site contains or is adjacent to a stream or lake regulated under the Washington Shorelines Management Act.

4. A Preliminary Development Plan Meeting the Requirements of Section 40.380.060(F)—Additional Site and Vicinity Information.

a. If wetlands exist on the site and will be impacted by the proposal, a wetland delineation report (Section 40.400.050(C)(4)) may be required.

b. If unstable or complex soil conditions exist which may significantly impact the design of the stormwater facilities, the responsible official may require a preliminary soils report to be completed that addresses stormwater design considerations arising from soil conditions.

c. The responsible official may require additional site or vicinity information if needed to determine the feasibility of the stormwater proposal.

5. Preliminary Stormwater Design Report. A written narrative shall be required to accompany the preliminary stormwater plan. The narrative shall describe the methods for meeting the requirements of this chapter and include the following information:

a. Listing of approximate volumes of runoff storage required;

b. Listing of tested percolation rates at sites to be used for infiltration, if required;

c. Listing of proposed BMPs which will meet the treatment requirements of this chapter and are appropriate for the site;

d. Description of the approximate size and location of stormwater facilities on the site;

e. Discussion of who will maintain the facility(s) after completion and proposed method of funding if the facility(s) will be privately maintained; and

f. Listing of additional permits (e.g., wetland, floodplain, and shoreline management permits) that may be required in connection with the stormwater facilities.

C. Preliminary Stormwater Plan Submittals.

1. Purpose. The purpose of this plan is to determine whether a proposal can meet the requirements set forth in Chapter 40.380. The preliminary stormwater plan shall identify how stormwater runoff originating on the site or flowing through the site is presently controlled and how this will change due to the proposed devel-

opment activity, redevelopment, or drainage project. If the site is within the region covered by a basin plan pursuant to this chapter, then the information needed in the preliminary plan is reduced. All maps shall contain a scale and north arrow.

2. Types of Development Activity and Redevelopment. A preliminary stormwater plan is required for all development activities not exempted by Section 40.380.020 and Section 40.380.030 and the following activities:

- a. Short plats.
- b. Subdivisions.
- c. Site plan reviews.
- d. Planned unit developments.
- e. Conditional uses meeting the applicability requirements of Section 40.380.020.
- f. Master plan developments.
- g. Timing.
- h. A preliminary stormwater plan shall be submitted with the land use application.

(1) A land use application shall be considered "fully complete" from the standpoint of stormwater information when a preliminary stormwater plan meeting the submittal requirements of this section is provided.

(2) To insure adequate public review and avoid multiple reviews of preliminary plans by county staff, the preliminary stormwater plan shall not be significantly modified after public notice of the final SEPA determination without issuance of a new SEPA determination.

i. Contents. The preliminary stormwater plan submittal shall be prepared in the standardized format described below. The purpose of this standardized format is to promote a quick and efficient review of required information. The project engineer shall include a statement that all information required by this section is included in the preliminary stormwater plan and that the proposed stormwater facilities are feasible. All maps shall contain a scale and north arrow. Insuring the accuracy of all the information is the applicant's responsibility.

(1) Vicinity Maps. All vicinity maps shall clearly show the site of the development activity, redevelopment, or drainage project;

(2) Site Location Map. Minimum USGS (one to twenty-four thousand (1:24,000) quadrangle topographic map showing (and labeling where appropriate):

- (a) Contributing drainage areas and acreage both on-site and off-site, and
- (b) Natural and man-made drainage features adjacent to the site including existing and proposed (if known) stormwater facilities.

(3) Soils Map.

(a) The soils map shall show soils within the contributing area draining to the site and the site itself. Copies of Clark County soil survey maps may be used; however, if the maps do not appear to accurately represent the soils for a site, the applicant is responsible for verifying the actual soil types existing on a site,

(b) Where unstable or complex soil conditions exist which may significantly impact the design of stormwater facilities, the responsible official may require a preliminary soils report to be completed that addresses stormwater design considerations arising from soil conditions. The preliminary soils report shall be prepared by a registered professional engineer proficient in geo-technical investigation and engineering, or a registered soil scientist. The preliminary soils report shall include a soils map, developed using the criteria set in the USDA, SCS National Soils Handbook and USDA, SCS Title 430 Soil Survey Manual at a minimum scale of one to five thousand (1:5,000) (12.7 in/mi.);

(4) Other Maps. The following additional vicinity maps shall be required in the situations noted below:

(a) Conveyance System. If a surface water discharge of stormwater is proposed from the site, a map showing the conveyance system downstream to a point where the stormwater enters a stream, wetland, or other natural water body shall be required,

(b) Wellhead Protection. If the site lies within the ten (10) year “zone of contribution” of a public water supply well, maps showing all the zones of contribution that overlap the site are required,

(c) Floodplains. If a floodplain mapped by FEMA exists on or adjacent to the site, a map showing the floodplain is required,

(d) Shoreline Management Area. If the site contains or is adjacent to a stream or lake regulated under the Washington Shorelines Management Act, a map showing the boundary of the shoreline management area in relation to the site is required;

(5) A preliminary development plan meeting the requirements of Section 40.380.060(F);

(6) Preliminary Stormwater Design Report. A written narrative shall be required to accompany the preliminary stormwater plan. The narrative shall describe the methods for meeting the requirements of this section and include the following information:

(a) Description of on-site hydrologic soil groups and their suitability for the proposed design and verification of soil conditions through field reconnaissance (to the maximum extent practicable),

(b) Identification of the approximate amount of new impervious surface contemplated for the proposal,

(c) Identification of where runoff characteristics will be altered, e.g., where runoff curve numbers will be revised by the proposed development,

(d) Discussion of how on-site conveyance system design will provide for ultimate build-out of the upstream area based on the maximum density achievable under the comprehensive plan, if applicable,

(e) Listing of approximate volumes of runoff storage required,

(f) Listing of tested percolation rates at sites to be used for infiltration, if required,

(g) Listing of proposed BMPs which will meet the treatment requirements of this chapter and are appropriate for the site,

(h) Description of the approximate size and location of stormwater facilities on the site,

(i) For agricultural sites with drain tiles, a discussion of the impact of construction on the drain tiles and site drainage and the impact of the drainage tiles on proposed stormwater facilities,

(j) Discussion of who will maintain the facility(s) after completion and the proposed method of funding for maintenance, if the facility(s) will be privately maintained, and

(k) Listing of additional permits (e.g., wetland, floodplain, and shoreline management permits) that may be required in connection with the stormwater facilities.

j. Modification of Content Requirements. The responsible official may waive in writing some or all of the content requirements in the preliminary stormwater plan if:

(1) The development activity or drainage project is included in an approved final stormwater plan which meets the requirements of this chapter; or

(2) A basin plan exists that makes some of the information irrelevant.

The waiver of some or all of the preliminary stormwater control plan does not relieve the applicant of a final stormwater control plan.

k. Review and Approval. For proposals connected with a land use application requiring a public hearing, the preliminary stormwater plan shall be heard and decided in accordance with the procedures applicable to the land use application. All other preliminary stormwater plans shall be acted on by the responsible official within thirty (30) days following submittal of a preliminary stormwater plan meeting the submittal requirements of this section.

l. Appeals. Preliminary stormwater plan decisions may be appealed in conjunction with the associated land use application.

D. Final Stormwater Plan Submittals.

1. Purpose. The final stormwater plan provides final engineering design and construction drawings for the stormwater aspects of a proposed development activity, redevelopment, or drainage project.

2. Timing. The final stormwater plan is required and must be approved by the responsible official prior to beginning construction related to a development activity, redevelopment, or drainage project.

3. Contents. The final stormwater plan shall include the following:

a. An engineer's estimate of the cost for surveying and engineering to complete the record drawing(s) is required prior to site plan approval;

b. An escrow, letter of credit, cashier's check, or other acceptable form of guarantee is required from the applicant or applicant's representative for one-hundred ten percent (110%) of the engineer's estimate identified in Section 40.380.060(D)(1) of this section. Bonds are not acceptable instruments;

c. Any easements, covenants or agreements that are necessary to permit construction must be included;

d. The approved preliminary stormwater plan with an explanation of any differences between the design concepts included in the preliminary stormwater plan and the final engineering plans. A final stormwater plan which differs from the approved preliminary stormwater plan in a manner that, in the opinion of the responsible official, raises material water quality or quantity control issues, shall, if subject to SEPA, require another SEPA determination, and a post-decision review in accordance with Section 18.600.110;

e. Final engineering plans that provide sufficient detail to allow construction of the stormwater facilities. These plans shall be stamped, signed and dated by the engineer(s) registered in the state of Washington, responsible for hydrologic, hydraulic, geo-technical, structural and general civil engineering design and by the project engineer responsible for the preparation of the final stormwater plan. Additionally, the final engineering plan shall show all utilities to insure conflicts between proposed utility lines do not exist;

f. The off-site analysis required under Section 40.380.040(B)(2);

g. A final development plan meeting the requirements of Section 40.380.060(F); and

h. A technical information report.

4. Technical Information Report (TIR). The TIR shall be a comprehensive report, supplemental to the final engineering plans, containing all technical information and analysis necessary to complete final water quality and quantity engineering plans based on sound engineering practices and appropriate geo-technical, hydrologic, hydraulic and water quality design. The TIR shall be stamped, signed and dated by the professional engineer(s), registered in the state of Washington, responsible for hydrologic, hydraulic, geo-technical, structural and general civil engineering design. The level of detail in the TIR is dependent on the complexity and size of the development activity. The TIR, which is part of the final stormwater plan, shall contain the following information:

a. Table of Contents.

(1) List section headings and their respective page numbers,

(2) List of tables with page numbers,

(3) List of figures with page numbers,

(4) List of attachments, numbered,

(5) List of references;

b. Site Location Map. The site location map (minimum USGS one to twenty-four thousand (1:24,000) quadrangle topographic map) shall be as required for the preliminary stormwater plan, updated to reflect additional data or revisions to concepts established in preliminary stormwater plan;

c. Soils Map. A soils map as required for the preliminary stormwater plan;

d. Section A—Project Overview.

(1) Identify and discuss existing stormwater system functions,

(2) Identify and discuss site parameters influencing stormwater system design,

- (3) Describe drainage to and from adjacent properties, and
- (4) Generally describe proposed site construction, size of improvements, and proposed methods of mitigating stormwater runoff quantity and quality impacts;
 - e. Section B—Approval Conditions Summary. List each preliminary approval condition related to stormwater control, wetlands, floodplains, and other water-related issues and explain how design addresses or conforms to each condition;
 - f. Section C—Quantity Control Analysis and Design.
 - (1) Hydrologic Analysis, Existing and Developed Conditions.
 - (a) Identify criteria used in completing analyses and their sources,
 - (b) Identify and discuss any assumptions made in completing analysis,
 - (c) Tabulate acreage; imperviousness; curve number; length and grade of overland, pipe and channel flow; and other hydrologic parameters used in completing analyses,
 - (d) Complete detailed hydrologic analysis for existing and developed site conditions in accordance with the requirements of Section 40.380.030(B). Compute existing and developed peak flows and volumes for the design storms for all sub-basins. Refer to labeled points shown on the site location map and development plan,
 - (e) Include and reference all hydrologic and hydraulic computations in the technical appendix, and
 - (f) Include all maps, exhibits, graphics and references used to determine existing and developed site hydrology,
 - (2) Quantity Control System Design.
 - (a) Reference conceptual design proposed in the preliminary stormwater plan,
 - (b) Identify revisions to conceptual design contained within the final engineering plans,
 - (c) Identify and discuss geo-technical or pedological study or information used in completing analysis and design,
 - (d) Identify criteria used in completing analyses and their sources,
 - (e) Identify initial conditions including stream base flows, beginning water surface elevations, hydraulic or energy grade lines, initial groundwater elevation, beginning storage volumes, and other data or assumptions used to determine initial conditions in order to complete analyses, referencing sources of information,
 - (f) Identify and discuss any assumptions used in completing analysis,
 - (g) Complete detailed hydrologic/hydraulic analysis of all on-site stormwater control facilities impacted by the proposal, in accordance with the requirements of Section 40.380.040(C). Compute inflow and outflow hydrographs and peakflows and storage volumes. Reference conveyance and stormwater control facilities to labeled points shown on the development plan,
 - (h) Tabulate existing and proposed peak flows and storage volumes,
 - (i) Include and reference all hydrologic and hydraulic computations, equations, rating curves, stage/storage/discharge tables, graphs and any other aids necessary to clearly show methodology and results in the technical appendix,
 - (j) Summarize results of quantity control system analyses and describe how the proposed design meets the requirements of this chapter, and
 - (k) Include all maps, exhibits, graphics and references used to complete quantity control system analysis and design,
- (3) Quantity Control System Plan.
 - (a) Provide illustrative sketch of quantity control facility and its appurtenances,
 - (b) Show basic measurements necessary to confirm storage volumes,
 - (c) Show all orifice, weir and flow restrictor dimensions and elevations,
 - (d) Tabulate peak flow rates, storage volumes and ponding elevations for all design storms, and

(e) Sketch shall correspond with final engineering plans. Alternatively, final site grading plan incorporating the above information may be included as an attachment to the final stormwater plan;

g. Section D—Conveyance Systems Analysis and Design.

(1) Reference conceptual drainage design proposed in the preliminary stormwater plan,
 (2) Identify revisions to conceptual drainage design contained within the final stormwater plan,
 (3) Identify criteria used in completing analyses and their sources,
 (4) Identify and discuss initial conditions including stream base flows, beginning water surface elevations, hydraulic or energy grade lines, beginning storage elevations, and other data or assumptions used to determine initial conditions in order to complete analyses. Reference sources of information,

(5) Identify and discuss assumptions used in completing analyses,

(6) Complete detailed hydraulic analysis of all proposed collection and conveyance system elements and existing collection and conveyance elements influencing the design or impacted by the proposal, including outfall structures and outlet protection, in accordance with Section 40.380.040(C). Compute and tabulate design flows and velocities and conveyance element capacities for all conveyance elements within the development. Compute existing one hundred (100) year floodplain elevations and lateral limits for all channels, and verify no net loss of conveyance or storage capacity from development. Reference conveyance system elements to labeled points shown on the site location map or development plan,

(7) Verify capacity of each conveyance system element to convey design flow and discharge at non-erosive velocities. Verify capacity of on-site conveyance system to convey design flows resulting from ultimate build-out of upstream areas,

(8) Include and reference all hydraulic computations, equations, pipe flow tables, flow profile computations, charts, nomographs, detail drawings and other tabular or graphic aids used to design and confirm performance of conveyance systems in the technical appendix, and

(9) Summarize results of system analyses and describe how the proposed design meets the requirements of this chapter;

h. Section E—Water Quality Design.

(1) Reference conceptual water quality design proposed in the preliminary stormwater plan,
 (2) Identify revisions to conceptual water quality design contained within the final stormwater plan,
 (3) Identify geo-technical or soils study or other information used in completing analysis and design,
 (4) Identify best management practices used in design and their sources,
 (5) Identify and discuss initial conditions including groundwater elevations, beginning storage elevations, and other data or assumptions used to determine initial conditions in order to complete analyses. Reference sources of information,

(6) Identify and discuss assumptions used in completing analysis,

(7) Complete detailed analysis and design of all proposed water quality system elements in accordance with Section 40.380.040(B). Reference water quality system elements to labeled points shown on the site location map or development plan,

(8) Include and reference all computations, equations, charts, nomographs, detail drawings and other tabular or graphic aids used to design water quality system elements in the technical appendix, and

(9) Summarize results of water quality design and describe how the proposed design meets the requirements of this chapter;

i. Section F—Soils Evaluation.

(1) Identify on-site soil types and their erosive potential and discuss their suitability for implementation of proposed best management practices (BMPs) and quantity control facilities,

(2) Identify seasonal high water table elevations in cases where this will impact the stormwater facilities,

(3) Identify and discuss soil parameters and design methods for use in hydrologic and hydraulic design of proposed facilities, and

(4) Report findings of testing and analysis used to determine the infiltration rate;

j. Section G—Special Reports and Studies. Where specific site characteristics, such as steep slopes, wetlands and sites located in wellhead protection areas pose difficult drainage and water quality design problems, the responsible official may require additional information or the preparation of special reports and studies which further address the specific site characteristics, the potential for impacts associated with the development, and the measures which would be implemented to mitigate impacts. Special reports shall be prepared by professional persons with expertise in the particular area of analysis, who shall date, sign, stamp and otherwise certify the report. Subjects of special reports may include, but not be limited to, the following:

(1) Geo-technical/pedological,

(2) Wetlands,

(3) Floodplains and floodways,

(4) Groundwater,

(5) Structural design,

(6) Fluvial geomorphology (erosion and deposition), and

(7) All special reports and studies shall be included in the technical appendix, or as an attachment to the

TIR;

k. Section H—Other Permits. Construction of roads and stormwater facilities may require additional water-related permits from other agencies. These additional permits may contain requirements that impact design of the stormwater system. This section shall list the titles of all other required permits, the agencies requiring the permits, and identify the permit requirements, if known, that affect the final stormwater plan. Approved permits that are critical to the feasibility of the stormwater facility design shall be included in this section. Examples of other permits are as follows:

(1) Clark County wetland permit,

(2) On-site sewage disposal: Clark County health department or Washington Department of Health,

(3) Developer/local agency agreement: Washington Department of Transportation,

(4) Short-term water quality modification approval: Washington Department of Ecology,

(5) Hydraulic project approval: Washington Departments of Fisheries and Wildlife,

(6) Dam safety permit: Washington Department of Ecology,

(7) Section 10, 404, and 103 Permits: U.S. Army Corps of Engineers,

(8) Surface mining reclamation permits: Washington Department of Natural Resources,

(9) Clark County floodplain permit,

(10) Clark County shoreline management permit, and

(11) Clark County habitat permit;

l. Section I—Groundwater Monitoring Program. Where required under Section 40.380.040(H), a groundwater monitoring program shall be included in the final stormwater plan. The groundwater monitoring program shall be prepared by a person with expertise in groundwater contamination investigation, prevention and monitoring, and shall clearly describe a comprehensive groundwater testing and evaluation program designed to ensure compliance with federal and state of Washington laws and the requirements of this chapter. Proposed groundwater monitoring programs will be reviewed by the responsible official on a site-specific basis;

m. Section J—Maintenance and Operations Manual. For each stormwater control or treatment facility that is to be privately maintained and for those which constitute an experimental system under Section 40.380.040(H) to be maintained by the county, the project engineer shall prepare maintenance and operations manual. The manual, which may be brief, shall be clearly written in an orderly and concise format that clearly

describes the design and operation of the facility. The manual shall also provide an outline of required maintenance tasks with recommended frequencies at which each task should be performed. Use of the maintenance procedures outlined in the BMP manual for various BMPs is encouraged;

n. Section K—Technical Appendix. All technical information reports (TIR) shall contain a technical appendix, including all computations completed in the preparation of the TIR together with copies of referenced data, charts, graphs, nomographs, hydrographs, maps, exhibits, and all other information required to clearly describe the stormwater runoff quantity and quality design for the proposed development activity. The format of the technical appendix shall follow as closely as possible the section format of the TIR, and shall be adequately cross-referenced to ensure that the design may be easily followed, checked and verified. The technical appendix shall also contain all special reports and studies, other than those included as attachments to the TIR.

5. Modification of Content Requirements. The responsible official may waive, in writing, some of the content requirements in the final stormwater plan if:

a. The development activity, redevelopment, or drainage project is included in an approved final stormwater plan which meets the requirements of this section and the applicant demonstrates to the satisfaction of the responsible official that the applicable provisions of the previously approved final stormwater plan will be met;

b. The responsible official determines, upon receipt of a letter of request from the applicant, that less information is required to accomplish the purposes of this chapter; or

c. A basin plan exists that makes some of the information irrelevant.

6. Review and Approval.

a. Final stormwater plans shall be reviewed in accordance with the Type I review process in accordance with Section 40.510.010.

b. All final stormwater plans require approval by the responsible official. Approval is only for conformance with Clark County standards and does not relieve the engineer of record of responsibility for the design.

c. Approval of final stormwater plans does not relieve the applicant from the obligation to comply with this chapter and does not prevent the county from recovering for defective work or violation of this chapter.

E. Erosion Control Plans.

1. Small Parcel Developments.

a. Any person or entity undertaking a small parcel development shall agree to implement a small parcel development erosion control plan, provided by the county, which shall address the small parcel development requirements in Section 40.380.050(A).

b. Small parcel developments are not required to submit preliminary erosion control plans unless they are conducting land disturbing activities within an erosion hazard area.

c. Applicants may find “A Builder’s Guide to Erosion Prevention and Sediment Control”, published by Clark County home builders association, a useful reference for implementation.

2. Large Parcel Developments. Any person or entity undertaking a large parcel development shall prepare and implement a large parcel development erosion control plan which shall address the large parcel development requirements in Section 40.380.050(B).

3. Erosion Control Plan.

a. An erosion control plan shall be submitted and approved prior to any person undertaking any land disturbing activity subject to this section. The erosion control plan shall be stamped by an engineer licensed in the state of Washington and shall be submitted with the final stormwater plan. Any revised plan shall be a refinement of the prior approved final erosion control plan clearly showing any changes or revisions.

b. Content. The erosion control plan shall include a description of the following:

(1) The BMPs that will be utilized to achieve compliance with the requirements of this chapter;

- (2) The timing of installation of BMPs and installation techniques;
- (3) The phasing of construction activities;
- (4) Protection of project improvements from erosion and sedimentation;
- (5) The construction of employee parking and equipment storage areas;
- (6) The effect of weather on the project and temporary stoppages;
- (7) An inspection log shall be provided to note any changes from the approved plan;
- (8) The location, sizes, and other design features of the proposed BMPs to be applied to the site;
- (9) A maintenance schedule for insuring the BMPs continue to function until the site is revegetated and stable;
- (10) A contingency plan discussing additional BMPs to be applied if proposed BMPs fail or are insufficient to control erosion;
- (11) Provisions for final stabilization prior to completion; and
- (12) Grading. Any grading to occur in conjunction with a development activity or redevelopment shall, in addition to requirements of this chapter, be designed in accordance with and meet the requirements of Chapter 33 Excavation and Grading of the Uniform Building Code.

4. Submittals. Erosion control plans shall be submitted, approved and implemented for all large parcel development activities and for small parcel development conducting land disturbing activities within an erosion hazard area.

F. Development Plans.

1. Preliminary development plan shall show the character of the existing site and proposed features, including but not limited to:
 - a. Existing and proposed property boundaries, easements and rights-of-way;
 - b. Existing and proposed contours with a two (2) foot maximum contour interval, unless the responsible official determines a lesser interval is sufficient to show drainage patterns. Grading shall conform to the requirements of Chapter 33 of the Uniform Building Code;
 - c. Existing on-site water wells, known agricultural drain tiles, areas of potential slope instability, structures, utilities, and septic tanks and drainfields;
 - d. Location of the one hundred (100) year floodplain and floodways and shoreline management area limits on the site;
 - e. Proposed impervious surfaces outside of single-family residential lots;
 - f. Existing water resource features on and adjacent to the site including streams, wetlands, springs, sinks and stormwater facilities;
 - g. Existing and proposed drainage flow routes and existing discharge points to and from the site;
 - h. Approximate location and size of proposed stormwater facilities, including typical cross-sections of proposed facilities;
 - i. If wetlands exist on the site and will be impacted by the proposal, a wetland delineation report (Section 40.400.050(C)(4)) shall be required;
 - j. Water table elevations, flow directions (where available), and data on seasonal water table fluctuations with minimum and maximum water table elevations (where available) shall be required;
 - k. For sloping sites, a conceptual grading plan verifying the constructibility of a stormwater facility shall be required; and
 - l. The responsible official may require additional site or vicinity information if needed to determine the feasibility of the stormwater proposal.

2. Final development plans shall be consistent with the preliminary stormwater plan. Final development plans may be combined with the final engineering plans. In addition to the information required of preliminary development plans, the following information is required:

- a. Delineate sub-basins and show sub-basin acreage used in hydraulic/hydrologic calculations both on-site and off-site that contribute surface runoff;
- b. Show directions and lengths of overland, pipe and channel flow;
- c. Indicated outfall points and overflow routes for the one hundred (100) year storm;
- d. Show storage volumes, pipe and weir invert elevations, and lengths of weir for stormwater control facilities; and
- e. The director may require additional site or vicinity information if needed to determine the feasibility of the stormwater proposal. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

Division IV

CRITICAL AREAS AND SHORELINES

Chapter 40.410

CRITICAL AQUIFER RECHARGE AREAS (CARAs)

Sections:

- | | |
|-------------------|---------------------------------------------------------|
| 40.410.010 | Introduction. |
| 40.410.020 | Standards. |
| 40.410.030 | Administration. |
| 40.410.040 | Incentives, education, and technical assistance. |

40.410.010 Introduction.

A. Purpose. This chapter is intended to protect public health, safety, and welfare by preventing degradation, and where possible, enhance the quality of groundwater which will be, or might likely be, used in the future for drinking water or business purposes. This will be accomplished by limiting potential contaminants within designated CARAs. The requirements of this chapter are intended to fulfill obligations of state law under the Growth Management Act, RCW 36.70A; the Public Water Systems Penalties and Compliance RCW 70-119A; the Washington State Wellhead Protection Program and the Public Water Supplies, WAC 246-290; the Dangerous Waste Regulations, WAC 173-303; and the Water Quality Standards for Groundwater of the State of Washington, WAC 173-200.

B. Classification of Critical Aquifer Recharge Areas.

1. Category I is the highest priority critical aquifer recharge area. Category I is the one (1) year time of travel for Group A water wells, shown on the county's critical aquifer recharge areas map.
2. Category II is the primary critical aquifer recharge area. This area consists of the unconsolidated sedimentary aquifer and the Troutdale gravel aquifer, both shown on the county's critical aquifer recharge areas map.
3. Parcels that are partly within Category I and Category II shall be subject to the Category I provisions in this chapter.

APPENDIX C

CCC 40.550.010

- a. Streets,
 - b. Location(s) of any existing building(s),
 - c. Location and width of existing easements for access, drainage, utilities, etc. if not already on the plat,
 - d. Name, location and width of existing rights-of-way, if not already on the plat,
 - e. Location and width of existing driveways, and
 - f. Other items that are relevant to the approval standards for the alteration or vacation.
 - E. Approval Criteria for Plat Alterations and Vacations.
 - 1. The review authority may approve plat alteration requests if the following criteria is met:
 - a. The plat alteration is within the public interest;
 - b. The approval criteria in Section 40.540.040(D), as applicable to the proposed plat alteration, is met;
- and
- c. The approval of the plat alteration will not result in the violation of any requirements of the original approval unless conditions necessitating such requirements have changed since the original plat was recorded.
 - 2. The review authority may approve the vacation of a plat if it is in the public interest.
 - F. Limitations.
 - 1. If the plat or portions of the plat contain restrictive covenants which were filed with the plat and the proposed alteration will result in the violation of a covenant, the application shall contain an agreement signed by all parties to the covenant providing that all parties agree to alter or revoke the covenants specified in the application.
 - 2. Vacations of county roads may be approved through this process only when the road vacation is proposed with the vacation of a subdivision or portions thereof. Vacations of roads may not be made that are prohibited under RCW 36.87.130 and CCC Chapter 12.28.
 - 3. If any land within the alteration contains a dedication to the general use of the persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.
 - 4. Blanket utility easements existing along the lot lines, but not specifically required as a condition of development approval, may be moved during a boundary line adjustment; provided, there is compliance with RCW 64.04.175 and the easement is not occupied by a utility. If the easement is occupied, the provisions of this section and RCW 64.04.175 shall apply. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

Chapter 40.550

MODIFICATIONS AND VARIANCES

Sections:

- 40.550.010 Road modifications.**
- 40.550.020 Variances.**

40.550.010 Road modifications.

- A. Criteria.
 - 1. Modifications to the standards contained within Chapter 40.350 may be granted in accordance with the procedures set out herein when any one of the following conditions are met:
 - a. Topography, right-of-way, existing construction or physical conditions, or other geographic conditions impose an unusual hardship on the applicant, and an equivalent alternative which can accomplish the same design purpose is available.

b. A minor change to a specification or standard is required to address a specific design or construction problem which, if not enacted, will result in an unusual hardship.

c. An alternative design is proposed which will provide a plan equal to or superior to these standards.

d. Application of the standards of Chapter 40.350 to the development would be grossly disproportional to the impacts created.

2. In reviewing a modification request, consideration shall be given to public safety, durability, cost of maintenance, function, appearance, and other appropriate factors, such as to advance the goals of the comprehensive plan as a whole. Any modification shall be the minimum necessary to alleviate the hardship or disproportional impact. Self-imposed hardships shall not be used as a reason to grant a modification request.

B. Categories. For the purpose of processing, modification requests fall within the following two (2) categories:

1. Administrative Modification. Administrative modification requests deal with the construction of facilities, rather than their general design, and are limited to the following when deviating from the standard specifications:

a. Surfacing materials for roads or pedestrian facilities;

b. Asphalt and/or base rock thickness less than required;

c. Pavement marking layout;

d. Exceeding the maximum street grade;

e. Type and/or location of signage;

f. Channelization;

g. Intersection interior angles and curb radii less than required;

h. Utilizing the current set of standards in lieu of the standards that were in place when the applicant's proposed project was vested;

i. Access-related modifications onto collectors and state routes; provided, other substantive criteria such as sight distance and limited access points are met; and provided further, that access to a lesser classification of road is not available.

j. Field changes during construction;

k. Similar revisions to the standards; and

l. Shed section or inverted crown.

2. Design Modifications. Design modifications deal with the vertical and horizontal geometrics and safety related issues and include the following when deviating from the standard specifications:

a. Reduced sight distances;

b. Intersection spacing;

c. Vertical alignment;

d. Horizontal alignment;

e. Geometric design (length, width, bulb radius, etc.);

f. Design speed;

g. Crossroads;

h. Access policy;

i. A proposed alternative design which will provide a plan superior to these standards; and

j. All other standards.

C. Procedures. A modification request shall be classified as administrative or design by the county engineer.

1. Administrative Modification. Administrative modifications may be requested at any time by filing a written application with the county engineer. The application shall include sufficient technical analysis to enable

a reasoned decision. The county engineer shall provide a written decision on the application. No fee is applicable to the administrative modification.

2. **Design Modification.** Design modifications shall be proposed in conjunction with the application for the underlying development proposal in accordance with Chapter 40.500. Design modification requests shall be processed in conjunction with the underlying development proposal; provided, that where the modification request is filed subsequent to the decision on the development proposal, such request shall be processed in accordance with the post-decision review procedures of Section 40.520.060 and subject to the fees listed in CCC Title 6. The design modification application, to be filed with the responsible official, shall:

a. Include a written request stating the reasons for the request and the factors which would make approval of the request reasonable;

b. Be accompanied by a map showing the applicable existing conditions and proposed construction such as contours, wetlands, significant trees, lakes, streams and rivers, utilities, property lines, existing and proposed roads and driveways, existing and projected traffic patterns, and any unusual or unique conditions not generally found in other developments;

c. In the case of modification requests based upon alleged disproportionality, include an engineering analysis of the standard sought to be modified which contrasts relevant traffic impacts from the development with the cost of complying with the standard; and

d. For crossroad and frontage construction and right-of-way dedication, shall include information indicating whether there are geographic or other factors which render connection/completion of the road unlikely.

D. **Infill Road Modifications.** In order to encourage and facilitate infill development, the following road standards may be considered for administrative road modification for residential infill developments pursuant to Section 40.260.110.

1. Partial or full frontage improvements, if consistent with existing or anticipated neighborhood roadways. For purposes of this subsection, neighborhood roadways shall mean non-arterial and non-collector roadways providing access to, and located within, eight hundred (800) feet of the infill development; and/or

2. Access spacing, if there is no identifiable safety hazard.

E. **Road Modification for County Projects.** County public road improvements, when varying from the standards of this chapter, are required to meet the road modification procedures for changes in design; provided that a county project may include less than the full planned improvement or allow for staged construction. The submission of construction plan should be considered as development application. (Sec. 1 (Exh. A) of Ord. 2003-11-01; amended by Sec. 23 of Ord. 2004-06-11)

40.550.020 Variances.

A. **Type I and II (Administrative) Variances.**

1. The responsible official may grant a variance to numerical standards including but not limited to: setbacks, buffers, building height, landscaping, lot coverage, lot dimensions and parking standards but not including lot area, density or qualifying standards for programs such as infill or density transfer as provided in this title.

2. An application for a variance(s) pursuant to this section shall be subject to Type I review if the variance(s) is for less than ten percent (10%) of the numerical standard(s) in question, except as provided in subsection (A)(4) of this section. An application for a variance(s) pursuant to this section shall be subject to Type II review if the variance(s) is for ten percent (10%) to twenty-five percent (25%) of the numerical standard(s) in question, except as provided in subsection (A)(4) of this section. The responsible official may not approve an administrative variance of more than twenty-five percent (25%) of a numerical standard.

3. The responsible official shall approve an administrative variance(s) if, based on substantial evidence in the record, the applicant has sustained the burden of proving the variance(s) complies with all of the following:

a. Granting the variance(s) will not substantially detract from the livability or appearance of a residential area or from the desired character of a nonresidential area, or the variance(s) will substantially enhance the livability or appearance of a residential area or the desired character of a nonresidential area, such as by preserving or protecting significant natural, scenic, historic, cultural, open space or energy resources;

b. If variances to more than one (1) regulation are being requested, the cumulative effect of the variances shall be consistent with the purpose of the zone in which the site is situated;

c. Adverse impacts resulting from the variance(s) are mitigated to the extent practical; and

d. The variance(s) does not substantially impair or impede the availability or safety of access that would otherwise exist for vehicles or for pedestrians, or alternative access is provided.

4. Relationship of Administrative Variance to Associated Applications.

a. If an application for an administrative variance is associated with another application(s) subject to this title, or if it is reasonably likely and foreseeable that it will be associated with another application(s) subject to this title, then the application for the administrative variance shall be combined with the associated application(s) for processing and shall be subject to the same procedure type as the highest number procedure type application(s) with which it is combined.

b. If an administrative variance is approved, and, subsequently, an application(s) subject to an equal or higher number procedure type is filed, the decision approving the administrative variance may be altered for good cause by the decision on the merits of subsequent applications(s).

c. If an administrative variance is proposed as a post-decision action, then it shall be subject to the procedure type required in Section 40.520.060.

B. Type III Variances.

1. Approval Standards for a Type III Variance. The review authority may permit and authorize a variance from the requirements of this title only when unusual circumstances cause undue hardship in the application of this title. A variance shall be made only when all of the following conditions and facts exist:

a. Unusual circumstances of conditions apply to the property and/or to the intended use that do not apply generally to other property in the same vicinity or district;

b. Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same vicinity or district;

c. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which property is located; and

d. That the granting of such variance will not adversely affect the realization of the comprehensive plan.

C. Application and Fee. A request for a variance may be initiated by a property owner or the property owner's authorized agent by filing an application with the responsible official. The application shall be accompanied by a site plan prepared in accordance with Section 40.510.050, and other drawings or material essential to an understanding of the proposed use and its relationship to the surrounding properties. A fee shall be paid to the county at the time of filing the application in accordance with Chapter 6.110A. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

APPENDIX D

EASEMENT

UTILITY EASEMENT

8708030061

THE GRANTOR(S), Salmon Creek Developers, Inc. a Washington Corporation for and in consideration of valuable consideration, as set out in part below do hereby bargain, sell and convey to CLARK COUNTY, WASHINGTON, a Municipal Corporation, its heirs and assigns, a perpetual drainage easement to construct, install, reconstruct, repair, operate and maintain a drainage ditch and/or line and all necessary related facilities, over, under, upon and across the following described real property situated in Clark County, Washington, particularly described as follows:

SEE ATTACHED EXHIBIT "A" & "B"

GRANTORS agree that no building, wall or structure with footings shall be placed upon the granted property without the written permission of the County.

The terms and conditions of this easement shall be binding upon the heirs and assigns of the grantors and of Clark County, Washington.

CONSIDERATIONS: Mutual Benefits

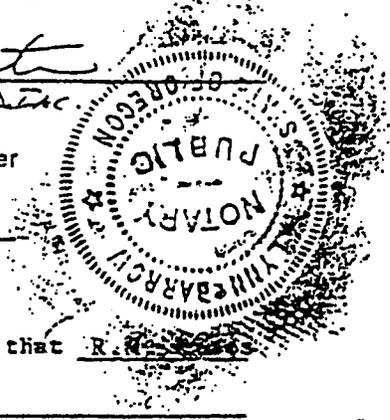
DATED this 24th day of July, 1987

R. M. Best
Pres SCD Inc.

OREGON)
STATE OF WASHINGTON)
COUNTY OF CLARK)

Accepted on behalf of Clark County under the authority of CCC 233.095.

[Signature]
Director of Public Works
Clark County, Washington



I hereby certify that I know or have satisfactory evidence that R. M. Best
President SCD Inc.

signed this instrument and acknowledged it to be His free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: July 29, 1987

NOTARY'S SIGNATURE: *[Signature]*

TITLE: _____

MY APPOINTMENT EXPIRES: 8-26-89

10,854-LD-452
7/7/27
KDB/WG

LEGAL DESCRIPTION
STORM DRAINAGE EASEMENT
WATER'S EDGE AT SALMON CREEK
CLARK COUNTY, WASHINGTON

Real property situated in Clark County, Washington, lying within the Northwest quarter of Section 25, Township 3 North, Range 1 East of the Willamette Meridian, being a strip of land, 20.00 feet wide, lying 5.00 feet left and 15.00 feet right of the following described line:

Beginning at the Southwest corner of said Northwest quarter; thence along the West line of said Northwest quarter North 0° 13' 31" West 818.57 feet to the true point of beginning of the line herein described; thence North 29° 03' 44" East 63.49 feet; thence North 50° 03' 18" East 221.60 feet; thence South 84° 15' 17" East 294.29 feet to a point, said point hereinafter referred to as "Point A"; thence North 12° 31' 27" East 190.00 feet to the terminus of said line.

EXCEPT that portion lying within the N.E. Salmon Creek Avenue right-of-way.

The sidelines of this easement shall be extended or shortened as necessary to provide a uniform strip of land, 20.00 feet wide.

ALSO a strip of land, 20.00 feet wide, lying 15.00 feet left and 5.00 feet right of the following described line:

Beginning at said "Point A"; thence South 20° 37' 26" East 120.00 feet to the terminus of said line.

EXCEPT that portion lying within the N.E. Salmon Creek Avenue right-of-way.

The sidelines of this easement shall be extended or shortened as necessary to provide a uniform strip of land, 20.00 feet wide.

136

10,854-LD1-#52

7/7/87

KDB/wg

LEGAL DESCRIPTION
CREEK EASEMENT
WATER'S EDGE AT SALMON CREEK
CLARK COUNTY, WASHINGTON

Real property situated in Clark County, Washington, lying within the Northwest quarter of Section 25, Township 3 North, Range 1 East of the Willamette Meridian, being a strip of land, 35.00 feet wide, lying 25.00 feet left and 10.00 feet right of the following described line:

Beginning at the Southwest corner of said Northwest quarter; thence along the West line of said Northwest, quarter North $0^{\circ} 13' 31''$ West 1347.69 feet; thence North $89^{\circ} 46' 29''$ East 349.77 feet to a point on the Southerly right-of-way line of N.E. 134th Street (65.00 feet from centerline) said point being the true point of beginning of the line herein described; thence North $89^{\circ} 36' 55''$ East 128.76 feet; thence South $78^{\circ} 43' 50''$ East 90.05 feet; thence North $89^{\circ} 31' 16''$ East 49.58 feet to a point on the Westerly right-of-way line of N. E. Salmon Creek Avenue (20.00 feet from centerline), said point being the terminus of the line herein described.

The sidelines of this easement shall be extended or shortened as necessary to provide a uniform strip of land, 35.00 feet wide.

--137

FILED FOR RECORD
CLARK CO. WASH
PUBLIC WORKS
AUG 3 1 11 PM '87

ADDRESSEE
ELIZABETH A. LUCE
Exhibit B

001511

APPENDIX E

EXCERPTS FROM
40.350.030

b. Provide a signed, notarized statement and documentation that a minimum benefit package as prescribed in subsection (1)(b) of this section is provided and available to all regular full-time employees.

3. Director Obligations. The threshold family wage shall be updated annually in the county code by the community development director or designee upon publication of the average annual covered wages for Clark County by the Washington Department of Employment Security.

4. Enforcement.

a. At the time of annual update of the threshold family wage data, each recipient of mitigated LOS standard shall be reviewed for compliance with the threshold family wage criteria. This review shall include all employers who have had continuous occupancy of their development for a period of at least thirty-six (36) months and who have not been released from the requirements of this section UDC. The review shall take place for five (5) consecutive years including the first thirty-six (36) month review. The review shall consist of confirmation with the Washington Department of Employment Security that reported average annual covered wages for the past year meets or exceeds the threshold family wage.

b. If, after thirty-six (36) months after the date of certificate of occupancy of a building or addition thereto, or as specified in a developer agreement, the recipient fails to meet the threshold family wage for the median of all thirty-six (36) month level-of-pay scale covered wage workers, the developer/employer shall pay a monetary penalty to the county. The penalty moneys shall then be used by the county to improve public roadways and intersections in the vicinity of the development. The amount of the penalty will be calculated as the difference between the threshold family wage required to satisfy the mitigated LOS eligibility standard and the actual average wage paid by the employer, multiplied by the total number of covered wage workers of the employer. This amount will then be increased by fifty percent (50%) and interest added consistent with RCW 82.02.020. The total amount added together will be considered as the amount of the penalty.

c. If the threshold family is not met after the annual reviews, the penalty shall be as follows:

Third year: one hundred percent (100%) of the amount calculated in subsection (4)(b) above;

Fourth year: eighty percent (80%) of the amount calculated in subsection (4)(b) above;

Fifth year: seventy percent (70%) of the amount calculated in subsection (4)(b) above;

Sixth year: sixty percent (60%) of the amount calculated in subsection (4)(b) above;

Seventh year: fifty percent (50%) of the amount calculated in subsection (4)(b) above;

5. Expenditure of Funds. The penalty funds shall be expended or encumbered for a permissible use within five (5) years of receipt, consistent with RCW 82.02.020.

P. Application of SEPA to the Director's Determinations. Any determination made by the public works director pursuant to this section shall be an administrative action that is categorically exempt from the state Environmental Policy Act. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.350.030 Street and road standards.

A. Overview.

1. Purpose. It is the purpose of this section to establish minimum standards for public and private transportation facilities for vehicles, public transit, pedestrians, and bicycles, hereinafter constructed or improved as a condition of county approval of a development, or a transportation project constructed by the county. These standards are intended to preserve the community's quality of life and to minimize total costs over the life of the transportation facility.

2. Applicability. This section applies to any subdivision, short plat, site plan application, or conditional use permit, provided that for the purposes of Sections 40.350.030(B)(4) and 40.350.030(B)(8), it shall also apply to applications for building permit or other applications for access to a public road, or to projects within the public right-of-way.

c. Paving of Intersecting Area. Where connecting to a paved street, whether public or private, the connecting road or driveway (excluding driveways in rural area) shall be paved twenty-five (25) feet back from the nearest edge of the traveled lane, or shall be equal to the minimum intersection radii as specified in Tables 40.350.030-2 through Table 40.350.030-6, whichever is greater.

Driveways in rural areas connecting with paved public roads shall be paved from the edge of the public road to the right-of-way or to twenty (20) feet from the edge, whichever is greater.

Rural paving shall be done in accordance with the equivalent base structural requirements of the gravel road section as noted in the standard details manual.

8. Sight Distances. As noted in Section 40.350.030(A)(2), this subsection also applies to applications for building permits and applications for access to public roads. Unless modified pursuant to Section 40.550.010, public and private roads shall comply with the following sight distance requirements:

a. Stopping Sight Distance. Public roads shall have minimum stopping sight distance, as measured from a height of three and one-half (3½) feet to a target on the roadway nominally six (6) inches in height, in accordance with Table 40.350.030-10.

“Posted speed,” which is statutory (50 MPH as per RCW 46.61.415) or recommended through a speed zone study and adopted by resolution by the board, shall be the legal speed limit generally applicable to such roadway. The advisory speed shown on a yellow advisory speed plate is not a legal speed limit. The county, or the applicant, should conduct a speed study if the actual traffic speeds are significantly different than the posted speed limit.

Table 40.350.030-10. Stopping Sight Distance	
Posted Speed (mph)	Minimum Stopping Distance (feet)
25	150
30	200
35	250
40	325
45	400
50	475

b. Controlled Intersection and Driveway Sight Distance Triangle. Traffic entering an uncontrolled public road from stop sign controlled public roads, or from private roads or private driveways shall have minimum corner sight distances, as shown in the following table, except as allowed in Section 40.350.030(B)(8)(c). They are measured from an eye height of three and one-half (3½) feet above the controlled road at least fifteen (15) feet from the edge of the vehicle travel lane of the uncontrolled public road to an object height of four and one-fourth (4¼) feet on the uncontrolled public road in accordance with Table 40.350.030-11.

Table 40.350.030-11. Controlled Intersection, Public Road and Driveway Sight Distance	
Posted Speed, Uncontrolled Road (mph)	Minimum Corner Sight Distance (feet)
20	200
25	250
30	300
35	350
40	400
45	450
50	500

(4) Where physical obstructions or development constraints preclude or limit full completion of the frontage road on the abutting property, the partial width roads may be allowed.

(5) Parking shall be prohibited along partial width roads, with signs and pavement markings being the responsibility of the developer.

(6) Where frontage improvements are required, the county will perform pavement deflection testing to determine the adequacy of the existing pavement. Where remaining life of the pavement is less than five (5) years, the developer shall construct the roadway to current standards to the centerline or twenty-two (22) feet, whichever is less. If remaining life is greater than five (5) years, the road shall be cut back to a location where the structure is sound and the widening constructed. However, in no case shall the reconstruction be less than four (4) feet in width from the existing edge of pavement to the new edge of pavement or face of curb. The county may require reconstruction to the centerline or twenty-two (22) feet, whichever is less, if the review authority determines the geometrics or other existing features are inadequate.

(7) The intersection of driveways with paved rural public roads shall be paved from the edge of the public road to the right-of-way or to twenty (20) feet from the edge, whichever is greater.

b. Exceptions.

(1) The right-of-way and easement requirements of Section 40.350.030(B)(5)(a) shall not apply to the construction, remodeling or enlargement of any Group R-Division 3 (single-family or duplex), or Group U occupancy (as defined in the Uniform Building Code), to the construction of any accessory residential structure, to any sign, or to the structural addition, alteration or repair to any existing structure within any twelve (12) month period which neither exceeds twenty-five percent (25%) of the value of the existing structure nor increases the total floor space of the structure by more than ten percent (10%).

(2) The roadway frontage improvement requirements Section 40.350.030(B)(5)(a) shall not apply to rural developments outside rural centers or those urban developments which the county engineer finds, based upon an engineering traffic study, will not result in an increase of total site trip generations during the p.m. peak hour of more than ten percent (10%); provided, that such otherwise exempt developments shall be required to make intersection and sight distance improvements in accordance with Sections 40.350.030(B)(7) and 40.350.030(B)(8) and such frontage road improvements as are necessary in order to provide minimally safe access to the development.

c. Deferral.

(1) In the event that required frontage road improvements are included as a portion of a county road project on the county's six (6) year transportation improvement program scheduled to be undertaken within three (3) years, the developer, in lieu of constructing or guaranteeing the construction pursuant to Section 40.350.030(C)(4)(i) of such frontage improvements may be permitted to contribute a proportionate share towards the cost of such county road project by an agreement consistent with the requirements of RCW 82.02.020.

(2) The development approval authority may defer frontage road improvements, in whole or in part, where the current development proposal is for lots in the R1-5, R1-6, R1-7.5, R1-10 or R1-20 zoning districts larger than one (1) acre and a covenant running with the land is recorded requiring such improvements to be undertaken when redivision is proposed at an urban density.

6. Off-Site Road Improvement.

a. General. Nothing in this section shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Section 40.350.020 or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development; provided, that the applicant may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.

APPENDIX F

CCC 40.100.060

in conformity with conditions established hereunder. It is unlawful for any person, firm or corporation to erect, construct, establish, move into, alter, enlarge, use or cause to be used, any buildings, structures, improvements or use of premises contrary to the provisions of this title. Where the UDC imposes greater restrictions than those imposed or required by other rules, regulations or ordinances, the provisions of the UDC shall control. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.100.030 Severability and validity.

If it should be found by a court of competent jurisdiction that any portion of the UDC, including text and maps adopted hereby, does not qualify under the authority of RCW 35.63, such finding shall not affect the validity of the remainder of this title.

If any provision of the UDC, including text and maps adopted hereby, or the application of the provision to any person or circumstances, is held invalid, then the rest of the UDC or the application of the provision to other persons or circumstances, should not be affected. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.100.040 Repealer.

The adopted UDC shall replace and supersede the following:

- A. Streets and Roads (Chapters 12.05A, 12.06 and 12.41, Clark County Code).
- B. Public Works (Chapters 13.04, 13.08A, 13.29, 13.36, 13.40A, 13.51, 13.55, 13.60, and 13.70, Clark County Code).
- C. Land Division Ordinance (Title 17, Clark County Code).
- D. Zoning (Title 18, Clark County Code).
- E. Clark County Environmental Policy Ordinance (Title 20, Clark County Code). (Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.100.050 Authority.

- A. Designation of Responsible Official.
 - 1. Unless otherwise noted, the director of the community development department (“director”) or the director’s designee shall be the responsible official and shall interpret and apply the provisions of the UDC.
 - 2. Where noted in the UDC, the county engineer shall interpret and apply the provisions of the UDC relating to transportation and circulation facilities.
 - 3. Where noted in the UDC, the county public works director shall interpret and apply the provisions of the UDC relating to water and sewer facilities.
 - 4. The Clark County building official shall interpret and apply the provisions of Title 14.
- B. Responsible Official Authority. Unless otherwise noted, it shall be the responsibility of the responsible official to interpret and apply the provisions of the UDC. An interpretation shall be subject to appeal pursuant to Division V of this title. The responsible official’s response shall be in writing and kept on permanent file. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.100.060 Enforcement.

It shall be the duty of the responsible official to determine the applicability of the UDC for enforcement purposes. All departments, officials and public employees of the county vested with the duty or authority to issue permits, shall conform to the provisions of the UDC and shall issue no permit, certificate or license for any use, building or purpose which violates or fails to comply with conditions or standards imposed by the UDC. Any permit, certificate or license issued in conflict with the provisions of the UDC, intentionally or otherwise, shall be void. The responsible official shall be responsible for carrying out the enforcement provisions of Title 32 of

the Clark County Code, at such time as a violation has been determined under the provisions of Title 32. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.100.070 Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply to terms in this title. In addition to definitions provided below, there are chapter- or section-specific definitions in the following sections:

40.240.060	Columbia River Gorge National Scenic Area Districts;
40.250.010	Airport Environs Overlay Districts (AE-1, AE-2);
40.250.030	Historic Preservation;
40.260.110	Residential Infill;
40.260.240	Wireless Communications Facilities;
40.310.010	Sign Standards;
40.550.030	Master Planned Development;
40.560.030	Amendments Docket;
40.570	State Environmental Policy Act (SEPA); and
40.600.030	Impact Fees.

“Above ground storage tank” means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which is ninety percent (90%) or more above the surface of the ground.

“Abutting” means sharing a common boundary line; except that where two (2) or more lots share a common boundary line only at a corner or corners, they shall not be considered as abutting unless the common boundary line between the two (2) parcels measures not less than eight (8) feet in a single direction.

“Access” means the place, means, or way by which pedestrians or vehicles shall have safe, adequate and usable ingress and egress to a property or use, as required by this title.

“Access roads” means any of the urban access roads as defined in Table 40.350.030-4 or any of the rural access roads as defined in Table 40.350.030-5. This term is used to differentiate access roads from arterials and collectors.

“Accessory dwelling unit” is an additional, smaller, subordinate dwelling unit on a lot with, or in, an existing or new house.

“Accessory use” or “accessory structure” means one which is subordinate to the principal use of a building on the lot serving a purpose customarily incidental to the use of the principal building.

“Accessway” means a public facility shared by pedestrians and bicyclists.

“Adjacent” means near, close; for example, an industrial district across the street or highway from a commercial district shall be considered as “adjacent.”

“Adjoining” means sharing a common boundary line, including across a public or private right-of-way or easement from the property in question.

“Administrative manual”, when referring to transportation concurrency, means the written documentation adopted by the public works director pursuant to Section 40.350.020.

“ADT” stands for average daily trips.

“Affected transportation corridor” means any transportation corridor which is reasonably projected to be affected by the transportation related impacts of a proposed development.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

WAL-MART STORES, INC., and CLC
ASSOCIATES,

Respondents,

v.

CLARK COUNTY,

Appellant,

And

RP NORTHWEST PROPERTIES and
FAIRGROUNDS NEIGHBORHOOD
ASSOCIATION,

Additional Parties.

No. 38241-5-II

CERTIFICATE OF SERVICE

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
09 SEP 16 AM 11:57
BY REPORTER

The undersigned, being first duly sworn, upon oath, deposes and says:

That I am a citizen of the United States of America and of the State of Washington, living and residing in Clark County, in said state; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that by service indicated below on this 16th day of January, 2009, affiant caused a true and correct copy of *Responsive Brief* and *Certificate of Service* to be directed to the attorneys-of-record for the above-named parties at the following addresses:

Charles E. Maduell
Davis Wright Tremaine LLP
1201 Third Avenue #2200
Seattle WA 98101-3045

U.S. Mail
 Facsimile
 Federal Express
 Hand Delivered

John S. Karpinski
2612 E 20th Street
Vancouver WA 98661

U.S. Mail
 Facsimile
 Federal Express
 Hand Delivered

DATED this 14th day of September, 2009.



Thelma Kremer
Clark County Prosecutor's Office
Civil Division
PO Box 5000
Vancouver WA 98666-5000

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

WAL-MART STORES, INC., and CLC
ASSOCIATES,

Respondents,

v.

CLARK COUNTY,

Appellant,

And

RP NORTHWEST PROPERTIES and
FAIRGROUNDS NEIGHBORHOOD
ASSOCIATION,

Additional Parties.

No. 38241-5-II

AMENDED BY
CERTIFICATE OF SERVICE

09 SEP 18 PM 12:29
STATE OF WASHINGTON
DEPUTY

FILED
COURT OF APPEALS
DIVISION II

I hereby certify that service was made on September 14, 2009, by mailing a copy of the Responsive Brief to the following attorneys of record in the manner indicated:

Charles E. Maduell
Davis Wright Tremaine LLP
1201 Third Avenue #2200
Seattle WA 98101-3045

U.S. Mail
 Facsimile
 Federal Express
 Hand Delivered

John S. Karpinski
2612 E 20th Street
Vancouver WA 98661

U.S. Mail
 Facsimile
 Federal Express
 Hand Delivered

DATED this 16th day of September, 2009.


Mindy Lambert
Legal Assistant, Civil Prosecutor's Office
Clark County, Washington