

FILED  
Court of Appeals  
Division II  
State of Washington  
11/5/2018 4:32 PM

Nos. 50847-8-II and 51745-1-II (Consolidated)  
(Growth Management Hearings Board Case No. 16-2-0005c)

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

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CLARK COUNTY,  
Petitioner and Respondent Below,

And

FRIENDS OF CLARK COUNTY and FUTUREWISE,  
Cross-Petitioners, Petitioners and Intervenors Below,

And

CITY OF RIDGEFIELD; CITY OF LA CENTER; RDGB ROYAL  
ESTATE FARMS, LLC; RDGK REST VIEW ESTATES, LLC; RDGM  
RAWHIDE ESTATES, LLC; RDGF RIVER VIEW ESTATES LLC;  
RDGS REAL VIEW, LLC; and 3B NORTHWEST, LLC,  
Petitioners and Intervenors Below,

v.

GROWTH MANAGEMENT HEARINGS BOARD,  
Respondent,

And

CLARK COUNTY CITIZENS UNITED, INC.,  
Petitioners and Intervenors Below

CITY OF BATTLE GROUND; LAGLER REAL PROPERTY, LLC;  
and ACKERLAND, LLC,  
Intervenors Below.

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BRIEF OF PETITIONER/CROSS-RESPONDENT CLARK  
COUNTY

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## I. INTRODUCTION

The Washington Growth Management Act (“GMA”)<sup>1</sup> requires that counties periodically review and update their comprehensive plans.<sup>2</sup> Clark County adopted an update in 2016 following review of its Comprehensive Growth Management Plan (“Plan” or “Comprehensive Plan”) pursuant to RCW 36.70A.130 as County Amended Ordinance 2016-16-12 (“2016 Plan Update” or “Update”). Futurewise and Friends of Clark County (together “Futurewise”) petitioned the Growth Management Hearings Board (“Board”) for review of the Update, and the Board held that certain aspects of the Update had violated GMA as alleged by Futurewise.<sup>3</sup>

Clark County has sought judicial review of those portions of the Board’s Final Decision and Order, dated March 23, 2017 (“FDO”) and Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidity, Stay Order, and Supplement the Record, dated January 10, 2017 (“Compliance Order”)<sup>4</sup> that held the urban growth area expansions and the County’s Rural Industrial Land Bank (“RILB”) noncompliant and invalid. The Cities of La Center and Ridgefield, and

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<sup>1</sup> Chapter 36.70A RCW.

<sup>2</sup> RCW 36.70A.130.

<sup>3</sup> Final Decision and Order in Case No. 16-2-0005c, dated March 23, 2017; AR 10457-10557; CAR 1-103. This brief refers to the Administrative Record as “AR.” The Administrative Record of the proceedings on compliance is referred to as “CAR.”

<sup>4</sup> CAR 1564-1604.

owners of property in the expansion areas have also petitioned for judicial review of portions of the FDO and the Compliance Order.

Futurewise has cross-appealed the portions of the Compliance Order that determined Clark County had complied with GMA regarding the designations of its Agricultural, Forest and Rural lands.

All of the petitions and the cross-appeal have been consolidated and are before this Court.

This brief responds to the motion to dismiss the County's appeal of the FDO in Section A of the Brief of Respondents/Cross-Appellants Futurewise ("Futurewise Brief"). This brief replies to Sections B, C, D, and F of the Futurewise Brief, which support the Board's decision regarding urban growth areas and the Rural Industrial Land Bank. This brief also responds to the Futurewise Brief concerning the assignments of error and issues on cross-appeal.

## II. RESPONSE TO STATEMENT OF THE CASE

In addition to the facts set forth and adopted by Futurewise in its opening brief on cross-appeal, Clark County adds the following facts.

- A. **Amended Ordinance 2016-06-12, the 2016 Plan Update, reduced or eliminated minimum lot size designations; Ordinance 2017-07-04 readopted the minimum lot size designations in effect before the 2016 Plan Update.**

The Board held in its FDO that the Clark County 2016 Plan Update<sup>5</sup> had violated GMA as alleged in Futurewise Issues 11 and 13.<sup>6</sup> Within a matter of weeks, Clark County initiated actions to address that holding;<sup>7</sup> these actions were the basis for the Board's findings of compliance regarding Issues 11 and 13.<sup>8</sup> An accurate portrayal of the County's actions is thus central to an understanding of the Cross-appeal by Friends of Clark County and Futurewise (together, "Futurewise") of the Board's Compliance Order.

The FDO held, concerning Issue 11, that the 2016 Plan Update, insofar as it changed minimum lot sizes from 20 acres to 10 and from 40 acres to 20 on agricultural and forest lands, respectively, had violated GMA for failing to conserve and protect agricultural and forest lands.<sup>9</sup> Regarding Issue 13, the FDO held that replacing three different Plan designations (each with a different minimum lot size) for Rural lands, with a single Plan designation for all Rural lands, had violated GMA, which requires the Plan to provide for a variety of Rural densities.<sup>10</sup> The FDO

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<sup>5</sup> The 2016 Plan Update made pursuant to RCW 36.70A.130(5) was adopted as Amended Ordinance ("Ord.") 2016-06-12; AR 238-324.

<sup>6</sup> AR 10499-10508, 10510-14.

<sup>7</sup> Clark County Compliance Report, Motion to Modify Compliance Order and Rescind Determination of Invalidity and Motion to Stay Order ("Compliance Report") at 1-8; CAR 222-29.

<sup>8</sup> Compliance Order at 3, 9-12; CAR 1566, 1572-75.

<sup>9</sup> Issue 11 is at pages 3-4 Appendix ("App.") 1, attached hereto; FDO at 43-52; AR 10499-10508.

<sup>10</sup> Issue 13 is at pages 4-5 App. 1; FDO at 54-58; AR 10510-14.

determined that the 2016 Plan Update was noncompliant, but not invalid,<sup>11</sup> with regard to both Issues 11 and 13.

In response, the Clark County Board of County Councilors (“Council”) adopted emergency interim Ordinance (“Ord.”) 2017-04-14, pursuant to RCW 35.63.200 and RCW 36.70A.390.<sup>12</sup> The interim ordinance imposed an immediately effective moratorium on the filing or acceptance of applications to divide or change the zoning of Agricultural and Forest lands to the 10-acre and 20-acre standards respectively, and of applications to divide or change the zoning of Rural lands.<sup>13</sup> This action prevented future applications for land divisions and zone changes in the resource and Rural lands from vesting to noncompliant standards, although the County could not render ineffective vesting that had already occurred.<sup>14</sup>

The County next adopted Ord. 2017-06-04, which found that it would be in the County’s best interest to come into compliance with GMA regarding resource and Rural designations.<sup>15</sup> Ord. 2017-06-04 made interim Ord. 2017-04-14 effective until the day after an ordinance went

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<sup>11</sup> FDO 95-97; AR 10551-53.

<sup>12</sup> CAR 216-20.

<sup>13</sup> CAR 218-20.

<sup>14</sup> CAR 216-19.

<sup>15</sup> Ord. 2017-06-04, adopted in a public hearing on June 20, 2017. CAR 105-07, at 105.

into effect that would amend the Plan and County Code to achieve compliance regarding those lands' designations.<sup>16</sup>

Ord. 2017-07-04 was adopted to achieve compliance regarding the FDO's holdings on Issues 11, 13, and several other Issues.<sup>17</sup> The portions of the County's 2016 Plan Update that were held noncompliant pursuant to Issues 11 and 13 had been adopted by enactment of Amended Ord. 2016-06-12, and had revised the Comprehensive Plan and development regulations to change the minimum lot sizes and designations of Agricultural, Forest, and Rural lands.<sup>18</sup> The amendments relevant to Issue 11 throughout the Plan and zoning code had changed AG-20 to AG-10, and FR-40 to FR-20.<sup>19</sup> The portions of Amended Ord. 2016-06-12 that made those changes are attached hereto as Appendix ("App.") 2. Deletions appear as strikethroughs, additions are shown with double underlining, and these amendments changed only the lot size specifications (~~AG-20~~, AG-10).<sup>20</sup> The Plan changes challenged by Issue 13 and ruled noncompliant had eliminated the Plan designations R-5, R-10, and R-20, but had retained those designations as zones.<sup>21</sup>

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<sup>16</sup> CAR 106-07.

<sup>17</sup> Ord. 2017-07-04, adopted in public hearing July 11, 2017. CAR 110-215, at 110-11.

<sup>18</sup> Amended Ord. 2016-12-06; AR 238-324; *See* App. 2.

<sup>19</sup> AR 239; App. 2.

<sup>20</sup> *See, e.g.*, AR 250, 258, 265, 308; App. 2.

<sup>21</sup> County/UGA Comprehensive Plan and zoning maps adopted as part of Ord. 2016-06-12, dated June 28, 2016; AR 771-72.

Ord. 2017-07-04, pertinent parts of which are attached as Appendix 3,<sup>22</sup> shows that the County's actions taken to achieve compliance with regard to Issues 11 and 13 were precisely the reverse of the actions taken by Amended Ord. 2016-06-12 and challenged by those Issues. Agricultural lands were changed back from AG-10 to AG-20 ("~~AG-10~~ AG-20"),<sup>23</sup> and Forest lands were changed back from FR-20 to FR-40 ("~~FR-20~~ FR-40").<sup>24</sup> Again, the lot sizes were changed, not the remainder of the text. The single Rural Plan designation that had been adopted by Amended Ord. 2016-06-12 was changed back to three Plan designations, R-5, R-10, and R-20.<sup>25</sup>

Amended Ord. 2016-06-12 changed the zoning of certain Rural lands abutting AG-10 lands from R-20 to R-10, because the County

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<sup>22</sup> CAR 110-215; See App. 3.

<sup>23</sup> Compare, e.g., AG-20 to AG-10 in Amended Ord. 2016-06-12 at 2, 21; AR 239, 258; App. 2; with AG-10 to AG-20 in Ord. 2017-07-04 at 2, 5, 8-10, 15-19; CAR 111, 112, 115-117, 122-126; App. 3 at 111, 112, 115-117, 122-126.

<sup>24</sup> Compare, e.g., FR-40 to FR-20 in Amended Ord. 2016-06-12 at 2, 21; AR 239, 258; App. 2; with FR-20 to FR-40 in Ord. 2017-07-04 at 2, 5, 8-10, 15-19; CAR 111, 112, 115-117, 122-126; App. 3 at 111, 112, 115-117, 122-126.

<sup>25</sup> Comprehensive Plan, Clark County, Washington, map at App. 4. The County adopted this map as part of the Clark County Comprehensive Growth Management Plan in accordance with Ord. 2017-07-04; CAR 111-12. Clark County requests the Court to take notice of this map pursuant to Rules of Appellate Procedure, RAP 9.11. This Court is authorized to take judicial notice of any ordinance that the court of original jurisdiction judicially notices. *Olympia v. Nickert*, 118 Wash. 407 (1922); *Spokane v. Knight*, 96 Wn. 403 (1917). See also, K. Tegland, 5 Wash. Prac. § 50, at 95 (2d ed. 1982). Because the Superior Court to which the appeal was taken takes judicial notice of Clark County ordinance so to can this Court without the necessity of pleading the ordinance. *Town of Forks v. Fletcher*, 33 Wash.App. 104, 107 (1982).

determined 10 acres sufficiently protected resource uses.<sup>26</sup> The FDO did not hold that the R-10 designation of Rural lands was noncompliant, except to the extent that it was a zoning designation rather than a plan designation.<sup>27</sup> Ord. 2017-07-04 did not address R-10 zoning, except that that the R-10 plan designation was readopted for all county lands with R-10 zoning.<sup>28</sup> The R-20 Plan designation, however, still applies to well over 1,000 acres of Rural lands in the County.<sup>29</sup> As was the case before the 2016 Plan Update, Clark County's Comprehensive Plan provides for the following rural densities: R-5, R-10, and R-20.<sup>30</sup>

The Cross-Appellant's Brief represents that "Clark County already has 40- and 80-acre agricultural minimum lot size zoning."<sup>31</sup> Clark County has no Agricultural lands of long-term commercial significance designated under GMA with 40-acre or 80-acre minimum lot sizes.<sup>32</sup> Both prior to and since the 2016 Plan Update, a limited area of land in the southeast corner of the County has been planned pursuant to the Columbia River Gorge National Scenic Area Act.<sup>33</sup> Only in the Gorge National Scenic

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<sup>26</sup> AR 239.

<sup>27</sup> FDO at 43-52, 54-58; AR 10499-514.

<sup>28</sup> Ord. 2017-07-04 at 2; CAR 111; App. 3 at 111.

<sup>29</sup> App. 4.

<sup>30</sup> *Id.*

<sup>31</sup> Brief of Respondents/Cross-Appellants Friends of Clark County & Futurewise ("Cross-Appellants' Brief") at 81.

<sup>32</sup> App. 4.

<sup>33</sup> See, *Id.*, and AR 771; Columbia River Gorge Scenic Area Overlay appears on App. 4 as blue, diagonal lines, running northeast and southwest. On AR 771 the overlay is purple.

Area are 40-acre and 80-acre agricultural designations found in Clark County.<sup>34</sup>

To summarize relevant facts, by Ord. 2017-04-07, Clark County amended the parts of the 2016 Plan Update that had been held noncompliant pursuant to Issues 11 and 13 so as to readopt their pre-Update designations, with the exception of certain R-10 lands.

**B. Uses allowed in the readopted AG-20, FR-40, R-5, R-10, and R-20 districts were the same as the GMA-compliant uses allowed in those districts; additional land divisions allowed in AG-20 and FR-40 are explicitly endorsed by RCW 36.70A.177.**

1. **Allowed uses.** Review of the Uses Table set forth in Amended Ord. 2016-06-12 for Agricultural and Forest lands shows that no new uses were adopted by the 2016 Plan Update.<sup>35</sup> Aside from the revisions to the lot size numbers, the addition of a footnote about public facility zoning, and irrelevant minor corrections, no changes were made to the Uses Table at all.<sup>36</sup> Consequently, aside from the lot sizes, no changes needed to be made to the Uses Table for Agricultural and Forest lands by Ordinance 2017-07-04, and no changes were made to allowed uses by that ordinance.<sup>37</sup> The Uses Table, in short, is virtually exactly as it was in

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<sup>34</sup> App. 4.

<sup>35</sup> Amended Ord. 2016-06-12, Exhibit 9, at Table 40.210.010-1. Uses. AR 258-62. App. 2 at 258-62.

<sup>36</sup> *Id.*

<sup>37</sup> Ord. 2017-07-04, Exhibit 5, at Table 40.210.010-1.Uses. AR 122-26; App. 3 at 122-26.

Clark County's GMA-compliant development regulations in effect prior to the 2016 Plan Update. It is not new.

2. **Allowed land divisions.** The 2016 Plan Update allowed a method of dividing AG-10 and FR-20 lands – the cluster subdivision – that had not been allowed previously on Clark County resource lands under GMA.<sup>38</sup> The development standards adopted for cluster subdivisions require the retention for resource or open space use (under a management plan) of indivisible, nonbuildable remainder parcels, which are larger than the minimum lot size in the zone, except when a cluster division adds only one additional homesite.<sup>39</sup> Cluster homesite lots must not be located on good farm soils.<sup>40</sup> When Ord. 2017-07-04 was enacted, the cluster process was retained for the readopted AG-20 and FR-40 districts.<sup>41</sup>

### **III. ARGUMENT IN RESPONSE TO MOTION TO DISMISS**

#### **Response to Futurewise Brief Section A:**

#### **Service of the County's Petition for Judicial Review Complied With all Applicable Administrative Procedures Act Requirements.**

Futurewise's motion to dismiss for lack of subject matter jurisdiction asserts that the Court lacks subject matter jurisdiction due to

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<sup>38</sup> Ord. 2016-06-12 at 29-32; AR 266-69.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 30; AR 267.

<sup>41</sup> Ord. 2017-07-04 does not delete the cluster provisions. CAR 110-215.

the County's failure to comply with service requirements outlined in RCW 34.05.542(4). The gravamen of Futurewise's argument is that "service" made pursuant to RCW 34.05.542(4) can never be made on an agency via email delivery. This argument fails because it is not supported by any legal authority and it ignores the Board's specific authorization that service may be made on the board "by electronic mail" as long as the original documents are mailed the same day.<sup>42</sup>

As outlined in Futurewise's Opening Brief, the Board mailed the FDO on March 23, 2017.<sup>43</sup> The County then had 30 days from the time of mailing to file its petition for judicial review (PFJR) with the court and serve the agency, the office of the attorney general, and all parties of record.<sup>44</sup> In the case at hand, because the 30 day deadline fell on a Saturday, the County had until Monday, April 24, 2017 to effectuate service in compliance with APA guidelines.<sup>45</sup> On Monday, April 24, 2017,

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<sup>42</sup> WAC 242-03-240(1).

<sup>43</sup> AR 010558-59.

<sup>44</sup> RCW 34.05.542(3).

<sup>45</sup> Superior Court Civil Rules (CR) 6 provides as follows:

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any superior court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

the County mailed and emailed its PFJR to the Board and the office of the attorney general.<sup>46</sup> The parties of record were served via email.<sup>47</sup>

Futurewise's motion to strike for lack of subject matter jurisdiction rests solely on the premise that "emailing a copy is not delivery."<sup>48</sup> This argument fails for two reasons. First, Futurewise provides **no legal authority** for this premise—relying instead on a dictionary definition of delivery as an "act of delivering up or over: transfer of the body or substance of a thing."<sup>49</sup> In reality, delivery via email **is** the transfer of the substance of a thing. In this case, it amounts to the electronic transfer of the PFJR that was subsequently placed in the mail on the same day. Futurewise has not, and cannot, cite to **any** legal authority requiring that compliance with RCW 34.05.542(4) necessitates the physical handing over of an original document beyond what has been accomplished through email delivery.

Rather than look to an ambiguous dictionary definition of "delivery" however, this Court need only look at the explicit guidance from the Board itself on this issue. The general provisions of the APA provide the following:

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<sup>46</sup> CP 280-81, Clark County's Petition for Judicial Review Certificate of service pp. 8-9.

<sup>47</sup> *Id.*

<sup>48</sup> Futurewise's Opening Brief, p. 9.

<sup>49</sup> *Id.* at pp. 8-9, *citing*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 597 (2002).

## PART I—GENERAL PROVISIONS

### 34.05.010 Definitions

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

\*\*\*\*

(19) “Service,” except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. **Agencies may, by rule, authorize service by electronic transmission, or by commercial parcel delivery company.** (*Emphasis added.*)<sup>50</sup>

RCW 34.05.010(19) explicitly authorizes agencies to allow service by electronic transmission. Pursuant to that statute, and Ch. 242-03 WAC, “GMHB Rules of Practice and Procedure,” under the heading “Filing and Service of all Papers,” the Board has adopted the following rule:

(1) Filing of papers: **All pleadings and briefs shall be filed with the board by electronic mail** unless a petitioner does not have the technological capacity to do so. The original and three copies of all documents shall be filed with the board personally, or by mail or commercial parcel delivery service and must be postmarked or sent on the same date as the electronic filing. Filings less than fifteen pages may be made by fax transmission. The original and three copies must be postmarked or sent on the same date as the fax transmission to be deemed filed.(*Emphasis added*)<sup>51</sup>

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<sup>50</sup> RCW 34.05.010(19).

<sup>51</sup> WAC 242-03-240(1).

Here, the 30<sup>th</sup> day fell on a Saturday, and the County mailed and emailed its PFJR to the Board and the office of the attorney general on Monday April 24, 2017. Futurewise’s challenge is limited to the question of whether email service on an agency satisfies delivery pursuant to RCW 34.05.542(4).<sup>52</sup> Futurewise’s motion to dismiss should be denied because the County’s use of email satisfies both the ambiguous definition of “delivery” proposed by Futurewise as well as the Board’s express authorization to serve papers and pleadings by electronic mail.<sup>53</sup>

#### IV. REPLY TO ARGUMENT ON CLARK COUNTY APPEAL

##### Reply to Futurewise Brief Sections B and C:

**The County’s dedesignation of agricultural lands and the expansion of the Ridgefield and La Center UGA’s became moot when both Cities annexed the land in the expansion areas.**

The Board has no authority or jurisdiction over the lawful annexation of land by a city.<sup>54</sup> The Washington Constitution<sup>55</sup> and statutes

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<sup>52</sup> In the event Futurewise attempts to expand this argument in its reply, it should be noted that the County included a Certificate of Service which establishes a prima facie case of valid service. See *Lee v. Western Processing Co., Inc.*, 35 Wn. App. 466, 469 (1983); *Northwick v. Long*, 192 Wn. App. 256, 262 (2015). It falls on Futurewise to overcome this assumption by clear and convincing evidence. *Id.*

<sup>53</sup> It is also worth noting that in addition to the County’s PFJR of the FDO, the County has also petitioned for review of the Board’s Compliance Order, which was issued January 10, 2018. The subsequent PFJR was served on January 24, 2018 and it, too, was sent via email and US Postal Service. CP 001-012, Clark County’s Petition for Judicial Review pp. 1-12. The reviews of the FDO and of the Compliance Order are consolidated before this Court.

<sup>54</sup> Annexation occurred in these instances pursuant to Chapter 35A.14 RCW. The Board’s subject matter jurisdiction is defined by RCW 36.70A.280, and does not permit review of actions taken under the annexation statutes.

regarding municipalities<sup>56</sup> and code cities<sup>57</sup> prohibit the County from planning for those lands; all land use jurisdiction over annexed lands is exercised by the cities within whose incorporated limits they are located.<sup>58</sup> Futurewise attempts to overcome this legal reality by relying upon the assertion that, “[u]pon a finding of invalidity, the underlying provision would be rendered void.”<sup>59</sup> Futurewise argues that this language means that although the annexations of land by La Center and Ridgefield occurred well before the Board issued its FDO,<sup>60</sup> the Board’s decision applies retroactively. This assertion fails for a number of reasons.

The quoted language originates from *King County v. Cent. Puget Sound Growth Mgmt, Hearings Bd.*<sup>61</sup>, as quoted in *Town of Woodway v. Snohomish County*,<sup>62</sup> and is non-binding dicta, which has no actual bearing on this case.

In *King County*, the Court was **not** faced with a question of whether a County could plan for land that had been annexed into a city

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<sup>55</sup> Wash. Const. Art. XI, Sect.11, which states, “Any county, city, town or township may make and enforce *within its limits* all such local police, sanitary and other regulations as are not in conflict with general laws.” (Emphasis added.)

<sup>56</sup> RCW 35.63.080. This general law authorizes a city council or board or commissioners to provide for preparation, adoption and enforcement of coordinated plans for the physical development of the municipality.

<sup>57</sup> RCW 35A.11.020. This general law authorizes code cities to regulate real property.

<sup>58</sup> Citations at notes 54, 55 and 56, above.

<sup>59</sup> Futurewise’s Opening Brief, p. 11, citing *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 181, 979 P.2d 374 (1999).

<sup>60</sup> See Clark County Opening Brief at 10-11.

<sup>61</sup> 138 Wn.2d 161, 181 (1999).

<sup>62</sup> 180 Wn.2d 165, 174 (2014).

without violating Washington Constitution Article XI, Section 11. The Washington Supreme Court explained that the question was whether *King County* had violated GMA when it issued permits for a project within a UGA that the Board had determined was noncompliant.<sup>63</sup> The Court held that the permits had been properly issued, because there was no finding of invalidity, and then digressed into a discussion of invalidity.<sup>64</sup>

A ruling of invalidity was not at issue in *King County*, and so the discussion was purely hypothetical. The facts and law in this case are different. Here, the question involves the relationship of GMA to other non-GMA statutes, and the Board's authority under GMA to determine whether actions taken under those statutes are null, void, and of no effect. *King County*, however, did not speak on that question.

Another issue in this case that distinguishes it from *King County* is that the Board lacks authority to order the County to take action that is assigned to cities by Washington Constitution Article XI, Section 11.<sup>65</sup> *King County* did not address the relative authority of GMA versus the Washington Constitution, and so for that reason as well, its hypothetical characterization of invalidity does not apply in this case. Finally, *King*

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<sup>63</sup> 138 Wn.2d at 180-82.

<sup>64</sup> *Id.*

<sup>65</sup> Wash. Const. Art. XI, Sect. 11, which states, "Any county, city, town or township may make and enforce *within its limits* all such local police, sanitary and other regulations as are not in conflict with general laws." (*Emphasis added.*)

*County* does not address the timing issue in this case. Here, annexations by both Ridgefield and La Center occurred *before* the Board issued its FDO.<sup>66</sup> Nothing in *King County*, or any other case argued by Futurewise allows the Board to undo actions lawfully taken prior to a ruling of invalidity.

Moreover, nothing in *King County* or *Town of Woodway* contradicts the well-established principle that a county's plan is presumed valid upon adoption.<sup>67</sup> The discussion of invalidity in *Town of Woodway* concerned a question of law strictly within GMA, and is, therefore, inapplicable to this case, although it actually supports the argument that a determination of invalidity is prospective in effect.<sup>68</sup>

Futurewise's reliance on *State v. Turner* is also misplaced.<sup>69</sup> *Turner* merely stands for the basic proposition that a case is not moot if a court can provide effective relief.<sup>70</sup> There, incarceration was not the only consequence that appellants complained of and the court could grant direct relief by waiving the fines that had been imposed.<sup>71</sup>

The holding in *Turner* provides no guidance for the issues before this Court because here, there is no effective relief available. Futurewise

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<sup>66</sup> Note 60, *supra*.

<sup>67</sup> RCW 36.70A.320(1).

<sup>68</sup> 180 Wn.2d at 175 (*quoting*, RCW 36.70A.302(1)(a)).

<sup>69</sup> 98 Wn.2d 731 (1983).

<sup>70</sup> *Id.* at 733.

<sup>71</sup> *Id.*

now concedes that the Board does not have authority to review the validity of the Cities' annexations.<sup>72</sup> Instead, it asks the Court to order the County to comply with the FDO despite the fact that the County has no more authority over accomplished annexations and the annexed land than does the Board. The Board cannot effectively order the County to take legislative actions under GMA to alter the land use designations of those lands, even if the annexed lands were wrongly designated.

Nor can the Board order the County to take legislative actions with regard to the land use designations of some other lands in mitigation for the loss of agricultural lands; whether they were lawful or not, the UGA expansions have not caused the designations of other lands to violate GMA. A ruling that would restrict other lands in the County as a sanction for the UGA expansions would arbitrarily punish property owners who did not cause the annexations by Ridgefield and La Center, and such a ruling would not be founded on any legal principle. There is no action that the County can lawfully take that would return the annexed lands to their former designations outside urban growth boundaries.

Despite this reality, Futurewise proposes several scenarios wherein the County or Cities "could" address the lawful annexations. In doing so, Futurewise incorrectly asserts without authority that the Cities "are bound

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<sup>72</sup> Futurewise's Opening Brief, p. 13.

by the Board and Court orders.”<sup>73</sup> This assertion ignores the fact that Futurewise filed a PFJR challenging the County’s adoption of its 2016 Comprehensive Plan Update.<sup>74</sup> No reviewable challenge to city actions was raised in the proceedings before the Board, and the Cities’ actions are not reviewable by either the Board or, by extension, this Court.

In light of the Board’s lack of authority to require the Cities to “assist” the County by either de-annexing lands within city limits or re-designating land as Agricultural,<sup>75</sup> Futurewise appears to rely on the willingness of the Cities to cooperate with Futurewise’s objectives. This Court need look no further than the Cities’ responsive briefing on this issue in order to assess the viability of this suggestion.

The County’s inability to plan for city lands, or to deannex land from Ridgefield and La Center – the only actions that would provide actual relief – makes Issues 5 and 10<sup>76</sup> moot. In light of that, the Board’s decisions ordering the County to come into GMA compliance regarding the annexed lands erroneously interpret and apply GMA, the Washington Constitution, and the state statutes regarding planning authority and annexation. The FDO and Compliance Order are also outside the Board’s

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<sup>73</sup> Futurewise’s Opening Brief, p. 14.

<sup>74</sup> AR 227-236.

<sup>75</sup> See Futurewise’s Opening Brief at 13-14.

<sup>76</sup> App. 1.

authority because they purport to order the County to take action that it cannot take. The Boards' decisions should be reversed by this Court.<sup>77</sup>

**Reply to Sections B and C:**

**Incorporation of Cities' Briefs.**

Clark County hereby adopts and incorporates as its own the arguments of the Cities of La Center and Ridgefield in reply to Sections B and C of the Futurewise Brief.

**Reply to Section D:**

**The Board's rulings that the Rural Industrial Land Banks qualify as agricultural lands of long-term commercial significance are contrary to law and lack support by the evidence in the record.**

As established in Clark County's Opening Brief, the County conducted an area-wide analysis of agricultural lands as required by WAC 365-190-050.<sup>78</sup> The Futurewise Brief concedes that the analysis was made, but says that the analysis was inadequate, in part, because the entire agricultural area was not dedesignated.<sup>79</sup> The WAC guidelines on agricultural resource lands require no such result, nor do the guidelines require that the land that is not being successfully managed for farming be dedesignated.<sup>80</sup> Futurewise suggests that lands depending on equipment

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<sup>77</sup> RCW 34.05.570(3)(b) and (d).

<sup>78</sup> Clark County Opening Brief at 21-27.

<sup>79</sup> Futurewise Brief at 53-54.

<sup>80</sup> See WAC 365-190-050 and 365-190-040 (the latter cited in the Futurewise Brief, even though it was not the basis for the Board's holding).

sharing with the land in the Rural Industrial Land Bank (“RILB”) be dedesignated.<sup>81</sup> Again, no statute or rule requires that any one parcel of resource land, rather than another, be dedesignated if neither meets the criteria for agricultural land. This argument misinterprets and misapplies the law, as did the FDO and the Compliance Order.

Further, evidence in the record indicates that the agricultural analysis undertaken in connection with the creation of the RILB<sup>82</sup> examined whether dedesignation of the RILB property would result in an amount of lands “sufficient to maintain and enhance the economic viability of the agricultural industry in the County over the long-term,” as required by WAC 365-190-050(5). The analysis provides evidence that the long-term outlook for larger farms in Clark County is in transition and that many dairies are moving from Western Washington to Eastern Washington, that the farms in the County have been experiencing a decline in average size, and are becoming more urban oriented.<sup>83</sup> As demonstrated by the evidence set forth in<sup>84</sup> the agricultural analysis that supported the designation of the RILB property for light industrial use was appropriate and thorough, and complied with WAC 365-190-050. The

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<sup>81</sup> Futurewise Brief at 54.

<sup>82</sup> AR 6036. Clark County apologizes to the Court and all the Parties for having cited AR 6035 in its Opening Brief.

<sup>83</sup> AR 6036.

<sup>84</sup> AR 6015-6119.

Board should have deferred to the County's exercise of its discretion in planning the RILB.<sup>85</sup>

The evidence in the record and a correct interpretation of the law support the County's dedesignation of land for the RILB, which can only be located outside an urban growth area, and must be designated for industrial use, pursuant to RCW 36.70A.367. The Board's FDO and Compliance Order are erroneous, and they should be reversed.<sup>86</sup>

**Reply to Section F:**

**In order for the Board to hold that an action is invalid, the Board must first find the action noncompliant; the County's challenge to the Board's ruling of noncompliance also challenges invalidity.**

Futurewise contends that the parties have abandoned their rights to challenge the Board's rulings of invalidity.<sup>87</sup> The County, the Cities of Ridgefield and La Center, and the owners of property in the UGA expansion areas have challenged the Board's rulings of noncompliance with regard to the UGA expansions and the RILB. If the County's actions in these matters comply with GMA, the Board must lift its determination of invalidity, regardless of whether that question is raised in this judicial review.<sup>88</sup> If this Court orders the Board to find the County compliant with

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<sup>85</sup> RCW 36.70A.3201; *Quadrant Corp. v. State Growth Management Hearings Bd.* 154 Wn.2d 224, 235-38, 110 P.3d 1132 (2005).

<sup>86</sup> RCW 34.05.570(3)(d), (e).

<sup>87</sup> Futurewise Brief at 67.

<sup>88</sup> RCW 36.70A.302(1)(a).

GMA concerning an issue, then a determination of invalidity itself no longer complies with GMA.<sup>89</sup>

## V. RESPONSE TO ARGUMENT ON FUTUREWISE CROSS-APPEAL

1. **Introduction.** In response to the Board's FDO regarding Issues 11 and 13, the County amended its comprehensive plan and development regulations to undo those portions of the Update that the Board had ruled noncompliant, and readopted the pre-Update content of those provisions.<sup>90</sup> In its Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidity, Stay Order, and Supplement the Record, dated January 10, 2017 ("Compliance Order"), the Board held that Clark County had achieved compliance as to Issues 11 and 13, and had mooted those Issues by readopting its previous compliant designations. In its cross-appeal, Futurewise argues that the County's Plan designations that had been compliant with GMA through June 2016 became noncompliant upon readoption, and that the Board should require Clark County to take further to "fix" its resource and Rural zones. The Board found otherwise, and the Court should uphold the Board's determination of compliance.

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<sup>89</sup> *Id.*

<sup>90</sup> Ord. 2017-07-04; Notes and text at notes 17-30, *supra*.

Futurewise argues that replacing the minimum lot size designations adopted in the 2016 Plan Update with the designations that had existed for years before the Update is the legal equivalent of adopting a new zoning scheme for under GMA.<sup>91</sup> Futurewise would have it that this newness would render the “new” zones susceptible to challenge.<sup>92</sup>

Clark County’s AG-20, FR-40, R-5, R-10, and R-20 plan and zoning designations are not new, however, whether the County’s action in replacing the noncompliant designations is called rescinding, repealing, deleting, reviving, readopting, or simply amending. The uses allowed in Agriculture, Forest and Rural lands are not new. These designations and uses were in effect immediately before the 2016 Plan Update, and had been ruled compliant with GMA years previously.<sup>93</sup> The attempt to overturn these designations, and the unchanged lists of uses allowed in the associated zones is nothing but a “failure to revise” challenge that cannot succeed here.<sup>94</sup>

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<sup>91</sup> Futurewise Brief at 70-78.

<sup>92</sup> *Id.*

<sup>93</sup> *Karpinski v. Clark County*, WWGMHB Case No. 07-2-0027c, Order Finding Compliance and Closing Case, slip op. at 3 (September 4, 2014) (reapplication of AG-20 designation to certain lands in unincorporated County complied with GMA); *Achen, et al. v. Clark County*, WWGMHB Case No. 95-2-0067c, Order Finding Compliance and Closing Case (June 9, 2006).

<sup>94</sup> *See Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 344-45, 190 P.3d 38 (2008) (scope of failure to revise challenges is limited).

Unless the Board had properly determined that the County's readoption of its resource and Rural lands designations had been clearly erroneous, a finding of compliance was required by GMA.<sup>95</sup> The Board properly ruled that the designations complied with GMA, and Futurewise has not demonstrated that the readopted and previously compliant designations and uses had become clearly erroneous under GMA in the year between passage of the 2016 Plan Update and the adoption of Ord. 2017-07-04. This Court should affirm the Compliance Order as to Issues 11 and 13 because Futurewise has not met its burden of proof to demonstrate that the Board's compliance rulings were invalid.

2. **Standard of review.** Futurewise had the burden of proving to the Board that that Clark County's actions taken to cure noncompliance under GMA were clearly erroneous, and the Board ruled it had failed to meet that burden.<sup>96</sup> The Board itself was required to defer to the County's exercise of its "broad discretion in adapting GMA's requirements to local realities," including the County's discretion to readopt long-compliant Plan designations.<sup>97</sup> Futurewise again has the burden of proving to this

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<sup>95</sup> RCW 36.70A.320(3).

<sup>96</sup> RCW 36.70A.320(2).

<sup>97</sup> RCW 36.70A.3201; *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 236, 110 P.3d 1132 (2005).

Court that the Board's actions were erroneous under Chapter 34.05 RCW, the Administrative Procedures Act (APA).<sup>98</sup>

Errors of law alleged under RCW 34.05.570(3) are reviewed de novo, with substantial weight given to the Board's interpretation of GMA based on its specialized knowledge and expertise regarding GMA issues.<sup>99</sup> The Court reviews factual determinations under the substantial evidence standard, by which a determination is upheld if it is supported by sufficient evidence to persuade a fair-minded person that it is true or correct.<sup>100</sup> This standard is highly deferential to the finder of fact, here, the Board.<sup>101</sup> A mixed question of law and fact is reviewed by interpreting the law, and then applying it to the facts as determined by the Board.<sup>102</sup> The Court is not bound by the Board's legal conclusions,<sup>103</sup> and a correct judgment will not be reversed when it can be sustained on any theory supported by the record, even if it is different from the theory relied on by the Board.<sup>104</sup> GMA is not liberally construed.<sup>105</sup>

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<sup>98</sup> RCW 34.05.570(1)(a).

<sup>99</sup> *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

<sup>100</sup> *Id.* RCW 34.05.570(3)(e); *City of Redmond, supra*.

<sup>101</sup> *Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 176 Wn. App. 555, 565, 309 P.3d 673 (2013).

<sup>102</sup> *City of Redmond, supra*, 136 Wn.2d at 46.

<sup>103</sup> *Id.*

<sup>104</sup> *Whidbey Environmental Action Network v. Island County*, 122 Wn. App. 156, 168, 93 P.3d 885 (2004), *rev. den.* 153 Wn.2d 1025, 110 P3d 756 (2005).

<sup>105</sup> *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 342, 190 P.3d 38 (2008).

**A. Response to Cross-Assignment of Error 1 Regarding Issue 11 on Minimum Lot Sizes of Resource Lands:**

**The Board correctly held that Clark County had achieved compliance with GMA when it revised its comprehensive plan and zoning regulations to address the FDO's ruling on Issue 11 and that Issue 11 had become moot.**

- 1. Clark County restored the pre-Update minimum lot sizes for lands designated Agricultural and Forest Tier II, and thereby achieved compliance with GMA; the Board's ruling of compliance regarding Issue 11 should be upheld.**

In the course of the 2016 Plan Update, Clark County reduced the minimum lot sizes from 20 acres in Agricultural lands (AG-20) and 40 acres in Forest Tier II lands (FR-40) to 10 acres (AG-10) and 20 acres (FR-20), respectively. The Futurewise petition for review to the Board, in Issue 11, contended that (a) these amendments to the Agriculture and Forest Districts, (b) or their related rural rezones, uses, densities, or development standards applicable to the AG-10 or FR-20 Districts, violated numerous provisions of GMA for failure to conserve farm and forest land, and for certain other reasons.<sup>106</sup>

The FDO ruled as follows with respect to Issue 11: “**reducing parcel sizes for agricultural and forestry lands** [did] not meet the requirements in [GMA]” or the standards in *King County* because it did

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<sup>106</sup> The above synopsis of Issue 11 adequately and coherently summarizes it. Issue 11 brought by Futurewise is set forth in App. 1, and the County apologizes for its length and complexity. Futurewise neglected to brief nine of the statutory provisions and the two administrative code provisions that it had named in Issue 11, and the Board deemed those matters abandoned. FDO at 44; AR 10500.

not “assure the conservation of agricultural lands [or] assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.”<sup>107</sup>

The FDO’s holding is clear: the reduction of minimum lot sizes by changing AG-20 to AG-10 and FR-40 to FR-20 had offended GMA’s mandate to conserve resource lands. That holding followed from the Board’s analysis of the impacts of lot sizes in resource zones.<sup>108</sup> The Board did not rule that related rural rezones, uses, or development standards had violated GMA -- only the reduced parcel sizes.<sup>109</sup> Futurewise did not seek review of any aspect of the FDO, and should not be permitted now to argue that the FDO’s ruling of noncompliance should have extended to additional arguments.

In response to the FDO, Clark County took the following actions:

- (1) Adopted a moratorium on receiving or processing further applications to divide land to the AG-10 or FR-20 standards,<sup>110</sup>
- (2) Repealed the AG-10 and FR-20 plan designations and zones, and replaced them with the compliant designations and zones that had existed before the 2016 Plan Update, AG-20 and FR-40.<sup>111</sup>

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<sup>107</sup> FDO at 52, lines 13-18; AR 10508. (*Emphasis added.*)

<sup>108</sup> FDO at 43-52; AR at 10499-10508.

<sup>109</sup> *Id.*

<sup>110</sup> Ord. 2017-04-14; CAR 216-20.

<sup>111</sup> Ord. 2017-07-04; CAR 110-215.

Following briefing to the Board and its hearing on whether the County had achieved compliance with GMA by taking these and other measures, the Board issued its Order on Compliance, stating “Clark County repealed the ordinance amendments challenged in Issue 11, the Issue 11 challenge is moot, and the County’s action addressing the Issue 11 provisions must be found compliant. **With the County amendment in Ordinance 2017-07-04 regarding agricultural and forest lands, the Board finds and concludes that the County is now in compliance with RCW 36.70A.060 and RCW 36.707A.070 in regards to Issue 11.**”<sup>112</sup>

It is clear that the County addressed the FDO’s ruling of noncompliance. “Reducing parcel sizes” had violated GMA, held the FDO,<sup>113</sup> and so, first, the County adopted Ord. 2017-04-14 to prevent further vesting to the smaller parcel sizes. Then, the County amended its plan and code to enlarge the minimums to their previous dimensions. When a county repeals planning provisions that violate GMA and restores the prior compliant terms, the issue alleging violation is moot, as the Board has long ruled, and as the Compliance Order correctly ruled here.<sup>114</sup> Whatever mechanism was used to bring back into a pre-existing compliant

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<sup>112</sup> Compliance Order at 11 (footnote omitted; emphasis in original); CAR 1575.

<sup>113</sup> FDO at 52; AR 10508.

<sup>114</sup> *E.g., Friends of the San Juans v. San Juan County*, WWGMHB Case No. 16-2-0001, Order Finding Compliance and Closing Case (February 21, 2017)(“County repealed challenged ordinance, case is moot and must be dismissed.”)

provision makes no difference; what matters is that the noncompliance found by the FDO was fully addressed. Issue 11 was moot, because the FDO's basis for the ruling of noncompliance had been eliminated.<sup>115</sup> The Board could no longer provide effective relief to Futurewise regarding Issue 11<sup>116</sup> because Ord. 2017-07-04 had resolved the question whether the reduction in minimum lot sizes of resource lands complied with GMA.<sup>117</sup> The Compliance Order correctly interpreted and applied the law in ruling that Issue 11 was moot and the County's resource lands provisions complied with GMA as to that Issue.<sup>118</sup>

Substantial evidence in the record before the Board supported the Board's conclusion that the County had readopted previously compliant designations, rather than creating a new zoning scheme for resource lands. The Board stated that the resource lands lot sizes had been found compliant in the litigation following adoption of the County's 2007 comprehensive plan.<sup>119</sup> The record demonstrates that the County reapplied the AG-20 designation to hundreds of acres of land in the course of those proceedings, and that the Board found that the County's actions in that

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<sup>115</sup> *Hazen v. Yakima County*, WWGMHB Case No. 08-1-0008c, FDO (April 5, 2010) at 13-14 (amendment/repeal provides relief requested by petitioner and matter is moot).

<sup>116</sup> *See, e.g. Orwick v. Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984) (when court ruling can no longer provide effective relief, case is moot).

<sup>117</sup> *Westerman v. Cary*, 125 Wn.2d 277, 892 P.2d 1067 (1994).

<sup>118</sup> RCW 34.05.570(3)(d).

<sup>119</sup> Compliance Order at 11; CAR at 1574.

regard, and the resulting plan, complied with GMA.<sup>120</sup> Futurewise, a participant in the appeals following the 2007 Plan adoption, did not appeal the 2014 determination of compliance. Its statement now that the AG-20 designation was not at issue is contrary to historical fact, and the Board's finding must be upheld as based on substantial evidence.

The Board also ruled in 2006 that Clark County's first GMA comprehensive plan containing the AG-20 and FR-40 designations which had been at issue in the appeal of that plan, had complied with GMA.<sup>121</sup> Finally, in 2011, this Court observed that the Board had determined in 2004 that the County's Comprehensive Plan complied with GMA.<sup>122</sup> In these decisions, the Board and the Court held that AG-20 and FR-40 designations complied with GMA as protecting and conserving farmland and forestland of long-term commercial significance.

The Compliance Order's finding that the County's minimum lot sizes previously had been held compliant under GMA was correct, and was supported by the fact of numerous appellate rulings. Though it states disagreement with the Board's finding, Futurewise has not and cannot demonstrate that it lacked support by substantial evidence. Because substantial evidence supports the finding that the AG-20 and FR-40

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<sup>120</sup> *Karpinski*, Order on Compliance, *supra*, at note 93.

<sup>121</sup> *Achen*, Order on Compliance, *supra*, at note 93.

<sup>122</sup> *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.App. 204, 254 P.3d 862 (2011), *vacated in part*, 177 Wn.2d 136, 298 P.3d 704 (2013).

designations had been held compliant prior to the 2016 Plan Update, this Court defer to the Board's conclusion as correct.<sup>123</sup> The Board's holding that these designations comply with GMA and that Issue 11 is moot, and is correct. It is due substantial weight by the Court.<sup>124</sup> Futurewise has not shown that the Board's Order on Compliance was erroneous under RCW 34.05.570(3)(d) or (e), and is not entitled to relief from the Court.

The Board also fully resolved the question before it by its holding in the Compliance Order. Clark County's plan and code amendments responded to the FDO on Issue 11, which had held that the reduction in parcel sizes had violated GMA. After readopting the previously existing AG-20 and FR-40 designations, Clark County needed to take no other action to comply with GMA. The Board was correct to hold that Clark County's Ord. 2017-07-04 complied with GMA, in that the County's resource lands parcel sizes were no longer reduced.<sup>125</sup> The Board and Clark County have taken all the action required of them with regard to Issue 11.<sup>126</sup>

Futurewise has failed to satisfy its burden of proving that the Board's Compliance Order misinterpreted or misapplied the law, that it

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<sup>123</sup> RCW 34.05.570(3)(e); *Olympic Stewardship Foundation v. State Environmental and Land Use Hearings Office through W. Wash. Growth Mgmt. Hearings Board*, 199 Wn.App. 668, 686, 399 P.3d 562 (2017), *rev.denied*, 189 Wn.2d 1040 (2018).

<sup>124</sup> *Quadrant Corp.*, *supra*, 154 Wn.2d at 233.

<sup>125</sup> Ord. 2017-07-04; CAR 110-215; App. 3.

<sup>126</sup> RCW 36.70A.330(2); RCW 35.05.570(3)(f).

lacked support by substantial evidence, or that it did not resolve the issues before it in holding that Clark County's readoption of its pre-Update AG-20 and FR-40 designations complied with GMA. The Court should affirm the Compliance Order as to Issue 11; Futurewise is not entitled to relief.<sup>127</sup>

**B. Response to Cross-Assignments of Error 1 and 2 Regarding Issue 13, on Designation of Rural Lands Densities:**

**Clark County restored its pre-Update variety of Rural land designations, and thereby achieved compliance with GMA; the Board's ruling of compliance regarding Issue 13 should be upheld.**

- 1. Clark County's Plan designates a variety of rural densities that is the same as the Plan's compliant variety of rural densities that were designated before the 2016 Plan Update, rendering Issue 13 moot.**

In the 2016 Plan Update, Clark County revised its Rural plan designations from R-20, R-10, and R-5 (20-acre, 10-acre, and 5-acre minimum lot sizes, respectively) to Rural, implemented by R-20, R-10, R-5 zoning designations.<sup>128</sup> Futurewise Issue 13 contended that this aspect of the 2016 Plan Update violated GMA because the plan's "rural element fails to provide for a variety of rural densities and rural uses...."<sup>129</sup>

The FDO reviewed the Supreme Court's decision in *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.*,<sup>130</sup> which had questioned

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<sup>127</sup> RCW 34.05.570(1)(a), (3).

<sup>128</sup> AR 771-72.

<sup>129</sup> FDO at 54-55; AR 10510-11.

<sup>130</sup> 172 Wn.2d 144, 167, 256 P.3d 1193 (2011).

the legality of a plan allowing rural densities to be assigned by the zoning code or “whether the plan itself must... directly and prospectively provide for a variety of rural densities.”<sup>131</sup> Reasoning that a plain reading of the statute indicated that a variety of rural densities must be provided in the plan itself, the Board found that the County had failed to comply with RCW 36.70A.070(5).<sup>132</sup> The FDO stated as follows: “The Board finds and concludes, FOCC has carried its burden of proof showing the **County did not comply with RCW 36.70A.070(5) regarding a variety of rural densities.**”<sup>133</sup> (*Emphasis added.*)

To address the FDO ruling on Issue 13, Clark County first adopted Ord. 2017-04-14, which imposed a moratorium on land divisions and zone changes on Rural lands.<sup>134</sup> Ord. 2017-07-04 then readopted the three different Plan designations for Rural lands that had existed as a compliant variety of Rural densities before the 2016 Plan Update.<sup>135</sup>

This action eliminated the basis for the FDO’s ruling on Issue 13. Substantial evidence in the record demonstrates that the readopted R-5, R-10 and R-20 Plan designations had been (1) part of the County’s Plan

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<sup>131</sup> FDO at 57-58; AR 10513-14.

<sup>132</sup> The Board first stated that Futurewise had failed to brief the issue except as to (then) RCW 36.70A.070(5)(b), which stated the requirement for a variety of rural densities. FDO at 55; AR 10510. Futurewise thereby abandoned all other aspects of Issue 13.

<sup>133</sup> FDO at 58; AR 10514.

<sup>134</sup> CAR 216-20.

<sup>135</sup> CAR 110-215; Compliance Report, CAR 222-46.

immediately prior to the 2016 Plan Update,<sup>136</sup> and (2) part of the County's Comprehensive Plan that the Board had ruled compliant in 2006.<sup>137</sup> Substantial evidence therefore supports the conclusion that the readopted Rural designations are not new, but rather readopt the pre-Update compliant Plan provisions in response to the FDO.<sup>138</sup> The Compliance Order correctly ruled that Issue 13 was moot because the Board could not provide further effective relief to Futurewise regarding that Issue.<sup>139</sup>

**2. Clark County Readopted a Compliant Variety of Rural Plan Designations in Ord. 2017-07-04, and this Variety of Designations Complies with RCW 36.70A.070(5)(b).**

Because the readopted set of Rural Plan densities constituted a variety as required by RCW 36.70A.070(5)(b), the Compliance Order correctly held that the County had complied with Issue 13.<sup>140</sup>

GMA requires that a county comprehensive plan include a rural element that “provide[s] for a variety of rural densities...”<sup>141</sup> It does not specify what the densities must be. Former RCW 36.70A.070(5)(b) is permissive in explicitly allowing counties to employ a number of techniques to “accommodate appropriate rural densities and uses that are

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<sup>136</sup> See Amended Ord. 2016-06-12.

<sup>137</sup> See Letter from David McDonald for FOCC to Oliver Orjiako dated September 14, 2015 relating detailed history of litigation after the adoption of the 1994 Plan, AR 8871-86; also see Clark County Prehearing Brief on the Merits at 33-34; AR 8314-15.

<sup>138</sup> RCW 36.70A.300(3)(b).

<sup>139</sup> *Orwick v. City of Seattle*, *supra*, 103 Wn.2d at 254.

<sup>140</sup> RCW 34.05.570(d).

<sup>141</sup> RCW 36.70A.070(5)(b).

not characterized by urban growth and that are consistent with rural character.”

In construing the requirement for a variety of rural densities, the Court, like the Board, must ascertain the legislature’s intent in enacting that language.<sup>142</sup> Legislative intent is best determined by reading the statutory language in the context of the statute as a whole and of other related provisions.<sup>143</sup>

The requirement for an unspecified variety of Rural densities must be read to require what it says, and nothing more.<sup>144</sup> A variety complies with the law. The permissive terms of RCW 36.70A.070(5)(b) require counties to adopt “appropriate” Rural densities, rather than dictating particular densities. The Washington Supreme Court has ruled that the Board may not apply a bright-line rule to determine appropriate rural densities.<sup>145</sup> Rather, RCW 36.70A.3201 requires that the Board and reviewing courts defer to County discretion in planning for local growth under GMA.<sup>146</sup> Consistent with these guides to interpretation of GMA’s requirement that Plans provide for a variety of Rural densities, the Court

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<sup>142</sup> *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.* (Soccer Fields), 142 Wash.2d 543, 555, 14 P.3d 133 (2000).

<sup>143</sup> *Thurston County v. Cooper Point Ass’n*, 148 Wash.2d 1, 12, 57 P.3d 1156 (2002).

<sup>144</sup> *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, *supra*, 164 Wn.2d at 342 (discussion of necessity for strict construction of GMA).

<sup>145</sup> *Id.* at 359.

<sup>146</sup> *Quadrant Corp. v. Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 235-38, 110 P.3d 1132 (2005).

should uphold the Board's ruling that the readoption of compliant Rural densities had complied with GMA in regard to the one issue raised by Issue 13.

Futurewise complains that certain lands formerly designated R-20 were redesignated R-10 by the 2016 Plan Update, arguing that the current density of Rural lands is not the same as the former compliant density of Rural lands. Futurewise ignores that much Rural land adjoining resource lands in Clark County retains the R-20 designation. Since the adoption of Ord. 2017-07-04, the R-20 Plan designation applies to more than 1,000 acres of Clark County lands.<sup>147</sup> R-20 has hardly disappeared from Clark County. Again, RCW 36.70A.070(5)(b) does not require any particular overall density in Rural areas; it requires a "variety of densities" that are not characterized by urban growth, and that are consistent with rural character. The R-10 density is not characteristic of urban growth, and Futurewise has not alleged that it is inconsistent with the County's rural character. The Plan's Rural designations as a group do not offend GMA – they are a variety. The Board was required by RCW 36.70A.330(2) to determine that the Plan complied with GMA, and it correctly did so.

Even if the Compliance Order did not correctly state the basis of its determination of compliance, the evidence in the record and the law

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<sup>147</sup> Comprehensive Plan Map at App. 4.

support the Board's decision that Ord. 2017-04-07 established compliance with GMA regarding Issue 13, and it should therefore be affirmed.<sup>148</sup>

Futurewise has not demonstrated that the decision lacked evidentiary support,<sup>149</sup> or that the law was misinterpreted or applied to the facts.<sup>150</sup>

The Court should uphold the determination of compliance.<sup>151</sup>

Clark County's Comprehensive Plan provides for a variety of Rural densities, and the variety of densities is the same compliant variety of densities in the Plan prior to the 2016 Update. By its holding of compliance and mootness with respect to Issue 13, the Board correctly resolved all the issues before it regarding that Issue, as required by RCW 36.70A.330(2). Futurewise has failed to demonstrate that the Compliance Order was invalid with respect to Issue 13.<sup>152</sup>

**C. Response to Cross-Assignment of Error 3 Regarding Issues 11 and 13 on Resource and Rural Densities, Uses, and Vesting:**

**Clark County Readopted Compliant Resource and Rural Lands Designations that Directly Responded to the FDO's Determination of Noncompliance; the County Need not Revisit Designated Minimum Lot Sizes or Uses or Take Other Actions to Achieve Compliance With Issues 11 and 13.**

**1. Issues 11 and 13 Are Moot.**

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<sup>148</sup> *Whidbey Environmental Action Network v. Island County*, 122 Wn. App. 156, 168, 93 P.3d 885 (2004), *rev. den.* 153 Wn.2d 1025, 110 P3d 756 (2005).

<sup>149</sup> RCW 34.05.570(3)(e).

<sup>150</sup> RCW 34.05.570(3)(d).

<sup>151</sup> RCW 34.05.570(1), (3).

<sup>152</sup> RCW 34.05.570(3)(f).

The Board correctly interpreted and applied GMA, made determinations supported by substantial evidence in the record, and resolved the issues before it when it held that Clark County's readoption of AG-20, FR-40, R-5, R-10, and R-20 Plan designations had mooted Issues 11 and 13.<sup>153</sup> As a result, the Board correctly rejected the Futurewise arguments that Clark County should be required to make further revisions to its minimum lot size designations in order to achieve compliance with those Issues. Futurewise argues that in order to satisfy the GMA mandate to conserve and protect farmland, the County must double its long-compliant Agricultural minimum, increase by 25% its long-compliant Forest Tier II minimum, and revise its Rural designations. Clark County does not concede that these arguments are well-founded, but even if they were, the Board was right not to consider them. Issues 11 and 13 are moot, and Futurewise cannot tie these arguments to other any other appellate issues. Futurewise has not met its burden of proof under RCW 34.05.570(1) and (3) to demonstrate that the Board's action finding that the County's pre-Update Plan designations are invalid or that they present live issues.

**2. The Attack on Clark County's Resource and Rural Lands Designations is an Impermissible Failure to Revise Challenge to the County Plan.**

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<sup>153</sup> Compliance Order at 12; CAR 1575.

A party seeking review of a county's comprehensive plan amendments is not free to challenge all the pre-existing provisions of the plan that previously have been found compliant with GMA. Unless GMA has been amended in a manner that directly affects compliant provisions, the county is not required to revise them. This is the rule established by the Washington Supreme Court in *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 336, 190 P.3d 38 (2008), and that rule applies in this case.

Before 2016, Clark County's AG-20 and FR-40 designations were most recently and specifically found GMA-compliant as applied to the County's resource lands in 2014 and 2006, respectively.<sup>154</sup> The entire comprehensive plan, including the R-5, R-10, and R-20 designations, as well as the resource lands designations, was found compliant in 2006.<sup>155</sup> GMA has not been amended in a manner that affects the County's resource or Rural lands designations since 2006. Those designations are not new. The rule in *Thurston County*, therefore, applies.

In this case, Futurewise petitioned the Board that the 2016 Plan Update had violated GMA by reducing resource minimum lot sizes and

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<sup>154</sup> Notes 93 and 120-122, *supra*, and related text.

<sup>155</sup> *Id.*

adopting a single Rural Plan designation.<sup>156</sup> The Board held that those actions had violated GMA, and Clark County acted promptly to correct them by readopting the previously compliant resource and Rural designations.<sup>157</sup> Futurewise refers to the AG-20 and FR-40 designations that were first established in Clark County's Comprehensive Plan approximately 20 years ago as "newly adopted" and the "new AG-20 and FR-40 zones."<sup>158</sup>

Clark County's initial work to adopt resource and Rural planning under GMA, and the related subsequent appeals, extended from GMA's effective date in 1990 to 2006.<sup>159</sup> The result of that appellate litigation was the very scheme for resource and Rural lands that Futurewise now asserts violate GMA, citing primarily academic work that did not examine or address conditions in Clark County.<sup>160</sup> If readoption of compliant provisions is insufficient under GMA, and Clark County must now revisit its entire Comprehensive Plan and development regulations for resource and Rural lands, the result will be punitive; for years, it will waste resources, and destabilize planning efforts in the County. The Court should reject the attempt by Futurewise to require such an exercise.

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<sup>156</sup> Issues 11 and 13, App. 1.

<sup>157</sup> Compliance Report at CAR 222-46.

<sup>158</sup> Futurewise Brief at 73-74 and 86.

<sup>159</sup> Note 137, *supra*.

<sup>160</sup> Futurewise Brief at 79-83.

The Board correctly ruled that AG-20, FR-40, R-5, R-10, and R-20 designations are not subject to challenge by Futurewise, and this Court should uphold that ruling. Appealing compliant Plan provisions, which have been readopted after the Board has ruled that their amendment violated GMA, is equivalent to reopening the litigation that followed their initial adoption. Even if Futurewise believes that Clark County could plan its nonurban lands differently, or better, the time to challenge the AG-20, FR-40, and the Rural designations was within 60 days of when they were first adopted.<sup>161</sup> In the current challenge Futurewise asserts that Clark County should revise its long-compliant designations, which is precisely the counterproductive growth management litigation that the *Thurston County* Court ruled against.<sup>162</sup>

**3. With One Exception, the Uses Allowed in Clark County's Resource Zones Did Not Change in Either the 2016 Plan Update or in Ord. 2017-07-04; They Cannot Be Challenged.**

A review of Appendices 2 and 3 attached to this brief reveals the extent to which the development regulations governing uses permitted in Clark County's Agriculture and Forest zones were changed, first by the 2016 Plan Update, and then by Ord. 2017-07-04: with one exception, they were not changed at all. Futurewise argues that the uses allowed in AG-20

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<sup>161</sup> RCW 36.70A.290(2).

<sup>162</sup> *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d at 344-45.

and FR-40 (some of which are not actually permitted in those areas)<sup>163</sup> fail to conserve resource lands.<sup>164</sup> If that is so, which the County does not concede, those uses have not changed by virtue of amendments to the numbers at the tops of the columns in the table.<sup>165</sup> With one exception, every single use of which Futurewise complains was allowed prior to the Update, and has been allowed since the update.<sup>166</sup> Assigning error to the unrevised uses allowed in AG-20 and FR-40 lands is a classic failure to revise challenge, and is not permitted in an appeal under GMA.<sup>167</sup>

The exception to the generally unchanged nature of the uses allowed on resource lands was to allow cluster land divisions on AG-10 and FR-20 lands, which had not previously been permitted in AG or FR areas.<sup>168</sup> Ord. 2017-07-04, which replaced AG-10 and FR-20 with the former AG-20 and FR-40 designations, retained the cluster land division provisions of county code, which now apply in AG-20 and FR-40 land.<sup>169</sup> RCW 36.70A.177(1) provides that a county “may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance...” RCW 36.70A.177(2)(b) explicitly

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<sup>163</sup>Futurewise Brief at 86; New cemeteries, etc. Table 40.210.010-1. Uses, 9.g; CAR 125; App. 3 at 125.

<sup>164</sup>Futurewise Brief at 79.

<sup>165</sup>AR 258-62; App. 2. CAR 123-126; App. 3.

<sup>166</sup>*Id.*

<sup>167</sup>*Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d at 344-45.

<sup>168</sup>Amended Ord. 2016-06-12 at 29-32; AR 266-70; App. 2.

<sup>169</sup>*See* Ord. 2017-07-04, CAR110-215 (cluster land divisions not repealed).

endorses “cluster zoning” as an innovative technique that can conserve farmland by allowing new development on one portion of the land, leaving the remainder in agriculture or open spaces.

For example, pursuant to RCW 36.70A.177 and the cluster provisions in Clark County’s zoning code, a vacant 100-acre AG-20 parcel could be divided into six new lots, comprising five 1-acre residential lots, and one unbuildable remainder parcel of 95 contiguous acres. The remainder would be subject to a farm or forest management plan, and it would be indivisible unless the land were brought into an urban growth area.<sup>170</sup> This would protect and conserve a far larger area of agricultural land than even Futurewise, which urges 40-acre agricultural minimum lot sizes, would require. To further conserve agricultural lands, and in compliance with RCW 36.70A.177(1), the cluster lots on which houses may be built must be located on poor farm soils, and adjacent to each other and to any preexisting residence.<sup>171</sup> They must be along a property boundary line, and adjacent to existing roads.<sup>172</sup> Cluster subdivisions must minimize conflicts between housing and agricultural or forest uses, and each cluster lot must contain a buffer from abutting resource uses.<sup>173</sup>

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<sup>170</sup>AR 267-69.

<sup>171</sup>AR 266-69.

<sup>172</sup>AR 267.

<sup>173</sup>AR 267-69.

The cluster subdivision described here is the only sort of “residential subdivision” allowed on AG-20 and FR 40 lands, and of which Futurewise complains.<sup>174</sup> It is also the only substantive revision made by the 2016 Plan Update to the use list for Agricultural and Forest Tier II lands. The *Soccer Fields*,<sup>175</sup> *Lewis County*<sup>176</sup> and *Kittitas County*<sup>177</sup> cases cited by Futurewise all concerned situations in which “no limiting criteria or standards” existed in order to protect agricultural land from harmful uses. In contrast to those cases, if a cluster land division occurs in Clark County, regulations protect and conserve agricultural and forest lands on the sites themselves, and on nearby properties. The allowance of cluster land divisions by Clark County does not violate GMA, and is correctly distinguished from the court cases Futurewise raises.

**4. GMA Does Not Require Clark County to Take Action Other Than the Replacement of Noncompliant AG-10 and FR-20 With Compliant AG-20 and FR-40; *Miotke v. Spokane County* Does Not Apply to This Case.**

In *Miotke v. Spokane County*, 181 Wn. App. 369, 325 P.3d 434 (2014), this Court ruled that Spokane County could not comply with GMA by simply repealing a noncompliant urban growth area expansion when

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<sup>174</sup> Futurewise Brief at 86.

<sup>175</sup> *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, *supra*, 142 Wn.2d 543.

<sup>176</sup> *Lewis Count. v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488 (2006).

<sup>177</sup> *Kittitas County. v. E. Wash. Growth Mgmt. Hearings Bd.*, *supra*, 172 Wn.2d 144 (2011).

urban development had vested in an island expansion area. The Court concluded that repeal alone did not address the GMA violation manifested by vested development.<sup>178</sup> The *Miotke* decision cited herein is the last appellate decision concerning that dispute, and it does not state what, exactly, the Court would require Spokane County to do under GMA. Futurewise seeks a ruling that Clark County should be required to do something more to “fix” the GMA violation of reducing minimum lot sizes for resource lands, appealed as Issue 11 before the Board.<sup>179</sup> The Board has correctly ruled, however, that Issue 11 is moot, and therefore the Board also correctly declined to consider questions under Issue 11. The question of whether the Board ruled correctly is a question of law under RCW 34.05.570(d), and the Court should give weight to the Board’s Compliance Order that did not require further County action by reason of the *Miotke* rule.

*Miotke* should not be cited as requiring any action by a County except when the underlying dispute under GMA is substantially similar. The basis of the dispute in this case is very different from that in *Miotke*. In that case, urban development had vested in resource land, and the opinion does not reveal that any applicable county regulations required any measures to protect the resource land from the impacts of

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<sup>178</sup> *Miotke v. Spokane County*, 181 Wn. App. 369, 384-85, 325 P.3d 434 (2014).

<sup>179</sup> Futurewise Brief at 87.

incompatible development. GMA contains no provisions that would endorse urban development in such a location.

In contrast, cluster land divisions are specifically named by GMA as an appropriate innovative technique to protect farm land (the large remainder parcels, in particular).<sup>180</sup> In Clark County cluster subdivisions have vested to a noncompliant density for resource lands, but development regulations require that non-farm cluster development occur on poor soils and that farmland be protected from adverse impacts.<sup>181</sup> Further, Futurewise has not presented evidence that almost 2 ½ years after they were first allowed, even one cluster land division has been permitted. It is a matter of speculation whether any such permit will issue, and if it does, the impacts of that development on resource land will be nothing like the impacts addressed in *Miotke*.

The Board correctly ruled as to Issue 11 that Clark County had come into compliance by readopting its AG-20 and FR-40 designations. Futurewise has not met its burden of demonstrating that the County should be required to take some additional unknown action under *Miotke* to address vested applications.<sup>182</sup> The Court should affirm the Compliance Order as to all issues arising from Issue 11.

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<sup>180</sup> RCW 36.70A.177.

<sup>181</sup> AR 266-29.

<sup>182</sup> RCW 34.05.570(1), (3).

**D. Response to Cross-Assignment of Error 4.**

**The Compliance Order Correctly Found that AG-20 was Applied and Found Compliant in the 2007 Plan Appeal; FR-40 was Found Compliant in 2006.**

In the resolution of the appeals following Clark County's 2007 Comprehensive Plan Update certain AG-20 lands that the County had dedesignated were redesignated AG-20, and the Board held those redesignations to be compliant with GMA.<sup>183</sup> Surprisingly, given that Futurewise was a party to the appeals, cases it cites to the contrary did not address the redesignations, or the Board's Orders on Compliance, and are therefore irrelevant to its contentions.<sup>184</sup> The Board's correct finding that AG-20 was found compliant in the appeals of the 2007 Plan was supported by substantial evidence in the record.<sup>185</sup>

In 2006, the Board held that the County's initial Comprehensive Plan, which had established the FR-40 designation, complied with GMA.<sup>186</sup> Even if that holding did not occur in resolution of the 2007 Plan Update, the evidence in the record supports the substance of the factual

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<sup>183</sup> Note 93 and related text, *supra*.

<sup>184</sup> Futurewise Brief at notes 416-417 and related text.

<sup>185</sup> Note 93 and related text, *supra*, citing, *Karpinski v. Clark County*, Order Finding Compliance and Closing Case.

<sup>186</sup> Note 93 and related text, *supra*, citing, *Achen v. Clark County*, Order Finding compliance and Closing Case.

conclusion: the Board has ruled that the FR-40 designation complies with GMA. The Court should not reverse a finding supported by the record.<sup>187</sup>

## VI. CONCLUSION

With respect to Clark County's request that the Court overturn the holdings of noncompliance and invalidity with respect to the urban growth area expansions by Ridgefield and La Center, issues related to those matters are moot. Neither the Board nor the Court can order the County to take action to cure noncompliant urban expansions when the expansion areas have been brought within the incorporated limits of the city, as they were by both of those cities. Annexed areas are planned by cities in Washington, not counties. The Board's rulings of noncompliance and invalidity as to Issues 5 and 10 should be reversed and remanded to the Board with instructions to issue of an order dismissing those Issues and holding the County GMA-compliant with respect to them.

Likewise, the Board's rulings of noncompliance and invalidity, based upon improper dedesignation of land for the County Rural Industrial Land Bank are erroneous. As a matter of law, and supported by substantial evidence in the record, Clark County demonstrated that it properly designated the Rural Industrial Land Bank property for industry pursuant to RCW 36.70A.367. The Court should reverse the Board's holding on

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<sup>187</sup> *Spokane County v. E. Wash. Growth Mgmt. Hearings Bd.*, *supra*, 176 Wn.App. 555.

Issue 19, and remand it to the Board with instructions to find the County in compliance with GMA.

In the 2016 Plan Update, Clark County reduced minimum lot size Plan designations in its resource zones and adopted a single Rural Plan designation. After these actions were challenged in Futurewise Issues 11 and 13, Clark County readopted in Ord. 2017-07-04 the precise designations for resource lands that had been applied to them immediately before the 2016 Plan Update, and had held to be compliant with GMA. Clark County thoroughly and directly addressed the Board's holding of noncompliance with respect to resource lands. Resource uses and development standards were generally not revised by the Update. Cluster land divisions are endorsed by RCW 36.70A.177, and limited by County development regulations to protect resource land from impacts of incompatible development. The Compliance Order correctly held that the County is not required to take further action to comply with GMA's requirements for resource lands and its holding as to Issue 11. The Court should affirm the Compliance Order with respect to all aspects of Issue 11.

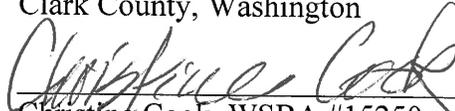
The gist of Issue 13 was that Clark County had eliminated three Plan designations for Rural lands, and adopted in their places, a single Plan designation. In response to the FDO's holding that a variety of designations for Rural lands are required in the Comprehensive Plan, in

Ord. 2017-07-04, Clark County readopted in its Plan its previous compliant three designations for Rural lands. The Compliance Order correctly held that Clark County complies with GMA with respect to Issue 13. The Court should affirm the Compliance Order with respect to all aspects of Issue 13.

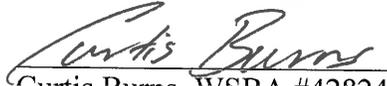
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**CERTIFICATE OF SERVICE**

I, Thelma Kremer, hereby certify that on this 5th day of November, 2018, I electronically filed the foregoing *Brief of Petitioner/Cross-Respondent Clark County and Appendices 1, 2, 3 and 4* using the Washington State JIS Appellate Courts' Portal, which will send notification of such filing to the following:

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DATED this 5th day of November, 2018.

  
Thelma Kremer, Legal Secretary

# CLARK COUNTY PROSECUTING ATTORNEY

November 05, 2018 - 4:32 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50847-8  
**Appellate Court Case Title:** Friends of Clark County and Futurewise, Appellants v Clark County, et al, Respondents  
**Superior Court Case Number:** 17-2-00929-0

### The following documents have been uploaded:

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Briefs - Petitioners  
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### Comments:

Brief of Petitioner/Cross-Respondent Clark County

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# APPENDIX 1

## GMHB ISSUES

### Public Participation and Process

1. Did the County's adoption of the 2016 Plan Update violate RCW 36.70A.020(11), RCW 36.70A.035, RCW 30.70A.106(3)(a), RCW 36.70A.130(2) and RCW 36.70A.140 and WAC 365-196-600 when the County began work on the 2016 Plan Update before the County adopted its public participation program in January 2014 and, subsequently, failed to provide open and timely access to the 2016 Plan Update process and underlying analysis? [CCCU No. A]
2. Does the 2016 Plan Update violate public participation requirements of the GMA (including RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.106(3)(a), RCW 36.70A.130(2) and RCW 36.70A.140 and WAC 365-196-600) in routinely and systematically excluding rural and resource landowners? [CCCU No. D]
3. Does the 2016 Plan Update violate GMA goal number 6 when Clark County failed to adequately consider the property rights impacts the Ordinance would have on the county's rural and resource landowners? *See* RCW 36.70A.020(6) (GMA goal number 6: "Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions"). [CCCU No. K1]
4. Did the County violate RCW 36.70A.106 and WAC 365-196-630 which it approved the 2016 Plan Update fewer than 60 days after forwarding the 2016 Plan Update to the Washington Department of Commerce? [CCCU No. L]

### Urban Growth

5. Did the adoption of Amended Ordinance 2016-06-12 expanding the Battleground, La Center, and Ridgefield urban growth areas violate RCW 36.70A.020(1), (2); RCW 36.70A.070 (internal consistency); RCW 36.70A.110(1), (2), (3); RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW 36.70A.210(1); or RCW

36.70A.215(1)(b) because the expansions were not needed to accommodate the planned growth and Buildable Lands reasonable measures were not adopted and implemented? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, pp. 11-13, pp. 14-15, pp. 26-29, pp. 41-46, pp. 267-68, Figure 12, Figure 14, Figure 15, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 1]

6. Did Amended Ordinance 2016-06-12's adoption of the Urban Reserve Overlay and the Urban Reserve-10 (UR-10) and Urban Reserve-20 (UR-20) zoning districts, the repeal of the Urban Reserve-40 (UR-40) zoning district, and the application of the overlay and districts to rural and natural resource lands violate RCW 36.70A.020(2) (8), (10); RCW 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (preamble), (1), (5); RCW 36.70A.110(1); RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); or WAC 365-196-815 because the land is not needed to accommodate planned urban growth and the overlay and zoning does not conserve natural resource lands or comply with the requirements for rural areas? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, pp. 12-13, pp. 36-38, pp. 96-97, p. 192, p. 228, p. 239, p. 365, Figure 12-18, Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]; Exhibit 5; Exhibit 6; Exhibit 8; and Exhibit 23. [FOCC/FW No. 5]
7. Does the annexation of land within an urban growth area expansion under appeal violate RCW 36.70A.020(1), (2), (8); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency), (1); RCW 36.70A.110; RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.215(1), (2), (3), (4); or any other applicable provision of state law? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, pp. 11-13, pp. 14-15, pp. 26-29, pp. 41-46, pp. 267-68, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County,

Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 12]

8. Does the 2016 Plan Update violate RCW 36.70A.110 because the County unlawfully relied on population projections by the Office of Financial Management which do not take into account the population influences resulting from Clark County's proximity to the Portland, Oregon metropolitan area? [CCCU No. I]
9. Does the 2016 Plan Update violate RCW 36.70A.030(16), RCW 36.70A.070(5)(b), and RCW 36.70A.177 when historical remainder parcels in rural developments are included in urban growth areas as potentially developable? [CCCU No. J]

## **Rural and Resource Lands**

### **Resource Lands:**

10. Did the adoption of Amended Ordinance 2016-06-12 including the de-designation of 57 acres of agricultural land of long-term commercial significance in the La Center urban growth area expansion and 111 acres in the Ridgefield urban growth area expansion, violate RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.210(1); WAC 365-190-040(10)(b); or WAC 365-190-050 or is the de-designation inconsistent with the Clark County comprehensive plan? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, pp. 10-12, pp. 14-15, pp. 43-44, pp. 84-86, pp. 94-95, Figure 14, Figure 15, Figure 22A, Figure 22B, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 2]
11. Did Amended Ordinance 2016-06-12's amendments to the comprehensive plan including the land use, rural, and capital facility plan elements, amendments to the Agriculture 20 (AG-20) District to create the Agriculture 10 (AG-10) District, amendments to the Forest 40 (FR-40) District to create the Forest 20 (FR-20)

District, related rural rezones, or the allowed uses, densities, or development standards applicable to the AG-10 or FR-40 districts, including but not limited to CCC 40.210.010B and E, violate RCW 36.70A.020(8), (10); RCW 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.070(1), (3), (5); RCW 36.70A.130(1), (5); WAC 365-196-815 or WAC 365-196-825 because they fail to conserve farm and forest land, protect the quality and quantity of groundwater used for public water supplies, or are inconsistent with the comprehensive plan? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, pp. 18-19, Chapter 1 Land Use Element, Chapter 3 Rural and Natural Resource Element, Chapter 6 Capital Facilities and Utilities Element, Figure 22A, Figure 22B, and Figure 24A; Exhibit 3 County/UGA Zoning Clark County, Washington [map]; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 25; Exhibit 26; Exhibit 28; Exhibit 30; Exhibit 31; Exhibit 32; Exhibit 33; Exhibit 34; Exhibit 35; Exhibit 36; Exhibit 37, Exhibit 38; and Exhibit 39. [FOCC/FW No. 3]

12. Does the 2016 Plan Update violate WAC 365-195-050 and -060 in its designations of agriculture and forest lands, and in its amendment of resource-related development regulations and amended zoning maps, when the 2016 Plan Update relies on late-completed Clark County Issue Paper #9 which excluded meaningful public participation regarding soils considerations mandated by the GMA, when the findings and conclusions in Issue Paper #9 are not supported by fact, and when the 2016 Plan Update disregards and misapplies predominant parcel size, use capability, and long-term commercial significance? [CCCU No. E]

### **Rural Lands**

13. Did Amended Ordinance 2016-06-12's adoption of a single "Rural," comprehensive plan designation, excluding limited areas of more intense rural development and similar categories, in the land use and rural elements and on Exhibit 2 the "County/UGA Comprehensive Plan Clark County, Washington" map, the county's future land use map, violate RCW 36.70A.020(2), (9), (10); RCW 36.70A.070 (preamble), (1), (5); or RCW

36.70A.130(1), (5) because the rural element fails to provide for a variety of rural densities and rural uses? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, p. 10, pp. 14-15, p. 31, pp. 36-45, Chapter 3 Rural and Natural Resource Element, and Figure 24A; and Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]. [FOCC/FW No. 4]

14. Does the 2016 Plan Update violate the GMA and interpreting case law because the County unlawfully applied assumptions from a rural vacant buildable lands model (RVBLM) to cap rural growth projections? RCW 36.70A.110(2); WAC 365-196-425(2); *Clark County Natural Resources Council v. Clark County Citizens United, Inc.*, 94 Wn. App. 670, 675-77, 942 P.2d 941 (1999). [CCCU No. F]
15. Does the 2016 Plan Update violate WAC 365-196-425 in its designations of rural lands, and in its amendment of rural-related development regulations and zoning maps, when the 2016 Plan Update disregards and misapplies predominant parcel size and density and rural character? [CCCU No. G]
16. Does the 2016 Plan Update violate WAC 365-196-425(3)(a) and 365-196-210(27) because the County relied on a 90/10 urban to rural population split projection when the historical population allocation has averaged closer to an 85 urban / 15 rural split? [CCCU No. H]

### **Industrial Land Banks**

17. Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.367(6) and RCW 36.70A.130(1)(d) because the industrial land banks were designated after the deadline in RCW 70A.367(6) and RCW 36.70A.130(4)? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, p. 31, pp. 36-37, p. 97, p. 228, p.402, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 9]

18. Did the adoption of Amended Ordinance 2016-06-12 violated RCW 36.70A.130(1), (3), (5); RCW 36.70A.210(2), (3); the applicable provisions of RCW 36.70A.365(2); or RCW 36.70A.367(1), (2), (3), (4), (7) by failing to comply with the procedural and substantive requirements for industrial land banks? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, p. 31, pp. 36-37, p. 97, p. 228, p. 402, Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 11]
19. Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.130(1), (5); RCW 36.70A.170; WAC 365-190-040(10)(b); WAC 365-190-050; or is the ordinance inconsistent with Clark County comprehensive plan because it de-designated approximately 602.4 acres of agricultural lands of long-term commercial significance? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035, pp. 10-12, pp. 14-15, p. 31, pp. 36-37, pp. 43-44, pp. 84-86, pp. 94-95, p. 97, p. 228, p. 402, Figure 22A, Figure 22B, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County Washington [map]. [FOCC/FW No. 10]

### **Challenges to Specific Elements of the 2016 Plan Update**

20. Did Amended Ordinance 2016-06-12's adoption of the transportation element, including an admitted deficit of \$158,104,000 for the 20-year transportation facility plan,<sup>1</sup> violate RCW 36.70A.020(3), (12); RCW 36.70A.070 (preamble), (1), (6); or RCW 36.70A.130(1), (3), (5)? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, Chapter 5 Transportation, Appendix A Transportation Issues, Appendix E

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<sup>1</sup> Exhibit 1, *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, Chapter 5, Transportation at 160.

Capital Facility Plans Review, Appendix G: Capital Facilities Financial Plan, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 6]

21. Did Amended Ordinance 2016-06-12's adoption of the capital facilities plan element violate RCW 36.70A.020(1), (12); RCW 36.70A.070 (preamble), (1), (3); or RCW 36.70A.130(1), (3), (5) because it does not comply with the requirements for capital facility plan elements? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*, Chapter 6 Capital Facilities and Utilities Element, Appendix E Capital Facility Plans Review and Analysis, Appendix G: Capital Facilities Financial Plan, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 7]
22. Does the 2016 Plan Update violate RCW 36.70A.100, RCW 36.70A.210, and WAC 365-196-305 because the 2016 Plan Update relies, in part, on amended countywide planning policies and an amended community framework plan, without the County first adopting a process to amend or update the CPPs or CFP that were incorporated in the 2016 Plan Update? [CCCU No. B]

### **Environmental Issues**

23. Did Amended Ordinance 2016-06-12's adoption of the comprehensive plan's Chapter 4 Environmental Element and the failure to review and if necessary revise Subtitle 40.4 Clark County Code (CCC), Critical Areas and Shorelines, violated RCW 36.70A.020(9), (10); RCW 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(2), (3); RCW 36.70A.130(1), (5), (7); RCW 36.70A.170; RCW 36.70A.172(1); WAC 365-190-080; WAC 365-190-090; WAC 365-190-100; WAC 365-190-110; WAC 365-190-120, WAC 365-190-130; WAC 365-195-905; WAC 365-195-915; WAC 365-196-485; or WAC 365-196-830 because they fail to adequately designate and protect critical areas, [sic] See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035*

Chapter 4 Environmental Element and Figures 7 and 8.  
[FOCC/FW No. 8]

24. Does the 2016 Plan Update violate RCW 43.21C.031 because the County never adopted or completed required review under the State Environmental Policy Act of the Growing Healthier Report, the Aging Readiness Plan, the Agriculture Preservation Strategies Report, and the Clark County Bicycle and Pedestrian Plan prior to relying on them in the 2016 Plan Update? [CCCU No. C]
  
25. Does the 2016 Plan Update violate RCW 43.21C.031 when the County failed to conduct environmental review under the State Environmental Policy Act on the remnants from approximately 36,000 square acres of land that were erroneously designated as agri-forst under the County's 1994 Comprehensive Plan? [CCCU No. K2]

# APPENDIX 2

1  
2  
3 **AMENDED ORDINANCE NO. 2016-06-12**

4 **An ordinance relating to land use; adopting an updated Growth**  
5 **Management Comprehensive Land Use Plan, zoning maps and zoning**  
6 **ordinances; providing for severability; providing an effective date; and**  
7 **requiring notice.**

8 THE COUNTY COUNCIL OF CLARK COUNTY, STATE OF WASHINGTON,  
9 does hereby ordain as follows.

10  
11 **1. RECITALS AND FINDINGS**

12  
13 1.1 Clark County is required to review and, if needed, revise its comprehensive plan, in  
14 accordance with the goals and requirements of RCW 36.70A (the Growth Management  
15 Act, or GMA) by June 30, 2016. The County's comprehensive plan is required to include  
16 maps and descriptive text covering the objectives, principles and standards used to  
17 develop the essential elements of the plan. GMA directs counties to adopt urban growth  
18 areas (areas within which urban growth is encouraged and outside of which only non-  
19 urban growth can occur) and to address these areas in the countywide planning policies.  
20 GMA mandates the county's identification and designation of critical areas and  
21 agricultural, forest, and mineral resources lands, together with the adoption of protective  
22 regulations. GMA further mandates that there be early and continuous public  
23 involvement, and the County adopted the Clark County Public Participation Plan by  
24 Resolution 2014-01-10.

25  
26 1.2 Consistent with the State Environmental Policy Act (SEPA) at Chapter 43.21C  
27 RCW, the County issued on April 27, 2016 its Final Supplemental Environmental impact  
28 Statement (FSEIS) on the Clark County 2016 Comprehensive Growth Management Plan  
29 Update (2016 Plan Update). The FSEIS was preceded by a Draft Supplemental  
30 Environmental Impact Statement (DSEIS) analyzing four alternatives (August 2015). A  
31 joint public hearing on the DSEIS was held on September 3 and 10, 2015 by the County  
32 Council and the Planning Commission. The Planning Commission deliberated and  
33 made a recommendation on a preferred alternative on September 17, 2015. After  
34 Alternative 4 was modified, the Planning Commission held a second hearing at the  
35 Council's request on November 19, 2015. The Council at a hearing on February 23, 2016  
36 decided on a preferred alternative.

37  
38 1.3 Pursuant to RCW 36.70A.110, the County adopted population projections based  
39 on the range of estimates provided by the State Office of Financial Management  
40 (Resolutions 2014-01-09, 2014-06-17, 2015-04-05, and 2016-03-01); and examined its  
41 Urban Growth Areas (UGAs) to ensure a 20-year land supply (out to 2035) to  
42 accommodate population and job growth (Resolution 2014-04-01). The 2016 Plan  
43 Update reflects principles and values adopted at the outset of the update process  
44 (Resolution 2014-06-17).

45  
46 1.4 Pursuant to RCW 36.70A.215, the County submitted the 2015 Buildable Lands  
47 Report on June 11, 2015 to Washington State Department of Commerce (Commerce),  
48 satisfying the GMA requirement to review and evaluate the adequacy of suitable  
49 residential, commercial and industrial lands inside the Urban Growth Area for  
50 accommodating projected 2035 population and employment growth during the 20-year  
51 GMA planning horizon.

1  
2 1.5 Copies of the County's draft 2016 Plan update were submitted to the state more  
3 than sixty days (60) prior to final adoption.  
4

5 1.6 The County Council and the Planning Commission held a duly advertised joint  
6 public hearing on the comprehensive plan update on May 19 and 24, 2016. The  
7 Planning Commission held a duly-advertised public meeting on June 2, 2016 to  
8 deliberate and make its recommendation to the County Council. The Council held a  
9 duly-advertised public hearing on June 21, 2016 to consider the Planning  
10 Commission recommendation and to deliberate.  
11

12 1.7 The County Council finds that all GMA prerequisites for the revisions in the 2016  
13 Plan Update have been met and that the 2016 Plan Update adopted herein achieves the  
14 goals and satisfies the requirements of the GMA, as follows:  
15

16 1.7.1 Compliance with the Required Elements of the Comprehensive Plan. The  
17 2016 Plan Update includes all of the following required elements: Land Use, Housing,  
18 Capital Facilities and Utilities, Rural and Natural Resources, Transportation, Economic  
19 Development, Parks and Open Space, and Shoreline Policies. In addition, the 2016 Plan  
20 Update also contains the following optional elements: Environment, Historic  
21 Preservation, Schools, Community Design, Annexation, and Procedural Guidelines.  
22

23 1.7.2 Compliance with Resource and Critical Areas Designations and  
24 Regulation. The County designated agriculture and forest land on the comprehensive  
25 plan and zoning maps, and has provisions in Clark County Code (CCC) Chapter 40.210,  
26 Resource and Rural Districts, to adequately protect resource lands. The 2016 Plan  
27 Update includes a change in the minimum parcel size for resource lands, as follows:  
28 A. The minimum parcel size on lands zoned for agriculture (AG-20) is reduced  
29 from 20 acres to 10 acres (AG-10).  
30 B. The minimum parcel size on lands zoned for forest (FR-40) is reduced from  
31 40 acres to 20 acres (FR-20).  
32

33 The County has considered a number of resources, including Agricultural Preservation  
34 Strategies Report, 2010, Rural Lands Study: Assessment of Agriculture and Forestry in  
35 Clark County, BERK 2012, and the 2016 update of the Clark County Agriculture and  
36 Forest Land Inventory and Analysis (2016, BERK). Clark County has the second highest  
37 percentage of very small farms in the State. Family farming is critical to the continued  
38 viability of the agricultural community in the County. The authorization for 10-acre lot size  
39 will facilitate more affordable owner-occupied family farms. This continues to reflect the  
40 unique structure of farming in Clark County. The BERK Reports further document support  
41 for the Forest Land lot size.  
42

43 To implement this change, property owners may use the innovative zoning technique of  
44 clustering as allowed by RCW 36.70A.177(2)(b).  
45

46 1.7.3 Public Participation. The public participation requirements of the GMA at  
47 RCW 36.70A.140 have been met through an extensive public involvement process that  
48 included the following:

- 49 • Technical Advisory Committee comprised of planners from the cities,  
50 who met monthly to discuss planning issues of a technical nature.
- 51 • Three rounds of public meetings (August 2014 (scoping); October 2014

1 revise urban growth area boundaries, and adopted such boundaries for each city  
2 consistent with the countywide planning policies. Further, the county provided  
3 notification to surrounding jurisdictions of its 2016 Plan Update development  
4 process. The County has achieved consistency with adopted countywide planning  
5 policies.  
6

7 1.8 The draft 2016 Plan Update was filed with Commerce within the required  
8 time frame. Commerce received notice of the county's intent to adopt a comprehensive  
9 plan under the GMA on April 29, 2016. Comments were received from Commerce on  
10 June 20, 2016. Commerce's comments were considered in the 2016 Plan Update.  
11

12 1.9 The County has adequate development regulations in place through Clark  
13 County Code Title 40, the Unified Development Code. Adoption of updates to zoning  
14 ordinances and other measures necessary to implement the Comprehensive Plan are  
15 adopted as part of this ordinance.  
16

17 1.10 Capital facilities plans for service providers (including school districts,  
18 public safety, parks, water, sewer, and transportation) satisfy GMA requirements, and  
19 incorporated into the 2016 Plan Update.  
20

## 21 22 **2. COMPREHENSIVE PLAN ADOPTION**

23  
24 2.1 **Adoption of the updated Clark County Comprehensive Plan.** The 2016  
25 Plan Update is hereby adopted as the County's current 20-year land use plan and the  
26 GMA Comprehensive Plan for Clark County.  
27

28 2.2 **Plan Components.** The County Comprehensive Land Use Plan, through  
29 the 2016 Plan Update, consists of the following:  
30

31 2.2.1 The 2016 Plan Update document and all text and policies contained  
32 therein (Exhibit 1), including: Capital Facilities Plan for school districts;  
33 transportation; parks, recreation and open space services; water; sewer; sheriff;  
34 fire; and stormwater (Appendix E); Clark County Capital Facilities Financial Plan  
35 2015-35 (Appendix G); and County transportation analysis (Appendix A).  
36

37 2.2.2 An updated map showing plan designations for unincorporated rural  
38 and resource lands as well as lands within urban growth boundaries in Clark  
39 County (Exhibit 2).  
40

41 2.2.3 An updated map showing the corresponding zoning that implements  
42 the plan designations (Exhibit 3).  
43

44 2.2.4 An updated map showing arterial classifications and cross-sections  
45 for roadways within the county's land-use jurisdiction (Exhibit 4).  
46

47 2.2.5 The following are incorporated by reference:

- 48 • Vacant and Buildable Lands Analyses for urban growth areas;
- 49 • Traffic impact fee technical memorandum; and
- 50 • Park impact fee technical memorandum.  
51

1  
2 **3. CHANGES TO DEVELOPMENT REGULATIONS**  
3  
4

- 5 3.1. Amendatory. Clark County Code Section Table of Contents is  
6 amended (Exhibit 5).  
7 3.2. Amendatory. Clark County Code Section 40.100.070 is amended  
8 (Exhibit 6).  
9 3.3. Amendatory. Clark County Code Section 40.200.020 is amended  
10 (Exhibit 7).  
11 3.4. Amendatory. Clark County Code Section 40.200.040 is amended  
12 (Exhibit 8).  
13 3.5. Amendatory. Clark County Code Section 40.210.010 is amended  
14 (Exhibit 9).  
15 3.6. Amendatory. Clark County Code Section 40.210.020 is amended  
16 (Exhibit 10).  
17 3.7. Amendatory. Clark County Code Section 40.210.030 is amended  
18 (Exhibit 11).  
19 3.8. Repealer. Clark County Code Section 40.210.040 Urban Reserve  
20 Districts is repealed.  
21 3.9. Amendatory. Clark County Code Section 40.210.050 is amended  
22 (Exhibit 12).  
23 3.10. Amendatory. Clark County Code Section 40.220.010 is amended  
24 (Exhibit 13).  
25 3.11. Amendatory. Clark County Code Section 40.220.020 is amended  
26 (Exhibit 14).  
27 3.12. Amendatory. Clark County Code Section 40.230.010 is amended  
28 (Exhibit 15).  
29 3.13. Amendatory. Clark County Code Section 40.230.020 is amended  
30 (Exhibit 16).  
31 3.14. Amendatory. Clark County Code Section 40.230.050 is amended  
32 (Exhibit 17).  
33 3.15. Amendatory. Clark County Code Section 40.230.060 is amended  
34 (Exhibit 18).  
35 3.16. Repealer. Clark County Code Section 40.230.070 Urban Holding  
36 Districts is repealed.  
37 3.17. Amendatory. Clark County Code Section 40.230.085 is amended  
38 (Exhibit 19).  
39 3.18. New. A new Clark County Code Section 40.230.090 Public  
40 Facilities Zoning District is adopted (Exhibit 20).  
41 3.19. Amendatory. Clark County Code Chapter 40.250.040 Existing  
42 Resort Overlay is amended (Exhibit 21).  
43 3.20. Amendatory. Clark County Code Chapter 40.250.090 Equestrian  
44 Overlay is amended as shown in Exhibit 22.  
45 3.21. New. A new Clark County Code Chapter 40.250.100 Urban  
46 Reserve Overlay is adopted (Exhibit 23).  
47 3.22. New. A new Clark County Code Chapter 40.250.110 Urban  
48 Holding Overlay is adopted as shown in Exhibit 24.  
49 3.23. Amendatory. Clark County Code Section 40.260.030 is amended  
50 (Exhibit 25).  
51 3.24. Amendatory. Clark County Code Section 40.260.050 is amended

- 1 (Exhibit 26).  
2 3.25. Amendatory. Clark County Code Section 40.260.075 is amended  
3 (Exhibit 27).  
4 3.26. Amendatory. Clark County Code Section 40.260.115 is amended  
5 (Exhibit 28).  
6 3.27. Repealer. Clark County Code Section 40.260.157 Neighborhood  
7 Parks is repealed.  
8 3.28. New. A new Clark County Code Section 40.260.157 Parks is  
9 adopted (Exhibit 29).  
10 3.29. Amendatory. Clark County Code Section 40. 260.160 is amended  
11 (Exhibit 30).  
12 3.30. Amendatory. Clark County Code Section 40. 260.170 is amended  
13 (Exhibit 31).  
14 3.31. Amendatory. Clark County Code Section 40. 260.210 is amended  
15 (Exhibit 32).  
16 3.32. Amendatory. Clark County Code Section 40.260.250 is amended  
17 (Exhibit 33).  
18 3.33. Amendatory. Clark County Code Section 40.310.010 is amended  
19 (Exhibit 34).  
20 3.34. Amendatory. Clark County Code Section 40.320.010 is amended  
21 (Exhibit 35).  
22 3.35. Amendatory. Clark County Code Section 40.510.010 is amended  
23 (Exhibit 36).  
24 3.36. Amendatory. Clark County Code Section 40.510.020 is amended  
25 (Exhibit 37).  
26 3.37. Amendatory. Clark County Code Section 40.510.030 is amended  
27 (Exhibit 38).  
28 3.38. Amendatory. Clark County Code Section 40.530.010 is amended  
29 (Exhibit 39).  
30 3.39. Amendatory. Clark County Code Section 40.560.010 is amended  
31 (Exhibit 40).  
32 3.40. Amendatory. Clark County Code Section 40.610.040 is amended  
33 (Exhibit 41).  
34 3.41. Amendatory. Clark County Code Section 40.620.010 is amended  
35 (Exhibit 42).  
36 3.42. Amendatory. Clark County Code Section 40.630.010 is amended  
37 (Exhibit 43).  
38

39 **4. DOCKETS**

40  
41 **4.1 School Impact Fees.** The findings and analysis contained in the Clark  
42 County Planning Commission's memorandum dated October 15, 2015, and June  
43 2, 2016 relating to the 2015 Comprehensive Plan Amendments-Dockets is hereby  
44 adopted and incorporated herein by reference.  
45

46 The table below shows proposed school impact fees (SIF):  
47  
48  
49  
50  
51

School District	CPZ Number <sup>1</sup>	Ordinance <sup>2</sup>	Single Family <sup>3</sup>	Multi-Family <sup>3</sup>
Battle Ground	CPZ-2015-00003	Ord. 2011-12-22	\$6,397	\$2,285
Camas	CPZ-2015-00004	Ord. 2011-12-22	5,371	5,371
Evergreen	CPZ-2015-00005	Ord. 2011-12-22	6,100	7,641
Green Mountain	CPZ-2015-00006	Ord. 2007-09-13	3,387	0
Hockinson	CPZ-2015-00007	Ord. 2009-12-21	6,080	2,781
La Center	CPZ-2015-00011	Ord. 2009-12-21	4,111	5,095
Ridgefield	CPZ-2015-00008	Ord. 2011-12-22	6,530	6,530
Vancouver	CPZ-2015-00009	Ord. 2011-12-22	2,880.75	2,381.93
Washougal	CPZ-2015-00010	Ord. 2011-12-22	5,600	5,800
Woodland	CPZ-2016-00003	Ord. 2005-12-23	5,000	2,500

<sup>1</sup>The case number for purposes of Tidemark.

<sup>2</sup>The ordinance containing the last update of the fees.

<sup>3</sup>The proposed 'single family' and 'multi-family' fees per dwelling unit, respectively.

**4.2 Parks Impact Fees.** Clark County parks impact fees were last updated in 2002 by Ordinance 2002-10-16. The findings and analysis contained in the Clark County Planning Commission's memorandum dated April 16, 2016, are hereby adopted and incorporated herein by reference.

The table below shows proposed parks impact fees (PIF):

PIF District	Single-Family PIF Rates			Multi-Family PIF Rates		
	Year 1 80%	Year 2 90%	Year 3 100%	Year 1 75%	Year 2 90%	Year 3 100%
1 <sup>1</sup>	N/A	N/A	N/A	N/A	N/A	N/A
2 <sup>1</sup>	N/A	N/A	N/A	N/A	N/A	N/A
3 <sup>1</sup>	N/A	N/A	N/A	N/A	N/A	N/A
4 <sup>1</sup>	N/A	N/A	N/A	N/A	N/A	N/A
5	\$3,482	\$3,918	\$4,353	\$2,520	\$3,023	\$3,359
6	\$4,458	\$5,015	\$5,572	\$3,225	\$3,870	\$4,300
7	\$3,402	\$3,827	\$4,252	\$2,461	\$2,953	\$3,282
8	\$3,167	\$3,563	\$3,959	\$2,291	\$2,750	\$3,055
9	\$4,400	\$4,950	\$5,500	\$3,183	\$3,820	\$4,244
10	\$3,082	\$3,467	\$3,852	\$2,229	\$2,675	\$2,973

<sup>1</sup>These park districts are either wholly or predominately within the Vancouver city limits, which is why Clark County Parks Advisory Board voted unanimously to take references to these four districts out of the Draft Park Impact Fee technical document.

**4.3 Traffic Impact Fees.** The findings and analysis contained in the Clark County Planning Commission's memorandum dated July 16, 2015, are hereby adopted and incorporated herein by reference.

1  
2 The table below shows proposed traffic impact fees (TIF):  
3

Existing Districts	Existing Rates	Proposed Rates	Proposed Districts
Hazel Dell	\$375	\$338	Hazel Dell
Mount Vista	\$613	\$536	Mount Vista
North Orchards	\$553	\$313	Orchards
South Orchards	\$389		
Rural 1	\$315	\$264	Rural
Rurai 2	\$52		

4  
5 **5. MISCELLANEOUS**  
6

7 **5.1 Severability.** If any section, clause, or phrase of this ordinance should be  
8 held invalid or unconstitutional by the Growth Management Hearings Board or a court of  
9 competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or  
10 constitutionality of any other section, sentence, clause or phrase of this ordinance.  
11

12 **5.2 Instructions to the Clerk.** The Clerk of the Board shall:  
13

14 5.2.1 Transmit a copy of this ordinance to the Washington Department  
15 of Commerce within ten days of its adoption, pursuant to RCW 36.70A.106;

16 5.2.2 Record a copy of this ordinance with the Clark County Auditor;

17 5.2.3 Cause notice of adoption of this ordinance to be published forthwith  
18 pursuant to RCW 36.70A.290.

19 5.2.4 Transmit a copy of this ordinance to the School District Consortium  
20 (Marnie Allen).

21 5.2.5 Transmit a copy of this ordinance to Clark County Geographic  
22 Information Systems (Ken Pearrow, GIS Coordinator), to Community Planning (Oliver  
23 Orjiako, Director), to Community Development (Debra Weber, Tidemark Data Manager  
24 and Marty Snell, Director) and to Public Works (Heath Henderson, Director and Carolyn  
25 Heniges, Manager)

26 5.2.6 Transmit a copy of this ordinance to the Cities of Battle Ground,  
27 Camas, La Center, Ridgefield, Washougal, Woodland, and Vancouver, and the  
28 Town of Yacolt.

29 5.2.7 Transmit a copy of this ordinance to the Ports of Camas/Washougal,  
30 Ridgefield, Vancouver and Woodland.

31 5.2.8. Transmit a copy of this ordinance to the Columbia River Economic  
32 Development Council (Mike Bomar, President).  
33

34 **5.3 Effective Date.** This ordinance shall go into effect ten (10) days after adoption as  
35 provided by law, except for school, parks, and traffic impact fees, which will take  
36 effect on January 1, 2017.  
37  
38

1 ADOPTED this 28<sup>th</sup> day of June, 2016.

2  
3 BOARD OF COUNTY COUNCILORS  
4 FOR CLARK COUNTY, WASHINGTON

5 Attest:

6  
7 *Sina Redkuni*  
8 Clerk to the Board

By: *Marc Boldt*  
Marc Boldt, Chair

10  
11  
12 Approved as to Form Only:  
13 Anthony F. Golik  
14 Prosecuting Attorney

By: \_\_\_\_\_  
Jeanne Stewart, Councilor

15  
16 By: \_\_\_\_\_  
Julie Olson, Councilor

17  
18  
19 By: *P. Stephen DiJulio*  
20 P. Stephen DiJulio  
21 Special Deputy Prosecuting Attorney

By: \_\_\_\_\_  
David Madore, Councilor

22  
23 By: \_\_\_\_\_  
24 Tom Mielke, Councilor  
25

1 **EXHIBIT 5**

2 Title 40 Clark County, Washington, Unified Development Code

3

4 **TABLE OF CONTENTS**

5 **Chapter 40.210 Resource and Rural Districts**

6 40.210.010 Forest, Agriculture and Agricultural-Wildlife Districts (FR-80, ~~FR-40~~ FR-20,

7 ~~AG-20~~ AG-10, AG-WL)

8 40.210.020 Rural Districts (R-20, R-10, R-5)

9 40.210.030 Rural Center Residential Districts (RC-2.5, RC-1)

10 ~~40.210.040 Urban Reserve Districts (UR-40, UR-20, UR-10)~~

11 40.210.050 Rural Commercial Districts (CR-1, CR-2)

12

13 **Chapter 40.230 Commercial, Business, Mixed Use and Industrial Districts**

14 40.230.010 Commercial Districts (~~C-2~~ NC, ~~C-3~~ CC, GC)

15 40.230.020 Mixed Use District (MX)

16 40.230.050 University District (U)

17 40.230.060 Airport District (A)

18 ~~40.230.070 Urban Holding Districts (UH-10, UH-20, UH-40)~~

19 40.230.085 Employment Districts (IL, IH, IR, BP)

20 40.230.090 Public Facilities (PF)

21

22 **Chapter 40.250 Overlay Districts**

23 40.250.010 Airport Environs Overlay Districts (AE-1, AE-2)

24 40.250.022 Surface Mining Overlay District

25 40.250.030 Historic Preservation

26 40.250.040 Existing Resort Overlay District

27 40.250.050 Highway 99 Overlay District

28 40.250.060 Mill Creek Overlay District

29 40.250.070 Railroad Overlay District (RR)

30 40.250.080 Rural Center Mixed Use Overlay District (RC-MX)

31 40.250.090 Equestrian Overlay

32 40.250.100 Urban Reserve Overlay (UR-20, UR-10)

33 40.250.110 Urban Holding Overlay (UH-10, UH-20)

34

35 **Chapter 40.260 Special Uses and Standards**

36 40.260.010 Accessory Buildings and Uses

37 40.260.020 Accessory Dwelling Units

38 40.260.025 Agricultural Stands and Markets

39 40.260.030 Ambulance Dispatch Facility

40 40.260.040 Animal Feed Yards, Animal Sales Yards, Animal Boarding Facilities,

41 Animal

42 Day Use Facilities, and Equestrian Facilities

43 40.260.050 Bed and Breakfast Establishments

44 40.260.055 Coffee and Food Stands

45 40.260.070 Community Buildings, Social Halls, Lodges, Fraternal Organizations,

46 Clubs,

47 Public and Private Schools, Private Recreational Facilities and Churches

48 40.260.073 Cottage Housing

49 40.260.075 Electric Vehicle Infrastructure

1 **EXHIBIT 6**  
 2 **40.100.070 DEFINITIONS**  
 3

Lot area, rural	<p>"Lot area, rural" <u>means</u> the computed area contained within the lot lines to include:</p> <ul style="list-style-type: none"> <li>• Private driveway easements,</li> <li>• On-site road easements,</li> <li>• One-half (1/2) width or thirty (30) feet, whichever is less, of abutting public rights-of-way for perimeter streets, excluding limited access state or interstate highways.</li> </ul> <p>For the purposes of this definition, "rural lot area" applies to urban reserve (UR-10 <u>and</u> UR-20) <u>and</u> UR-40), <u>and</u> urban holding <u>overlays</u> (UH-10 and UH-20) <u>and</u> UH-40), <u>and</u> rural (R-5, R-10 and R-20), agricultural (AG-1020 <u>and</u> AG-WLAW) and forest resource (FR-2040 <u>and</u> FR-80) districts.</p>
Lot area, urban	<p>"Lot area, urban" <u>means</u> the computed area contained within the lot lines in urban districts, to include private driveway easements, and excluding street and alley rights-of-way, street easements, and street tracts.</p> <p>For the purposes of this definition, "urban lot area" does not apply to the urban holding <u>overlays</u> zones (UH-10 and UH-20) <u>and</u> UH-40).</p>
Neighborhood-park	<p><del>"Neighborhood park" means a public park designed to provide nonorganized recreational opportunities for residents living within a one-half (1/2) mile radius, and are located such that they are within walking and bicycling distance of most users. These parks generally contain three (3) to five (5) acres but may vary in size depending upon unique site characteristics, opportunities and land availability.</del></p>
Park, Community	<p><u>"Community park" means a public park that provides a focal point and gathering place for broad groups of users. Community Parks are used by all segments of the population and generally serve residents from a one to three-mile service area. Community Parks often include recreation facilities for organized activities such as sports fields, skate parks, and play courts.</u></p>
Park, Neighborhood	<p><u>"Neighborhood park" means a public park designed to provide non-organized recreational opportunities for residents living within a one-half (1/2) mile radius, and are located such that they are within walking and bicycling distance of most users. These parks generally contain three (3) to five (5) acres but may vary in size depending upon unique site characteristics, opportunities and land availability.</u></p>
Park, Regional	<p><u>"Regional park" means a public recreational area that serves residents throughout Clark County, as well as outside the county. Facilities may include sports fields, extensive trail systems, or large picnic areas. Because of their large size and broad service area,</u></p>

1 **EXHIBIT 7**

2

3 **40.200 LAND USE DISTRICTS – GENERAL PROVISIONS**

4 **40.200.020 ZONING CLASSIFICATIONS**

5 **A. Classification of Zoning Districts.**

6 For the purposes of this title, the county is divided into zoning districts designated as  
7 shown in Table 40.200.020-1.

8

Table 40.200.020-1. Zoning Districts.				
Zoning District	Map Symbol	Urban	Rural	Code Section
<b>RESOURCE AND RURAL DISTRICTS (40.210)</b>				
Forest and Agriculture	<del>FR-80, FR-40,</del> <del>FR-20, AG-20,</del> <u>AG-10</u>		X	40.210.010
Agricultural-Wildlife	AG-WL		X	
Rural	R-20, R-10, R-5		X	40.210.020
Rural center residential	RC-1, RC-2.5		X	40.210.030
Urban reserve	<del>UR-40, UR-20,</del> <del>UR-10</del>		X	40.210.040
<b>URBAN AREA RESIDENTIAL DISTRICTS (40.220)</b>				
Single-family residential	R1-20, R1-10, R1-7.5, R1-6, R1-5	X		40.220.010
Residential	R-12, R-18, R-22, R-30, R-43	X		40.220.020
Office residential	OR-15, OR-18, OR-22, OR-30, OR-43	X		
<b>COMMERCIAL, BUSINESS, MIXED USE AND INDUSTRIAL DISTRICTS (40.230)</b>				
Rural commercial	CR-1, CR-2		X	40.230.010
Neighborhood commercial	<del>NC-2</del>	X		
Community commercial	<del>CC-3</del>	X		
General commercial	GC	X		

Table 40.200.020-1. Zoning Districts.				
Zoning District	Map Symbol	Urban	Rural	Code Section
Mixed use	MX	X		40.230.020
Business park	BP	X		40.230.030
University	U	X		40.230.050
Airport	A	X	X	40.230.060
Urban holding	UH-40, UH-20, UH-10	X		40.230.070
Light industrial	IL	X		40.230.085
Heavy industrial	IH	X	X	
<u>Public Facilities</u>	<u>PE</u>	<u>X</u>	<u>X</u>	<u>40.230.090</u>
<b>COLUMBIA RIVER GORGE NATIONAL SCENIC AREA DISTRICTS (40.240)</b>				
Gorge Large-Scale Agriculture	GLSA-80, GLSA-40		X	40.240
Gorge Small-Scale Agriculture	GSSA-20		X	
Gorge Small Woodland	GSW-40, GSW-20		X	
Gorge Open Space	GOS		X	
Gorge Residential	GR-5		X	
Gorge Public Recreation	GPR		X	
Gorge SMA Agriculture	GSAG		X	
Gorge SMA Federal Forest	GSFF		X	
Gorge SMA Non-Federal Forest	GSNFF		X	
Gorge SMA Open Space	GSOS		X	
<b>OVERLAY DISTRICTS (40.250 and 40.460)</b>				
Airport Environs	AE-1, AE-2	X	X	40.250.010

1 **EXHIBIT 8**  
2 **40.200 LAND USE DISTRICTS – GENERAL PROVISIONS**

3  
4 **40.200.040 MINIMUM AND MAXIMUM CALCULATIONS**

5  
6 \*\*\*\*\*

7 **C. Lot Area Calculations.**

8 **1.** Lot area is the computed area contained within the lot lines.

9 **a.4.** In the urban area, except for the UH zones, lot area excludes street and alley  
10 rights-of-way, street easements, and street tracts.

11 **b.** In the urban reserve (UR-10 and UR-20) and UR-40, urban holding overlays  
12 (UH-10, UH-20 and UH-40), and rural (R-5, R-10 and R-20), agricultural (AG-20 AG-  
13 10 and AG-WL A/W) and forest resource (FR-40 FR-20 and FR-80) districts, lot area  
14 includes on-site road easements, and one-half (1/2) the width, or thirty (30) feet,  
15 whichever is less, of abutting public rights-of-way for perimeter streets, excluding  
16 limited access state or interstate highways.

17 **c.** Driveways are included in lot area in all zones.

18 **2.** One lot within a proposed subdivision, short plat or exempt division shall be  
19 considered in compliance with the minimum lot area requirements if it is within ten  
20 percent (10%) of the required lot area for the zone. To utilize this provision in the R1-5  
21 and R1-6 zones, one lot may be excluded from the average minimum lot calculations  
22 and the ten percent (10%) lot area reduction may be applied to the excluded lot. The  
23 provisions of this section shall not apply to developments utilizing the following:

24 **a.** Density transfer (Section 40.220.010(C)(5));

25 **b.** Rural cluster (Section 40.210.020).

26  
27

1 **EXHIBIT 9**

2 **40.210 RESOURCE AND RURAL DISTRICTS**

3 **40.210.010 FOREST, AGRICULTURE AND AGRICULTURAL-WILDLIFE DISTRICTS**  
4 **(FR-80, ~~FR-40~~ FR-20, ~~AG-20~~ AG-10, AG-WL)**

5 **A. Purpose.**

6 1. Forest 80 District. The purpose of the Forest 80 district is to maintain and  
7 enhance resource-based industries, encourage the conservation of productive forest  
8 lands and discourage incompatible uses consistent with the Forest I policies of the  
9 comprehensive plan. The Forest 80 district applies to lands which have been  
10 designated as Forest Tier 1 on the comprehensive plan. Nothing in this chapter shall  
11 be construed in a manner inconsistent with the Washington Forest Practices Act.

12 2. Forest ~~4020~~ District. The purpose of the Forest ~~4020~~ district is to encourage  
13 the conservation of lands which have the physical characteristics that are capable of  
14 management for the long-term production of commercially significant forest products  
15 and other natural resources, such as minerals.

16 3. Agriculture ~~2010~~ District. The purpose of the Agriculture ~~2010~~ district is to  
17 encourage the conservation of lands which have the growing capacity, productivity,  
18 soil composition, and surrounding land use to have long-term commercial significance  
19 for agriculture and associated resource production.

20 4. Agricultural-Wildlife. The purpose of the AG-WL district is to encourage the  
21 preservation of agricultural and wildlife use on land which is suited for agricultural  
22 production, and to protect agricultural areas that are highly valuable seasonal wildlife  
23 habitat from incompatible uses. The district provides for activities which can be  
24 considered accessory only to agricultural, game, or wildlife habitat management, or  
25 recreational uses. Nothing in this chapter shall be construed to restrict normal  
26 agricultural practices.

27 **B. Uses.**

28 The uses set out in Table 40.210.010-1 are examples of uses allowable in the various  
29 resource zone districts. The appropriate review authority is mandatory.

- 30 • "P" – Uses allowed subject to approval of applicable permits.
- 31 • "R/A" – Uses permitted upon review and approval as set forth in Section 40.520.020.
- 32 • "C" – Conditional uses which may be permitted subject to the approval of a  
33 conditional use permit as set forth in Section 40.520.030.
- 34 • "X" – Uses specifically prohibited.

35  
36 Where there are special use standards or restrictions for a listed use, the applicable  
37 code section(s) in Chapter 40.260, Special Uses and Standards, or other applicable  
38 chapter is noted in the "Special Standards" column.

39

Table 40.210.010-1. Uses.					
	FR-80	FR- <del>4020</del> <u>20</u>	AG- <del>2010</del> <u>10</u>	AG-WL	Special Standards
1. Residential.					
a. Single-family dwellings and accessory buildings	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P	40.260.010
b. Guest house	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>	40.260.010

Table 40.210.010-1. Uses.					
c. Family day care centers	P	P	P	P	40.260.160
d. Adult family homes	P	P	P	P	40.260.190
e. Home business – Type I	P	P	P	P	40.260.100
f. Home business – Type II	R/A	R/A	R/A	R/A	40.260.100
g. Bed and breakfast establishments (up to 2 guest bedrooms)	R/A	R/A	R/A	R/A	40.260.050
h. Bed and breakfast establishments (3 or more guest bedrooms)	C	C	C	C	40.260.050
i. Garage sales	P	P	P	P	40.260.090
j. Temporary dwellings	P	P	P	X	40.260.210
<b>2. Services, Business.</b>					
a. Commercial nurseries predominantly marketing locally produced plants and associated landscaping materials	R/A	R/A	R/A	C	
b. Roadside farm stand	P	P	P	P	40.260.025
c. Agricultural market	P	P	P	X	40.260.025
d. Commercial kennels on a parcel or parcels 5 acres or more	R/A	R/A	R/A	X	40.260.110
e. Private kennels	P	P	P	P	40.260.110
f. Animal boarding and day use facilities	P	P	P	X	40.260.040
<b>3. Services, Amusement.<sup>10</sup></b>					
a. Public recreation, scenic and park use <sup>10</sup>	P	P	P	C <sup>3</sup>	
b. Public interpretive/educational uses <sup>10</sup>	P	P	P	P	
c. Dispersed recreation and recreational facilities such as primitive campsites, trails, trailheads, snowparks and warming huts <sup>10</sup>	P	P	P	X	
d. Public recreation accessways, trails, viewpoints, and associated parking <sup>10</sup>	P	P	P	P	
e. Regional recreational facilities designed and developed through a public master planning process <sup>10</sup>	P	P	P	P	
f. Private recreation facilities, including retreats, but excluding such intensive uses as country clubs and golf courses	C	C	C	C <sup>3</sup>	
g. Country club and golf courses	X	X	C	X	

Table 40.210.010-1. Uses.					
h. Equestrian facility	P	P	P	X	40.260.040
i. Equestrian events center	C	C	C	X	
j. Circuses, carnivals or amusement rides	R/A	R/A	R/A	R/A	
4. Services – General.					
a. Event facilities < 5,000 sq. ft.	X	C	C	X	
b. Tasting room and event facilities in conjunction with a winery	P	P	P	X	40.260.245
5. Services, Membership Organization.					
a. Churches	X	C	C	X	
6. Services, Educational. <sup>10</sup>					
a. Public and private elementary and middle schools serving a student population primarily outside of urban growth boundaries	C	C	C	X	40.260.160
7. Public Service and Facilities. <sup>10</sup>					
a. Ambulance dispatch facilities <sup>10</sup>	C	C	C	C	40.260.030
b. Government facilities <sup>10</sup>	C <sup>4</sup>	C <sup>4</sup>	C <sup>4</sup>	C <sup>5</sup>	
c. Public corrections facilities <sup>10</sup>	C	C	C	X	
8. Resource Activities.					
a. Agricultural	P <sup>6</sup>	P <sup>6</sup>	P <sup>6</sup>	P	
b. The growing, harvesting and transport of timber, forest products and associated management activities in accordance with the Washington Forest Practices Act of 1974 as amended, and regulations adopted pursuant thereto	P	P	P	X	
c. Wildlife game management	P	P	P	P	
d. Plant nurseries	P	P	P	P	
e. Removal, harvesting, wholesaling and retailing of vegetation from forest lands including but not limited to fuel wood, Christmas trees, salal, berries, ferns, greenery, mistletoe, herbs and mushrooms	P	P	P	C	Chapter <u>40.440</u>
f. Silviculture	P	P	P	C	40.260.080
g. Aggregate extraction and processing for the purposes of construction and maintenance of a timber or agricultural management road system	P <sup>7</sup>	P <sup>7</sup>	P <sup>7</sup>	X	40.260.120

Table 40.210.010-1. Uses.					
h. Exploration for rock, gravel, oil, gas, mineral and geothermal resources	P	P	P	X	40.260.120
i. Extraction of oil, gas and geothermal resources, in accordance with all applicable local, state and federal regulations	R/A	R/A	R/A	X	40.260.120
j. Commercial uses supporting resource uses	P <sup>8</sup>	P <sup>8</sup>	P <sup>8</sup>	X	
k. Accessory buildings	P	P	P	P	40.260.010
l. Housing for temporary workers	P	P	P	P	40.260.105
m. Sawmills greater than ten thousand (10,000) board feet per day, and other products from wood residues, drying kilns and equipment	C	C	C	X	
n. Forestry, environmental and natural resource research and facilities	P	P	P	C	
o. The processing of oil, gas and geothermal resources	C	C	C	X	
p. Heliports, helipads and helispots used in conjunction with the resource activity	P	P	C	X	40.260.170
9. Other.					
a. Signs	P	P	P	P	Chapter 40.310
b. Utilities, structures and uses including but not limited to utility substations, pump stations, wells, watershed intake facilities, gas and water transmission lines	P	P	P	C	40.260.240
c. Wireless communications facilities	P/C <sup>9</sup>	P/C <sup>9</sup>	P/C <sup>9</sup>	P/C <sup>9</sup>	40.260.250
d. Dams for flood control and hydroelectric generating facilities	C	C	C	C	
e. Solid waste handling and disposal sites	C	C	C	C	40.260.200
f. Private use landing strips for aircraft	C	C	C	X	40.260.170
g. New cemeteries and mausoleums, crematoria, columbaria, and mortuaries within cemeteries; provided, that no crematoria is within two hundred (200) feet of a lot in a residential district	X	X	X	C	
h. Expansion of existing cemeteries	P	P	P	P	
i. Temporary uses	P	P	P	P	40.260.220
j. Electric vehicle infrastructure	P	P	P	P	40.260.075
k. Marijuana-related facilities	X	X	X	X	

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<sup>1</sup> One (1) single-family dwelling on legal lot or legal nonconforming lot of record.  
<sup>2</sup> One (1) guesthouse in conjunction with a single-family dwelling or mobile home.  
<sup>3</sup> Public, where no public master planning process has been completed or private outdoor recreational facilities requiring limited physical improvements which are oriented to the appreciation, protection, study or enjoyment of the fragile resources of this area. In addition to those findings as specified by Section 40.520.030 (Conditional Use Permits), such uses shall be approved only upon the applicant establishing both of the following:

- There will be no significant environmental impact, especially as it relates to wildlife, resulting from the proposed use; and
- The subject site cannot be put to any reasonable economic use which is provided for in this section.

<sup>4</sup> Government facilities necessary to serve the area outside urban growth boundaries, including fire stations, ambulance dispatch facilities and storage yards, warehouses, or similar uses.

<sup>5</sup> Limited to fire stations only.

<sup>6</sup> Agriculture including: floriculture, horticulture, general farming, dairy, the raising, feeding and sale or production of poultry, livestock, furbearing animals, and honeybees including feedlot operations, animal sales yards, Christmas trees, nursery stock and floral vegetation and other agricultural activities and structures accessory to farming or animal husbandry.

<sup>7</sup> Additional surface mining and associated activities subject to zone change to add the surface mining overlay district, Section 40.250.020.

<sup>8</sup> Commercial uses supporting resource uses, such as packing, first stage processing and processing which provides value added to resource products. Chippers, pole yards, log sorting and storage, temporary structures for debarking, accessory uses including but not limited to scaling and weigh operations, temporary crew quarters, storage and maintenance facilities, disposal areas, saw mills producing ten thousand (10,000) board feet per day or less, and other uses involved in the harvesting of forest products.

<sup>9</sup> See Table 40.260.250-1.

<sup>10</sup>Once a property has been developed as a public facility, a docket is required to change the comprehensive plan designation from the current zone to the Public Facility zone.

C. Development Standards.

1. New lots and structures and additions to structures subject to this section shall comply with the applicable standards for lots and building height, and setbacks in Tables 40.210.010-2 and 40.210.010-3, subject to the provisions of Chapter 40.200 and Section 40.550.020.

Table 40.210.010-2. Lot Requirements.				
Zoning District	Use/Activity	Minimum Lot Area (acres)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)

FR-80	All Uses	80 <sup>1</sup> or legally described as one-eighth (1/8) of a section	660 <sup>2</sup>	None
FR-4020	All Uses	20 <sup>1</sup> 40 <sup>1</sup> or legally described as one-thirty-second (1/32) sixteenth (1/16) of a section	660 <sup>2</sup>	None
AG-2010	All Uses	10 <sup>1</sup> 20 <sup>1</sup> or legally described as one-sixth-fourth (1/64) thirty-second (1/32) of a section	660 <sup>2</sup>	None
AG-WL	Agricultural	20 or legally described as one-thirty-second (1/32) of a section	None	None
	Wildlife game management	20 or legally described as one-thirty-second (1/32) of a section	None	None
	Public interpretive/educational uses	N/A	None	None
	Single-family dwellings	160 or legally described as one-fourth (1/4) of a section	None	None
	Plant nurseries	20 or legally described as one-thirty-second (1/32) of a section	None	None
	Silviculture	20 or legally described as one-thirty-second (1/32) of a section	None	None
	Public recreation accessways and associated parking and trails	N/A	None	None

<sup>1</sup> The following uses may be permitted on newly approved lots of less than the minimum parcel size:

a. Utilities, structures and uses including but not limited to utility substations, pump stations, wells, watershed intake facilities, gas and water transmission lines and telecommunication facilities.

b. Dams for flood control and hydroelectric generating facilities.

<sup>2</sup> Minimum lot width – One hundred forty (140) feet for legal lots created under Section 40.210.010(D).

**Table 40.210.010-3. Setbacks, Lot Coverage and Building Height.**

Zoning District	Minimum Setbacks <sup>1</sup>			Rear (feet)	Maximum Lot Coverage	Maximum Building Height (feet)
	Front (feet)	Side				
		Street (feet)	Interior (feet)			
FR-80	50 <sup>2</sup>	25	50 <sup>3</sup>	50 <sup>3</sup>	N/A	35 <sup>4</sup>
FR-4020	50 <sup>2</sup>	25	50 <sup>3</sup>	50 <sup>3</sup>	N/A	35 <sup>4</sup>
AG-2010	50 <sup>2</sup>	25	50 <sup>3</sup>	50 <sup>3</sup>	N/A	35 <sup>4</sup>
AG-WL	None	None	None	None	N/A	None

<sup>1</sup> See Section 40.530.010(D)(2) for nonconforming lots.

<sup>2</sup> From public road right-of-way or private road easement.

<sup>3</sup> All structures.

<sup>4</sup> Residential buildings only.

2. Signs. Signs shall be permitted according to the provisions of Chapter 40.310.

3. Previous Land Divisions.

a. Within the FR-80, FR-4020 and AG-2010 districts, until the affected property is included within an urban growth boundary, no remainder lot of a previously approved agriculture or forest district "cluster" land division or lot reconfiguration shall be:

- (1) a. Further subdivided or reduced in size below seventy percent (70%) of the total developable area of the original parent parcel constituting the cluster subdivision; or
- (2) b. Reduced by a total of more than one (1) acre.

c. Applications for reduction in remainder lot size consistent with this provision shall be processed as a plat alteration pursuant to Section 40.540.120.

b. d. Exceptions to Subsections (C)(3)(a) and (b) of This Section. A remainder lot with an existing residence may be short platted further to contain the residence on its own lot, subject to the following:

(1) Process. Creation of the new lot is subject to the requirements of Section 40.540.030.

(2) Lot Size. The new lot shall be sized to require the minimum reduction in the remainder lot, but still meet minimum requirements of this section and for on-site sewage disposal as required by the Clark County Public Health Department.

(3) The new lot may not include critical areas unless no other alternative exists. If no alternative is available, encroachment into these areas shall be limited to the least amount possible consistent with applicable critical areas ordinances.

(4) A building envelope containing the existing residence and accessory buildings shall be established within the new lot, subject to the following:

(a) A minimum one hundred (100) foot setback between the envelope and the remainder parcel is maintained, unless it can be shown that a lesser setback with existing or proposed landscaping or existing vegetation will provide the same or greater buffering. In no case shall a setback less than fifty (50) feet be approved.

(b) A minimum twenty (20) foot setback between the envelope and other cluster lots is maintained.

(5) A note shall be placed on the plat stating the following:

1 The residential property is adjacent to agricultural or forest lands on which a variety of  
2 resource-related activities may occur that are not compatible with residential  
3 development. Potential discomforts or inconvenience may include, but are not limited  
4 to: Noise, odors, fumes, dust, smoke, insects, operation of machinery (including  
5 aircraft) during any twenty-four (24) hour period, storage and disposal of manure, and  
6 the application by spraying or otherwise of chemical fertilizers, soil amendments,  
7 herbicides and pesticides.

8  
9 (6) An open space, farm or forest management plan is required for the remainder  
10 parcel, which shall prohibit additional residential development. The plan shall be  
11 submitted and approved with the preliminary application. The plan shall identify  
12 permitted uses and management of the parcel so that it maintains its open space or  
13 other designated functions and provides for the protection of all critical areas. The  
14 management plan shall identify the responsibility for maintaining the remainder parcel.  
15 The plan shall also include any construction activities (trails, fencing, agricultural  
16 buildings) and vegetation clearing that may occur on site. All subsequent activities  
17 must be conducted in conformance with the approved management plan.  
18 Management plans may be modified through a Type II process. A note shall be placed  
19 on the plat and a restrictive covenant shall be recorded that clearly states that only the  
20 above uses are permitted on the remainder parcel. The note and covenant shall also  
21 incorporate the management plan, as described above.

22 4. Nonconforming lots may be reconfigured pursuant to Section 40.530.020(B).

23  
24 **D. Nonconforming Lots – Lot Reconfiguration Standards**

25 1. Purpose. It is in the public interest to encourage the protection of sensitive  
26 lands, expand the amount of commercially viable resource land under single  
27 ownership, reduce the amount of road and utility construction and, within the FR-80,  
28 FR-4020 and AG-1020 districts, to protect and buffer designated resource lands.

29 2. Lot Reconfiguration. Except for previously approved agricultural or forest zoned  
30 clusters or rural residential planned unit developments, these substandard lots may be  
31 modified where consistent with the following criteria. Parcels which meet all of the  
32 following criteria are eligible for reconfiguration and reduction in size subject to a Type  
33 II review:

34 a. Existing parcel(s) is:

35 (1) smaller than the minimum lot size established for new lots in the applicable  
36 zoning district. Parcels which meet the minimum lot size may be adjusted as a part of  
37 this process, but may not be decreased below the established minimum lot size

38 (2) determined to be legally created, and be reasonably buildable. Within the FR-  
39 80, FR-2040 and AG-1020 districts, this section authorizes lot reconfiguration only  
40 where existing divisions are determined to have a reasonable probability of  
41 developing. For the purposes of this section the review authority shall determine  
42 whether the existing lots are reasonably buildable by considering the following: road  
43 access, septic suitability, topography, costs of providing infrastructure and the  
44 presence of sensitive land

45 b. Proposed parcel(s) results in the following:

46 (1) No additional parcels;

47 (2) Have septic suitability approval;

48 (3) Have adequate potable water at the time of occupancy, subject to Section

49 40.370.020;

- 1 (4) Each resulting legal nonconforming parcel shall be at least one (1) acre in size  
 2 with a minimum width of at least one hundred forty (140) feet; and  
 3 (5) In addition, within the FR-80, FR-2040 and AG-1020 districts:  
 4 (a) The location of the resulting reconfigured lots shall have the least impact on  
 5 sensitive and resource lands;  
 6 (b) Access to reconfigured lots shall meet the minimum standards necessary to  
 7 obtain a building permit;  
 8 (c) The remainder lot shall not be further subdivided or reduced in size unless the  
 9 affected property is included within an urban growth boundary;  
 10 (d) Reconfigured lots shall not be further adjusted by boundary line adjustment  
 11 without approval under this section.  
 12 c. Reconfigured lots shall result in achieving one (1) or more of the identified  
 13 public interest issues in Section 40.210.010(D)(1).  
 14 3. Lot Requirements. The setback, dimensional, use and height standards for  
 15 these lots shall be as established for the Rural-5 (R-5) district except that reductions  
 16 in side and rear setbacks shall be granted where necessary to permit construction of a  
 17 dwelling on the parcel; providing, when the parcel is abutting, or surrounded by,  
 18 property zoned for resource uses, the minimum setback from those property lines  
 19 shall be fifty (50) feet for all structures.  
 20 4. The review authority may impose conditions on the lot reconfiguration to further  
 21 the purposes of this section.  
 22 5. Lot reconfigurations shall be finalized upon the filing of a record of survey or  
 23 covenant.  
 24

25 E. Land Division in the AG-10 and FR-20 Zones.

26 1. Purpose.

- 27 a. The provisions of this subsection shall apply to all land divisions in the AG-10  
 28 and FR-20 zoning districts after July 1, 2016.  
 29 b. Available options for land division are authorized:  
 30 (1) Pursuant to Chapter 40.540; or  
 31 (2) Pursuant to Chapter 40.540 and by using the cluster provisions in Section  
 32 40.210.010(E)(3).  
 33 c. In the AG-10 zoning district:  
 34 (1) Land divisions that result in parcels twenty (20) acres (or lots capable of  
 35 being described as 1/32 of a section) in size or larger are allowed under the  
 36 exemption provisions of Section 40.540.020(B)(4)(b).  
 37 (2) Land divisions that result in parcels less than (20) acres in size must be  
 38 platted and meet the additional requirements of this chapter.  
 39 d. In the FR-20 zoning district, land divisions that result in parcels less than (40)  
 40 acres in size must be platted and meet the additional requirements of this  
 41 chapter.  
 42 f. Previously approved cluster or lot reconfiguration remainder lots are not eligible  
 43 to use the provisions of this section.  
 44

45 2. Definitions. For the purposes of this subsection, the following definitions shall apply:  
 46

<u>Critical lands</u>	<u>"Critical lands" mean those lands classified by Chapter 40.440 as habitat areas, by Chapter 40.450 as any wetland</u>
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	<u>category and associated buffers, by Chapter 40.430 as landslide hazard areas, all lands subject to Shoreline Management Act jurisdiction by Chapter 40.460, and all lands within a designated one hundred (100) year floodplain or floodway by Chapter 40.420.</u>
<u>Remainder parcel</u>	<u>"Remainder parcel" means the remainder parcel of the cluster subdivision that contains the majority of the land within the development and is devoted to resource or open space use.</u>

1  
2 3. Development standards for subdivisions or short plats.

3 Subdivisions and short plats are allowed pursuant to Chapter 40.540. The density  
4 shall be based on one hundred percent (100%) of the gross area of the site.  
5

6 4. Development Standards for Clustering.

7 a. Cluster developments are allowed at a maximum density equivalent to that which  
8 would be permitted by applying the otherwise applicable minimum lot size  
9 requirements of this section. The density shall be based on one hundred percent  
10 (100%) of the gross area of the site.

11 b. Cluster lots shall be created, as follows:

- 12 (1) to minimize conflicts between housing and agricultural or forest uses;  
13 (2) along parent property boundary lines, adjacent to existing roads, and to minimize  
14 the need for new roads and driveways;  
15 (3) to have building envelopes that avoid critical areas;  
16 (4) on parcels with an existing house, one of the cluster lots has to include the existing  
17 house;  
18 (5) to be adjacent to each other and to any pre-existing residence, unless the location  
19 of the existing residence would preclude compliance with the other provisions of  
20 this subsection;  
21 (6) if located on agriculturally zoned land, and to the extent not precluded by other  
22 provisions of this subsection, to be limited lands with poor soils or soils otherwise  
23 unsuitable of agriculture purpose; and  
24 (7) each cluster lot shall contain a buffer from abutting resource uses.

25 c. Remainder parcel.

- 26 (1) The remainder parcel shall be contiguous. Fragmentation of the parcel by  
27 public or private road easements and/or building sites shall not occur unless  
28 no other reasonable alternative exists. Remainder parcels shall also be  
29 located adjacent to other bordering remainder parcels or public parks and  
30 open space, if practical.  
31 (2) The remainder parcel shall be non-buildable and used for the agriculture  
32 and forestry uses as listed in Table 40.210.010-1(8)(a), (b) and (d), or as  
33 open space.  
34 (3) A farm or forest management plan is required for the remainder parcel. The  
35 plan shall be submitted and approved with the preliminary application. The  
36 plan shall:  
37 (a) identify permitted uses and management of the parcel so that it  
38 maintains designated agricultural or forest functions and provides for the  
39 protection of all critical areas;

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(b) identify the responsibility for maintaining agriculture or forest uses on the parcels; and  
(c) include any construction activities (for example, fencing or agricultural buildings) and vegetation clearing that may occur on-site.  
If in current use, the plan submitted for the current use taxation program shall suffice for meeting this requirement.  
(4) A note shall be placed on the plat that the remainder parcel shall not be further subdivided or reduced in size unless brought into an urban growth area. In addition, a restrictive covenant shall be recorded that clearly state that only the above uses are permitted on the parcel. The note and covenant shall also incorporate the management plan, as described above  
d. Lot Requirements. New lots and structures and additions to structures subject to this section shall comply with the applicable standards for lots and building height, and setbacks in Tables 40.210.010-4 and 40.210.010-5, subject to the provisions of Chapter 40.200 and Section 40.550.020.

**Table 40.210.010-4 Lot Requirements – FR-20 and AG-10 Cluster Developments**

<u>Lot Type</u>	<u>Lot Size</u>	<u>Minimum Lot Width (feet)</u>	<u>Minimum Lot Depth (feet)</u>
<u>Cluster Lot</u>	<u>1 acre<sup>1</sup></u>	<u>140</u>	<u>140</u>
<u>Remainder Lot</u>	<u>85% or greater of the parent parcel<sup>2</sup></u>	<u>None</u>	<u>None</u>

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<sup>1</sup> Unless a larger size is required by Clark County Public Health. In no case shall a cluster lot exceed one-and-a-half (1.5) acres in size. Cluster lots can use right-of-way to meet the minimum lot size as permitted by Section 40.200.040(C)(1).  
<sup>2</sup> The minimum standard for remainder parcels controls the maximum size of cluster lots.

**Table 40.210.010-5 Setbacks, Lot Coverage and Building Height – FR-20 and AG-10 Cluster Development**

<u>Zoning District and Lot Type</u>	<u>Location or Structure Type</u>	<u>Minimum Setbacks</u>			<u>Maximum Lot Coverage</u>	<u>Maximum Building Height (feet)</u>
		<u>Front (feet)</u>	<u>Side (feet)</u>	<u>Rear (feet)</u>		
<u>FR-20 and AG-10 Cluster Lots</u>	<u>Residential or agricultural structures abutting a cluster lot</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>N/A</u>	<u>35<sup>2</sup></u>
	<u>Residential structures abutting a resource district</u>	<u>50<sup>1</sup></u>	<u>50<sup>1</sup></u>	<u>50<sup>1</sup></u>		
	<u>Agricultural</u>	<u>20</u>	<u>20</u>	<u>20</u>		

	<u>structures</u>					
	<u>Vehicle entry gates</u>	<u>20</u>	<u>20</u>	<u>20</u>		
	<u>All other situations</u>	<u>50</u>	<u>20</u>	<u>50</u>		

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2 1 Except in cases where it can be shown that requiring the normal setback will result in the location of  
3 the building sites within inappropriate areas such as wildlife habitat or wetland areas or the dimensions  
4 of the development site render it unbuildable.

5 2 Residential buildings only.

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7 e. Design Requirements. The design requirements for cluster developments are  
8 listed below. These requirements shall be recorded on the plat.

9 (1) No driveway treatments, monument or other permanent development signs  
10 are permitted. This shall not be construed to prohibit landscaping.

11 (2) To the maximum practicable extent, existing historic rural features shall be  
12 preserved as part of the cluster development. These features include but  
13 are not limited to rock walls, fences, functional and structurally safe farm  
14 buildings, monuments and landscape features.

15 f. Landscaping Standards. Cluster developments shall be landscaped within the  
16 cluster lots to reduce views of the development from public right(s)-of-way, so  
17 that a filtered view is provided of the cluster and the cluster does not dominate  
18 the landscape.

19 (1) At a minimum, proposed or existing landscaping and vegetation shall be of  
20 sufficient size and type to provide a buffer of vegetation six (6) feet in height  
21 and fifty percent (50%) opaque year round within three (3) years of planting.  
22 New landscaping materials shall consist of native vegetation as provided on  
23 the Clark County plant list (see the Standard Details Manual). A  
24 combination of trees and shrubs must be used.

25 (2) All landscaping shall be installed prior to final plat unless financial  
26 guarantees are made for its installation prior to any building permit activity.  
27 Any required landscaping materials that fail to survive within the first two (2)  
28 years shall be promptly replaced.

29 g. Notice of Resource Activities. For any areas abutting property zoned for  
30 agricultural or forestry uses, the following notice shall be recorded as part of  
31 the Developer Covenants to Clark County for each parcel within the cluster.

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33 "The subject property is adjacent to commercial agricultural or forest lands on which a  
34 variety of commercial activities may occur that are not compatible with residential  
35 development. Potential discomforts or inconvenience may include, but are not limited  
36 to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including  
37 aircraft) during any twenty-four (24) hour period, storage and disposal of manure, and  
38 the application by spraying or otherwise of chemical fertilizers, soil amendments,  
39 herbicides and pesticides."

- 1 EXHIBIT 10
- 2 40.210 RESOURCE AND RURAL DISTRICTS
- 3 40.210.020 RURAL DISTRICTS
- 4

**Table 40.210.020-1. Uses.**

	R-20	R-10	R-5	Special Standards
<b>3. Services, Amusement.</b>				
a. Publicly owned recreational facilities, services, parks and playgrounds <sup>4</sup>	P	P	P	<u>40.260.157</u>
b. Private recreation facilities, such as country clubs and golf courses, including such intensive commercial recreational uses as golf driving ranges, race track, amusement park, paintball facilities, or gun club.	C	C	C	
<b>5. Services, Educational.<sup>4</sup></b>				
a. Public or private schools, but not including business, dancing or technical schools <sup>4</sup>	C	C	C	40.260.160
<b>6. Public Service and Facilities.<sup>4</sup></b>				
a. Ambulance dispatch facilities <sup>4</sup>	C	C	C	40.260.030
b. Government facilities <sup>4</sup>				

5 <sup>4</sup>Once a property has been developed as a public facility, a docket is required to  
 6 change the comprehensive plan designation from the current zone to the Public  
 7 Facility zone.  
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1 **EXHIBIT 11**

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3 **40.210 RESOURCE AND RURAL DISTRICTS**

4 **40.210.030 RURAL CENTER RESIDENTIAL DISTRICTS (RC-2.5, RC-1)**

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Table 40.210.030-1. Uses.			
	RC-1	RC-2.5	Special Standards
<b>3. Services, Amusement</b>			
a. Publicly owned recreational facilities, services, parks and playgrounds <sup>3</sup>	P	P	<u>40.260.157</u>
b. Neighborhood pParks <sup>3</sup>	P	P	<u>40.260.157</u>
c. Private recreation facilities, such as country clubs and golf courses, including such intensive commercial recreational uses as golf driving range, race track, amusement park, paintball facilities, or gun club	C	C	
<b>5. Services, Educational.<sup>3</sup></b>			
a. Public or private schools, but not including business, dancing or technical schools <sup>3</sup>	C	C	40.260.160
<b>6. Public Service and Facilities.<sup>3</sup></b>			
a. Ambulance dispatch facilities <sup>3</sup>	C	C	40.260.030
b. Government facilities <sup>3</sup>	C <sup>1</sup>	C <sup>1</sup>	

6 <sup>3</sup>Once a property has been developed as a public facility, a docket is required to  
 7 change the comprehensive plan designation from the current zone to the Public  
 8 Facility zone.

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1 EXHIBIT 12

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3 40.210 RESOURCE AND RURAL DISTRICTS

4 40.210.050 RURAL COMMERCIAL DISTRICTS (CR-1, CR-2)

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Table 40.210.050-1. Uses.			
	CR-1	CR-2	Special Standards
11. Services-- Mental and Health			
g. Ambulance services <sup>Z</sup>	P	P	
14. Services - Educational. <sup>Z</sup>			
c. Libraries (< 2,500 square feet gross floor area) <sup>Z</sup>	P	P	
d. Libraries (> 2,500 square feet gross floor area) <sup>Z</sup>	X	C	
i. Public parks, parkways, recreation facilities, trails and related facilities <sup>Z</sup>	P	P	
j. Neighborhood parks <sup>Z</sup>	P	P	<u>40.260.157</u>
k. Public/private educational institutions <sup>Z</sup>	C <sup>1</sup>	C <sup>1</sup>	
17. Public Services and Facilities. <sup>Z</sup>			
a: Buildings entirely dedicated to public services, such as City Hall, police and fire substations <sup>Z</sup>	C1	C1	
e. U.S. Post Offices <sup>Z</sup>	P	P	
f. Public transit facilities including park and ride facilities <sup>Z</sup>	P	P	

6 Once a property has been developed as a public facility, a docket is required to  
 7 change the comprehensive plan designation from the current zone to the Public  
 8 Facility zone.

9

10

1 **EXHIBIT 25**

2  
3 **40.260.030 AMBULANCE DISPATCH FACILITY**

4  
5 A. In the R1-5, R1-6, R1-7.5, R1-10, R1-20, R-12, R-18, R-22, R-30, R-43, OR-15,  
6 OR-18, OR-22, OR-30, OR-43, R-5, R-10, R-20, FR-80, ~~FR-40~~ FR-20, ~~AG-20~~ AG-10,  
7 and AG-WL districts, an ambulance dispatch facility may be permitted upon issuance  
8 of a conditional use permit; provided, that the site has a minimum lot size of ten  
9 thousand (10,000) square feet in the urban area and should be on a street designated  
10 as an arterial on the county's comprehensive plan.

11  
12 B. Properties will develop per the standards of the current zone.

13  
14 C. Once a property has been developed as a public facility, a docket is required to  
15 change the comprehensive plan designation from the current zone to the Public  
16 Facility zone.

1 **EXHIBIT 26**

2  
3 **40.260 SPECIAL USES AND STANDARDS**

4  
5 **40.260.050 BED AND BREAKFAST ESTABLISHMENTS**

6  
7 **A. Purpose.**

8 This section provides standards for the establishment of bed and breakfast facilities.  
9 The regulations are intended to allow for a more efficient use of large, older houses  
10 for a purpose which has been found to be compatible with residential uses. These  
11 regulations enable owners to protect and maintain large residential structures in a  
12 manner which keeps them primarily in residential uses. The proprietor can take  
13 advantage of the scale and often the architectural and historical significance of a  
14 residence. The regulations also provide an alternative form of lodging for visitors who  
15 prefer a residential setting.

16  
17 **B. Use-Related Regulations.**

18 1. A bed and breakfast establishment must be accessory to a household living on the  
19 site. This means that an individual or family who operates the establishment must own  
20 and occupy the house as their primary residence. The house must have been used as  
21 a residence for at least a total of five (5) years prior to filing the application for a bed  
22 and breakfast establishment.

23 2. Banquets, parties, weddings or meetings for guests or other non-family members  
24 are prohibited. Services may only be provided to overnight patrons of the facility.

25 3. Establishments containing three (3) to six (6) bedrooms for guests must meet the  
26 Department of Social and Health Services (DSHS) bed and breakfast guidelines  
27 administered by DSHS.

28 4. Bed and breakfast establishments are only allowed on resource lands (FR-80, FR-  
29 40-FR-20, AG-20 AG-10 and AG-WL) when they do not diminish the primary use of  
30 the land for long-term commercial production of forest products and other natural  
31 resources.

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1 **EXHIBIT 27**

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**40.260.075 ELECTRIC VEHICLE INFRASTRUCTURE**

**A. Purpose.**

This section provides opportunities for electric vehicle infrastructure in all zoning districts in the county. These regulations are intended to:

1. Provide adequate and convenient electric vehicle charging stations to serve the needs of the traveling public;
2. Provide opportunities for Clark County residents to have safe and efficient personal electric vehicle charging stations located at their place of residence; and
3. Provide the opportunity for commercial and industrial projects to supply electric vehicle charging station services to their customers and employees.

**B. Applicability.**

1. Electric vehicle infrastructure is permitted, as follows:
  - a. Electric vehicle charging stations equipped with Level 1 or Level 2 charging equipment as an accessory use in all zoning districts.
  - b. Rapid charging stations also known as Level 3 charging in CR-1, CR-2, R-30, R-43, OR-15, PR-18, OR-22, OR-30, OR-43, MX, CC, C-3, GC, IL, IH, BP, U, A, UH-10, and UH-20. ~~and UH-40.~~
  - c. Battery exchange stations in CC, C-3, GC, IL and IH.

\*\*\*\*\*

1. **EXHIBIT 28**

2  
3 **40.260.115 MARIJUANA FACILITIES**

4  
5 **D. Location Standards.**

6 1. Subject to Section 40.260.115(D)(1)(d), marijuana facilities as defined in Section  
7 40.260.115(C) may be sited as follows:

8 a. Marijuana production facilities may be allowed on legal parcels of at least ten (10)  
9 acres in size zoned ~~AG-20~~ AG-10 and ~~FR-40~~ FR-20, and on legal conforming parcels  
10 zoned IL, IH, and IR.

11 b. Marijuana processing facilities may be allowed on legal parcels as follows:

12 (1) Processor I facilities, on legal conforming parcels zoned IL, IH, IR, and BP;

13 (2) Processor I facilities, on parcels of at least ten (10) acres in size zoned ~~AG-20~~ AG-  
14 10 and ~~FR-40~~ FR-20, but only as accessory to licensed production facilities; and

15 (3) Processor II facilities, on parcels zoned IH, IL, IR, and BP.

16 c. Marijuana retailing facilities may be allowed on legal conforming parcels zoned GC,  
17 CC, C-3, and CR-2.

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1 **EXHIBIT 30**

2  
3 **40.260 SPECIAL USES AND STANDARDS**

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5 **40.260.160 NURSERY SCHOOLS, PRESCHOOLS, KINDERGARTENS,**  
6 **COMMERCIAL DAY CARE CENTERS, AND FAMILY DAY CARE**  
7

8 **B. Family day care facilities shall comply with the following criteria:**

9 **1. When located in a resource, rural or residential zone (R1-5, R1-6, R1-7.5, R1-10,**  
10 **R1-20, R-12, R-18, R-22, R-30, R-43, OR-15, OR-18, OR-22, OR-30, OR-43, R-5, R-**  
11 **10, R-20, FR-80, ~~FR-40~~ ~~FR-20~~, ~~AG-20~~ ~~AG-10~~, and AG-WL districts), no exterior**  
12 **structural or decorative alteration which will alter the residential character of a**  
13 **residence is permitted.**

14 **2. Adequate off-street parking and loading space shall be provided pursuant to**  
15 **Chapter 40.340.**

16 **3. Two (2) nonresident or non-family member employees are permitted if located**  
17 **within a resource, rural or residential zone.**

18 **4. Signage shall be limited to one (1) sign, not to exceed two (2) square feet in area,**  
19 **for identification purposes only.**

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21 **\*\*\*\*\***  
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1 **EXHIBIT 31**

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3 **40.260 SPECIAL USES AND STANDARDS**

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5 **40.260.170 PRIVATE USE LANDING STRIPS FOR AIRCRAFT AND HELIPORTS**

6

7 All landing strips for aircraft or heliports shall be so designed and the runways and  
8 facilities so oriented that the incidence of aircraft passing directly over dwellings  
9 during their landing or taking off patterns is minimized. They shall be located so that  
10 traffic shall not constitute a nuisance to neighboring uses. The proponents shall show  
11 that adequate controls or measures will be taken to prevent offensive noise,  
12 vibrations, dust or bright lights.

13

14 A. Private landing strips and heliports may be permitted upon approval of a conditional  
15 use permit only in the R-5, R-10, R-20, ~~AG-20~~ AG-10, ~~FR-40~~ FR-20, IL and IH zoning  
16 districts.

17

18 B. Heliports, helipads and helispots are permitted outright only in the FR-80 district.

19

20 C. Private use heliports may also be permitted upon approval of a conditional use  
21 permit in the C-3, CL, GC and OR districts.

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1 **EXHIBIT 32**

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3 **40.260 SPECIAL USES AND STANDARDS**

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5 **40.260.210 TEMPORARY DWELLINGS**

6  
7 **B. Conditions.**

8 Temporary dwellings authorized herein shall be subject to the following minimum  
9 conditions:

10 1. The lot, tract or parcel shall be of such size and configuration, and the temporary  
11 dwelling shall be located in such a manner as to enable compliance with such zoning  
12 and subdivision regulations as would be applicable but for the authorization of this  
13 section; provided, that:

14 a. One (1) temporary dwelling may be approved for each authorized permanent  
15 dwelling, if the tract or parcel of which it is a part is either:

16 (1) One (1) acre or larger in size; or

17 (2) Able to comply with the residential density standards for the applicable zoning  
18 district with the addition of the temporary dwelling(s). For example, the addition of one  
19 (1) temporary dwelling on a ten thousand (10,000) square foot lot in the R1-5 zoning  
20 district with one (1) existing dwelling.

21 b. Within the agriculture and forest districts (~~FR-80, FR-40~~ FR-20, AG-20 ~~AG-10~~):

22 (1) The additional dwelling(s) private well and septic system shall be located where  
23 they will minimize adverse impacts on resource land;

24 (2) If practical, the temporary dwelling shall be located within two hundred (200) feet  
25 of the principal dwelling.

26  
27 \*\*\*\*\*

1 **EXHIBIT 33**

2  
3 **40.260.250 WIRELESS COMMUNICATION FACILITIES**

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5 **D. Site Location of Wireless Communications Facilities.** Wireless communications  
6 facilities are permitted in any zone in the unincorporated county subject to the  
7 following preferences and the limitations in Section 40.260.250(E)(2). New wireless  
8 communications facilities shall be in conformance with all applicable standards as  
9 provided by this section.

10 **3. Location Priorities for New Towers.** The county's preferences for new support tower  
11 locations in rural areas and in urban areas are listed below in descending order with  
12 the highest preference first. There is no preference for urban versus rural locations.

13 **a. Order of preference for new support towers in rural areas:**

- 14 (1) Rural Industrial outside rural centers (IH), to include UR-20 and UR-
- 15 40;
- 16 (2) Forest Tier I (FR-80) and Tier II (~~FR-40~~ FR-20);
- 17 (3) Rural Industrial inside rural centers (IH);
- 18 (4) Agriculture (~~AG-20~~ AG-10);
- 19 (5) Rural (R-20);
- 20 (6) Rural (R-10; R-5), to include UR-10;
- 21 (7) Rural Commercial outside rural centers (CR-1);
- 22 (8) Rural Commercial inside rural centers (CR-2);
- 23 (9) Rural Center Residential (RC-2.5; RC-1).

24 **b. Order of preference for new support towers in urban areas:**

- 25 (1) Heavy Industrial (IH);
- 26 (2) Light Industrial (IL), to include UH-20; and UH-40;
- 27 (3) General Commercial (GC);
- 28 (4) Other commercial districts, to include UH-10;
- 29 (5) Mixed Use (MX) districts;
- 30 (6) Residential districts.

31  
32 **G. Permit Process.**

33 **1. Process Review.** Table 40.260.250-1 shows required levels of WCF application  
34 review in terms of district location. Each type is subject to Section 40.520.040, Site  
35 Plan Review, and Chapter 40.510, Type I, II and III processes. Proposals requiring  
36 Type III review shall necessitate approval of a conditional use permit. Facilities  
37 exempt from threshold determination and EIS requirements under SEPA are listed in  
38 WAC 197-11-800(25).  
39

Table 40.260.250-1. Processing Requirements for Wireless Communications Facilities.			
	Collocation <sup>1</sup> on Existing Support Towers or Support Structures	New <sup>2</sup> Attached WCFs on Existing Support Structures	New Support Towers
WCFs in Rural Areas (outside UGBs)	Review Type <sup>3</sup>		

**Table 40.260.250-1. Processing Requirements for Wireless Communications Facilities.**

	Collocation <sup>1</sup> on Existing Support Towers or Support Structures	New <sup>2</sup> Attached WCFs on Existing Support Structures	New Support Towers
Industrial outside rural centers (IH)	I	I	II; III <sup>4</sup>
Forest Tier I (FR-80) and Tier II (FR-40 <u>FR-20</u> )	I	I	II; III <sup>4</sup>
Industrial inside rural centers (IH)	I	I	II; III <sup>4</sup>
Agriculture (AG-20 <u>AG-10</u> )	I	I	III
Rural (R-20; R-10; R-5)	I	I	III
Rural Commercial outside rural centers (CR-1)	I	I	III
Rural Commercial inside rural centers (CR-2)	I	I	III
Rural Center Residential (RC-2.5; RC-1)	I	I	III
Urban Reserve (UR)	I	I	III
WCFs in Urban Areas (inside UGBs outside city limits)			
Urban Holding (UH)	I	I	III
Employment Zones (IL, IH, IR, BP)	I	I	II; III <sup>4</sup>
Commercial ( <u>G2NC</u> , <u>G3-CC</u> and GC)	I	I	III
Residential	I	I	III
Temporary Use (not to exceed 60 days)			
All districts	I	I	I

1 **EXHIBIT 34**

2  
3 **40.310 SIGNS**

4  
5 **40.310.010 SIGN STANDARDS**

6  
7 **F. Requirements for Signs – General and by Zoning Districts.**

8 **1. Temporary Signs in Certain Commercial Zones (GC, CR-1, CR-2, ~~C-2~~NC, ~~C-3~~**  
9 **CC, BP, and A Zones).**

10 **3. Additional Standards for Signs Restricted by Land Use District.**

11 **a. Single-Family Residential Districts.** Additional standards for signs in single-family  
12 residential districts are located in Table 40.310.010-2. These standards apply to the  
13 following land use districts: R1-5, R1-6, R1-7.5, R1-10, and R1-20.

14 **b. Multifamily Residential and Office Residential Zones.** Additional standards for signs  
15 in multifamily residential and office residential districts are located in Table  
16 40.310.010-3. These standards apply to the following land use districts: R-12, R-18,  
17 R-22, R-30, R-43, OR-15, OR-18, OR-22, OR-30 OR-43, MU, U, and BP.

18 **c. Commercial Districts.** Additional standards for signs in commercial districts are  
19 located in Table 40.310.010-4. These standards apply to the following land use  
20 districts: GC, CR-1, CR-2, ~~NC~~, ~~C-2~~, and CC, ~~C-3~~.

21 **d. Industrial Districts.** Additional standards for signs in industrial districts are located in  
22 Table 40.310.010-5. These standards apply to the following land use districts: IL and  
23 IH.

24 **e. Rural and Resource Districts.** Additional standards for signs in rural and resource  
25 districts are located in Table 40.310.010-6. These standards apply to the following  
26 land use districts: AG-10, AG-20, ~~FR-20~~, ~~FR-40~~, ~~FR-80~~, AG-WL, R-5, R-10, R-20, RC-  
27 1, and RC-2.5.

Table 40.320.010-1 Landscaping Standards

		Zoning of Proposed Development													
		Single-family <sup>3,4</sup>		Multifamily <sup>4</sup>		Office Residential <sup>4</sup> , Employment and University		Commercial and Mixed Use		Industrial and Airport					
		R1, R, RC, UH and UR zones		R-12 through R-43		OR, BP and U zones		All C zones, MX		IL, A		IH/IR			
Zoning of land abutting development site	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	
															40 <sup>6</sup>
Resource	FR-80, FR-40, FR-20, AG-20, AG10, AG-WL			L2 5-ft	L3 50-ft	L2 5-ft	L3 10-ft	L2 10-ft	L2 5-ft	L2 10-ft	L1 5-ft	L2 10-ft	L3 10-ft		

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1 **EXHIBIT 36**

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4 **40.510 TYPE I, II, III, AND IV PROCESSES**

5  
6 **40.510.010 TYPE I PROCESS – MINISTERIAL DECISIONS**

7  
8 **C. Procedure.**

9 **4. Notice of agricultural, forest or mineral resource activities.**

10 a. All plats, building permits or development approvals under this title issued for  
11 residential development activities on, or within a radius of five hundred (500) feet for  
12 lands zoned agriculture-wildlife (AG-WL), agriculture (AG-10 ~~AG-20~~), forest (~~FR-40,~~  
13 ~~FR-20 and~~ FR-80), or surface mining (S), or in current use pursuant to Chapter 84.34  
14 RCW, shall contain or be accompanied by a notice provided by the responsible  
15 official. Such notice shall include the following disclosure:

16  
17 The subject property is within or near designated agricultural land, forest land or  
18 mineral resource land (as applicable) on which a variety of commercial activities may  
19 occur that are not compatible with residential development for certain periods of  
20 limited duration. Potential discomforts or inconveniences may include, but are not  
21 limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery  
22 (including aircraft) during any twenty-four (24) hour period, storage and disposal of  
23 manure, and the application by spraying or otherwise of chemical fertilizers, soil  
24 amendments, herbicides and pesticides.

25  
26 b. In the case of subdivisions or short plats, such notice shall be provided in the  
27 Developer Covenants to Clark County; in the case of recorded binding site plans,  
28 such notice shall be recorded separately with the County Auditor.  
29

1 **EXHIBIT 37**

2  
3 **40.510 TYPE I, II, III, AND IV PROCESSES**

4  
5 **40.510.020 TYPE II PROCESS – ADMINISTRATIVE DECISIONS**

6  
7 **D. Procedure.**

8 **5. Notice of Agricultural, Forest or Mineral Resource Activities.**

9 **a. All plats, building permits or development approvals under this title issued for**  
10 **residential development activities on, or within a radius of five hundred (500) feet for**  
11 **lands zoned agriculture-wildlife (AG-WL), agriculture (AG-20-AG-10), forest (FR-40-**  
12 **FR-20 and FR-80), or surface mining (S), or in current use pursuant to Chapter 84.34**  
13 **RCW, shall contain or be accompanied by a notice provided by the responsible**  
14 **official. Such notice shall include the following disclosure:**

15  
16 **The subject property is within or near designated agricultural land, forest land or**  
17 **mineral resource land (as applicable) on which a variety of commercial activities may**  
18 **occur that are not compatible with residential development for certain periods of**  
19 **limited duration. Potential discomforts or inconveniences may include, but are not**  
20 **limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery**  
21 **(including aircraft) during any twenty-four (24) hour period, storage and disposal of**  
22 **manure, and the application by spraying or otherwise of chemical fertilizers, soil**  
23 **amendments, herbicides and pesticides.**

24  
25 **b. In the case of subdivisions or short plats, such notice shall be provided in the**  
26 **Developer Covenants to Clark County; in the case of recorded binding site plans,**  
27 **such notice shall be recorded separately with the County Auditor.**

1 **EXHIBIT 38**

2  
3 **40.510 TYPE I, II, III, AND IV PROCESSES**

4  
5 **40.510.030 TYPE III PROCESS – QUASI-JUDICIAL DECISIONS**

6  
7 **D. Procedure.**

8 **7. Notice of Agricultural, Forest or Mineral Resource Activities.**

9 a. All plats, building permits or development approvals under this title issued for  
10 residential development activities on, or within a radius of five hundred (500) feet for  
11 lands zoned agriculture-wildlife (AG-WL), agriculture (~~AG-20~~ AG-10), forest (~~FR-40~~  
12 FR-20, FR-80), or surface mining (S), or in current use pursuant to Chapter 84.34  
13 RCW, shall contain or be accompanied by a notice provided by the responsible  
14 official. Such notice shall include the following disclosure:

15  
16 The subject property is within or near designated agricultural land, forest land or  
17 mineral resource land (as applicable) on which a variety of commercial activities may  
18 occur that are not compatible with residential development for certain periods of  
19 limited duration. Potential discomforts or inconveniences may include, but are not  
20 limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery  
21 (including aircraft) during any twenty-four (24) hour period, storage and disposal of  
22 manure, and the application by spraying or otherwise of chemical fertilizers, soil  
23 amendments, herbicides and pesticides.

24  
25 b. In the case of subdivisions or short plats, such notice shall be provided in the  
26 Developer Covenants to Clark County; in the case of recorded binding site plans,  
27 such notice shall be recorded separately with the County Auditor.

1 **EXHIBIT 39**

2  
3 **40.530 NON-CONFORMING USES, STRUCTURES AND LOTS**

4  
5 **40.530.010 NON-CONFORMING LOTS, STRUCTURES AND USES**

6  
7 **D. Legal Nonconforming Lots.**

8 A legal lot of record, as defined in Section 40.100.070 and created as a building site,  
9 which does not conform to minimum lot area, width or depth requirements of the  
10 zoning district in which it is currently situated may be developed, subject to the  
11 following:

12 1. A permitted use or structure shall meet all existing development standards of the  
13 zoning district within which it is located including, but not limited to, required  
14 yards/setbacks, lot coverage, density, parking, landscaping, storm drainage, signage,  
15 and road standards.

16 2. For the purpose of establishing setbacks from property lines, any residential lot of  
17 record in the rural (R-5, R-10 and R-20), resource (FR-80 and FR-40-FR-20, AG-20-  
18 AG-10, and AG-WL), urban reserve (UR-10 and UR 20) and urban holding (UH-10,  
19 UH-20 and UH-40) districts which has a smaller lot area, width and/or depth than that  
20 required by the zone in which it is located may use that residential zoning  
21 classification which most closely corresponds to the area or dimensions of the lot of  
22 record.

# APPENDIX 3

OCT 02 2017

GROWTH MANAGEMENT  
HEARINGS BOARD

ORDINANCE NO. 2017-07-04

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2  
3       **An ordinance relating to land use; adopting an amended updated**  
4 **Growth Management Comprehensive Land Use Plan, zoning maps and**  
5 **zoning ordinances; providing for severability; providing an effective date;**  
6 **and requiring notice.**

7  
8       WHEREAS, the Board of Clark County Councilors (Board) adopted  
9 Ordinance 2016-06-12 on June 28, 2016, completing the required 2016 update of  
10 the county's comprehensive plan (2016 Plan Update); and

11  
12       WHEREAS, Futurewise and Friends of Clark County, and Clark County  
13 Citizens United appealed the 2016 Plan Update; and

14  
15       WHEREAS, the Growth Management Hearings Board (GMHB) held a  
16 hearing on the issues on February 8, 2017; and

17  
18       WHEREAS, the GMHB issued its final decision and order (Order) on March  
19 23, 2017, finding that the County's 2016 Plan Update had complied with the  
20 Growth Management Act (GMA) on most issues, but that the 2016 Plan Update  
21 had violated GMA on certain issues, which the Order remanded back to the  
22 county with direction to come into compliance; and

23  
24       WHEREAS, the Board has discussed the remanded issues and potential  
25 responses to them in public meetings on March 29, 2017, April 25, 2017, June 7,  
26 2017, and June 20, 2017; and

27  
28       WHEREAS, certain of the noncompliant and remanded portions of the  
29 2016 Plan Update included the following:

- 30  
31       1. The 2016 Plan Update established AG-10 and FR-20 districts in place of  
32 the AG-20 and FR-40 districts, respectively; and,  
33       2. It eliminated the Rural-20, Rural-10 and Rural-5 Plan designations in favor  
34 of a single Rural designation that was implemented by the R-20, R-10, and  
35 R-5 zones; and,  
36       3. It established an Urban Reserve overlay, with uses to be governed by  
37 its own use list; and  
38       4. It failed to specify a maximum acreage for the Rural Industrial Land  
39 Bank; and  
40       5. It expanded the Urban Growth Area of the City of Battle Ground; and

41  
42       WHEREAS, the Clark County Planning Commission held a duly advertised  
43 public hearing on May 18, 2017 at which it addressed proposals to come into  
44 compliance with the above areas of noncompliance, and recommended that the  
45 Board adopt those proposals; and

46  
47       WHEREAS, the Planning Commission further recommended that the Board  
48 accept a request by the City of Battle Ground to impose the Urban Reserve  
49 overlay on any land removed from its Urban Growth Area; and

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WHEREAS, the Board held a duly advertised public hearing on June 20, 2017, at which it considered the Planning Commission recommendations and took public testimony and deliberated on them; and

WHEREAS, the Board finds and concludes that the actions recommended by the Planning Commission and set forth below are in the best public interest for the health, safety and welfare of Clark County;

Now, Therefore,

BE IT ORDERED, RESOLVED AND DECREED BY THE BOARD OF COUNTY COUNCILORS OF CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

**Section 1. Amendatory.** The 20-Year Clark County Comprehensive Growth Management Plan map for 2015-2035 is amended, as follows:

Resource Lands. All parcels currently designated as Forest Tier 2 with a zoning of FR-20 are hereby changed to FR-40 zoning. All parcels currently designated as Agriculture (AG) with a zoning of AG10 zoning are hereby changed to AG-20 zoning.

Rural Lands. All parcels with R-20 zoning now have a comprehensive plan designation of R-20. All parcels with R-10 zoning now have a comprehensive plan designation of R-10. All parcels with R-5 zoning now have a comprehensive plan designation of R-5.

Battle Ground UGA. Tax Lots 228346000, 228286000, 228344000, 228347000, 228339000, 228345000, 228348000, 228310000, 228343000, 228341000, 228342000, 228273000, 228301000, 228272000, 228340000, 986030989, and 228300000 are:

- 1) hereby removed from the Battle Ground urban growth area; and
- 2) given a comprehensive plan designation and zoning of R-5; and
- 3) given an urban reserve overlay of UR-20.

**Section 2. Amendatory.** The 20-Year Clark County Comprehensive Growth Management Plan text for 2015-2035 is amended, as follows:

**Land Use Element (Chapter 1)**  
Interpretation of the 20-Year Plan Map (page 31)

1 Rural Lands (page 91)

2  
3 Policy 3.2.3 Those areas with a Rural Comprehensive Plan designation of Rural 5,  
4 Rural 10, and Rural 20 shall have a residential densities of one dwelling  
5 unit per 5, 10, and 20 acres (R-5, R-10, and R-20), respectively).

6  
7 Forest Lands (page 93)

8  
9 Policy 3.4.3 Those areas with Forest Tier I and Forest Tier II Comprehensive Plan  
10 designations shall have a residential densities of one dwelling unit per  
11 80 and 40 ~~20~~ acres (FR-80 and FR-40 ~~FR-20~~), respectively).

12  
13 Agriculture Lands (page 94)

14  
15 Policy 3.5.3 Those areas with Agriculture Comprehensive Plan designations shall  
16 have a residential density of one dwelling unit per 2040 acres (AG-20  
17 ~~AG-10~~).

18  
19 Rural Industrial Land Bank (page 97)

20  
21 Policy 3.8.1. Designate a rural industrial land bank that is compatible with surrounding  
22 land uses and that creates long term value for both the community and  
23 the industrial users. The maximum size of industrial land bank sites shall  
24 be 700 acres.

25  
26 **Section 3. Amendatory.** Clark County Code (CCC) Title 40 Table of  
27 Contents, as amended previously by Ordinance 2016-06-12, is amended, as  
28 shown in Exhibit 1.

29  
30 **Section 4. Amendatory.** CCC Section 40.100.070, as previously  
31 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 2.

32  
33 **Section 5. Amendatory.** CCC Section 40.200.020, as previously  
34 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 3.

35  
36 **Section 6. Amendatory.** CCC Section 40.200.040, as previously  
37 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 4.

38  
39 **Section 7. Amendatory.** CCC Section 40.210.010, as previously  
40 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 5.

41  
42 **Section 8. Amendatory.** CCC Section 40.250.100, as previously  
43 amended by Ordinance 2016-06-12, is adopted as shown in Exhibit 6.

44  
45 **Section 9. Amendatory.** CCC Section 40.260.030, as previously  
46 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 7.

47  
48 **Section 10. Amendatory.** CCC Section 40.260.050, as previously  
49 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 8.

1  
2       **Section 11. Amendatory.** CCC Section 40.260.115, as previously  
3 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 9.  
4

5       **Section 12. Amendatory.** CCC Section 40.260.160, as previously  
6 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 10.  
7

8       **Section 13. Amendatory.** CCC Section 40.260.170, as previously  
9 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 11.  
10

11       **Section 14. Amendatory.** CCC Section 40.260.210, as previously  
12 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 12.  
13

14       **Section 15. Amendatory.** CCC Section 40.260.250, as previously  
15 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 13.  
16

17       **Section 16. Amendatory.** CCC Section 40.310.010, as previously  
18 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 14.  
19

20       **Section 17. Amendatory.** CCC Section 40.320.010, as previously  
21 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 15.  
22

23       **Section 18. Amendatory.** CCC Section 40.510.010, as previously  
24 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 16.  
25

26       **Section 19. Amendatory.** CCC Section 40.510.020, as previously  
27 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 17.  
28

29       **Section 20. Amendatory.** CCC Section 40.510.030, as previously  
30 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 18.  
31

32       **Section 21. Amendatory.** CCC Section 40.530.010, as previously  
33 amended by Ordinance 2016-06-12, is amended, as shown in Exhibit 19.  
34

35       **Section 22. Amendatory.** CCC Section 40.560.010, as previously  
36 amended by Ordinance 2016-06-12, is amended as shown in Exhibit 20.  
37

38       **Section 23. Repealer.** Ordinance 2017-04-14 is repealed in its  
39 entirety, effective the day following the effective date of this ordinance.  
40

41       **Section 24. Severability.** If any section, clause, or phrase of this ordinance  
42 should be held invalid or unconstitutional by the Growth Management Hearings Board  
43 or a court of competent jurisdiction, such invalidity or unconstitutionality shall not  
44 affect the validity or constitutionality of any other section, sentence, clause or phrase  
45 of this ordinance.  
46  
47



1 **EXHIBIT 1**

2

3 **Title 40 Clark County, Washington, Unified Development Code**

4

5 **TABLE OF CONTENTS**

6

7 **Chapter 40.210 Resource and Rural Districts**

8 40.210.010 Forest, Agriculture and Agricultural-Wildlife Districts (FR-80, FR-40, ~~FR-~~  
9 ~~20~~, AG-20, ~~AG-10~~, AG-WL)

10 40.210.020 Rural Districts (R-20, R-10, R-5)

11 40.210.030 Rural Center Residential Districts (RC-2.5, RC-1)

12 40.210.050 Rural Commercial Districts (CR-1, CR-2)

13

14

\*\*\*\*\*

1 **EXHIBIT 2**

2  
3 **40.100 GENERAL PROVISIONS**

4  
5 **40.100.070 DEFINITIONS**

6  
7 **40.100.070 Definitions**

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

- 11 • Section 40.240.040, Columbia River Gorge National Scenic Area Districts;
- 12 • Section 40.250.010, Airport Environs Overlay Districts (AE-1, AE-2);
- 13 • Section 40.250.030, Historic Preservation;
- 14 • Section 40.260.050, Bed and Breakfast Establishments;
- 15 • Section 40.260.100, Home Businesses;
- 16 • Section 40.260.250, Wireless Communications Facilities;
- 17 • Section 40.310.010, Sign Standards;
- 18 • Section 40.386.010, Stormwater and Erosion Control;
- 19 • Section 40.410.010, Critical Aquifer Recharge Areas (CARAs);
- 20 • Section 40.420.010, Flood Hazard Areas;
- 21 • Section 40.430.010, Geologic Hazard Areas;
- 22 • Chapter 40.460, Shoreline Master Program;
- 23 • Section 40.560.030, Amendments Docket;
- 24 • Chapter 40.570, State Environmental Policy Act (SEPA); and
- 25 • Section 40.610.020, Development Impact Fees.

26  
27 \*\*\*\*\*

<p>28 29 30 31 32</p> <p>Lot area, rural</p>	<p>"Lot area, rural" means the computed area contained within the lot lines to include:</p> <ul style="list-style-type: none"> <li>• Private driveway easements,</li> <li>• On-site road easements,</li> <li>• One-half (1/2) width or thirty (30) feet, whichever is less, of abutting public rights-of-way for perimeter streets, excluding limited access state or interstate highways.</li> </ul> <p>For the purposes of this definition, "rural lot area" applies to urban reserve (UR-10 and UR-20), and urban holding overlays (UH-10 and UH-20), and rural (R-5, R-10 and R-20), agricultural (<del>AG-20</del><del>AG-40</del> and AG-WL) and forest resource (<del>FR-40</del><del>FR-20</del> and FR-80) districts.</p> <p>(Amended: Ord. 2007-06-05; Ord. 2009-07-01; Ord. 2016-06-12)</p>
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1 **EXHIBIT 3**

2

3 **40.200 LAND USE DISTRICTS – GENERAL PROVISIONS**

4

5 **40.200.020 ZONING CLASSIFICATIONS**

6

7 **A. Classification of Zoning Districts.**

8 For the purposes of this title, the county is divided into zoning districts designated as  
 9 shown in Table 40.200.020-1.  
 10  
 11

Table 40.200.020-1. Zoning Districts.				
Zoning District	Map Symbol	Urban	Rural	Code Section
<b>RESOURCE AND RURAL DISTRICTS (40.210)</b>				
Forest and Agriculture	FR-80, <del>FR-40, FR-20,</del> <u>AG-20 AG-10</u>		X	40.210.010
Agricultural-Wildlife	AG-WL		X	
Rural	R-20, R-10, R-5		X	40.210.020
Rural center residential	RC-1, RC-2.5		X	40.210.030
Rural Commercial	CR-1, CR-2		X	40.210.050
<b>URBAN AREA RESIDENTIAL DISTRICTS (40.220)</b>				
Single-family residential	R1-20, R1-10, R1-7.5, R1-6, R1-5	X		40.220.010
Residential	R-12, R-18, R-22, R-30, R-43	X		40.220.020
Office residential	OR-15, OR-18, OR-22, OR-30, OR-43	X		
<b>COMMERCIAL, BUSINESS, MIXED USE AND INDUSTRIAL DISTRICTS (40.230)</b>				
Rural commercial	CR-1, CR-2		X	<u>40.210.050</u>
Neighborhood commercial	NC	X		40.230.010
Community commercial	CC	X		
General commercial	GC	X		

Table 40.200.020-1. Zoning Districts.				
Zoning District	Map Symbol	Urban	Rural	Code Section
Mixed use	MX	X		40.230.020
Business park	BP	X		40.230.030
University	U	X		40.230.050
Airport	A	X	X	40.230.060
Light industrial	IL	X		40.230.085
Heavy industrial	IH	X	X	
Public Facilities	PF	X	X	40.230.090
COLUMBIA RIVER GORGE NATIONAL SCENIC AREA DISTRICTS (40.240)				
Gorge Large-Scale Agriculture	GLSA-80, GLSA-40		X	40.240
Gorge Small-Scale Agriculture	GSSA-20		X	
Gorge Small Woodland	GSW-40, GSW-20		X	
Gorge Open Space	GOS		X	
Gorge Residential	GR-5		X	
Gorge Public Recreation	GPR		X	
Gorge SMA Agriculture	GSAG		X	
Gorge SMA Federal Forest	GSFF		X	
Gorge SMA Non-Federal Forest	GSNFF		X	
Gorge SMA Open Space	GSOS		X	
OVERLAY DISTRICTS (40.250 and 40.460)				

Table 40.200.020-1. Zoning Districts.				
Zoning District	Map Symbol	Urban	Rural	Code Section
Airport Environs	AE-1, AE-2	X	X	40.250.010
Surface mining	S	X	X	40.250.022
Historic Preservation		X	X	40.250.030
Shoreline	SL	X	X	40.460
Highway 99	TC-1	X		40.250.050
Mill Creek	MC	X		40.250.060
Equestrian	EQ	X	X	40.250.090
Urban reserve	UR-20, UR-10		X	40.250.100
Urban holding	UH-20, UH-10	X		40.250.110

(Amended: Ord. 2008-12-15; Ord. 2009-06-16; Ord. 2009-12-01; Ord. 2010-12-12; Ord. 2012-12-14; Ord. 2016-06-12)

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4  
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1 C. Lot Area Calculations.

- 2 1. Lot area is the computed area contained within the lot lines.
- 3 a. In the urban area, except for the UH zones, lot area excludes street and
- 4 alley rights-of-way, street easements, and street tracts.
- 5 b. In the urban reserve (UR-10 and UR-20), urban holding (UH-10 and UH-
- 6 20), rural (R-5, R-10 and R-20), agricultural (AG-20 ~~AG-10~~ and AG-WL)
- 7 and forest resource (FR-40 ~~FR-20~~ and FR-80) districts, lot area includes
- 8 on-site road easements, and one-half (1/2) the width, or thirty (30) feet,
- 9 whichever is less, of abutting public rights-of-way for perimeter streets,
- 10 excluding limited access state or interstate highways.
- 11 c. Driveways are included in lot area in all zones.
- 12 2. One lot within a proposed subdivision, short plat or exempt division shall be
- 13 considered in compliance with the minimum lot area requirements if it is within
- 14 ten percent (10%) of the required lot area for the zone. To utilize this provision
- 15 in the R1-5 and R1-6 zones, one lot may be excluded from the average
- 16 minimum lot calculations and the ten percent (10%) lot area reduction may be
- 17 applied to the excluded lot. The provisions of this section shall not apply to
- 18 developments utilizing the following:
- 19 a. Density transfer (Section 40.220.010(C)(5));
- 20 b. Rural cluster (Section 40.210.020).

21

22 *(Amended: Ord. 2005-06-09; Ord. 2006-11-15; Ord. 2007-11-13; Ord. 2009-06-01;*

23 *Ord. 2009-07-01; Ord. 2016-06-12)*

24

25

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27 \* \* \* \* \*

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30

1 **EXHIBIT 5**

2  
3 **40.210 RESOURCE AND RURAL DISTRICTS**

4  
5 **40.210.010 FOREST, AGRICULTURE AND AGRICULTURAL-WILDLIFE**  
6 **DISTRICTS (FR-80, FR-40, FR-20, AG-10, AG-20, AG- WL)**

7  
8 **A. Purpose.**

- 9 1. Forest 80 District. The purpose of the Forest 80 district is to maintain and  
10 enhance resource-based industries, encourage the conservation of productive  
11 forest lands and discourage incompatible uses consistent with the Forest I  
12 policies of the comprehensive plan. The Forest 80 district applies to lands  
13 which have been designated as Forest Tier 1 on the comprehensive plan.  
14 Nothing in this chapter shall be construed in a manner inconsistent with the  
15 Washington Forest Practices Act.
- 16 2. Forest ~~40~~ 20 District. The purpose of the Forest ~~40~~20 district is to encourage  
17 the conservation of lands which have the physical characteristics that are  
18 capable of management for the long-term production of commercially  
19 significant forest products and other natural resources, such as minerals.
- 20 3. Agriculture ~~20~~ 40 District. The purpose of the Agriculture ~~20~~40 district is to  
21 encourage the conservation of lands which have the growing capacity,  
22 productivity, soil composition, and surrounding land use to have long-term  
23 commercial significance for agriculture and associated resource production.
- 24 4. Agricultural-Wildlife. The purpose of the AG-WL district is to encourage the  
25 preservation of agricultural and wildlife use on land which is suited for  
26 agricultural production, and to protect agricultural areas that are highly valuable  
27 seasonal wildlife habitat from incompatible uses. The district provides for  
28 activities which can be considered accessory only to agricultural, game, or  
29 wildlife habitat management, or recreational uses. Nothing in this chapter shall  
30 be construed to restrict normal agricultural practices.

31  
32 **B. Uses.**

33 The uses set out in Table 40.210.010-1 are examples of uses allowable in the  
34 various resource zone districts. The appropriate review authority is mandatory.

- 35 • "P" – Uses allowed subject to approval of applicable permits.  
36 • "R/A" – Uses permitted upon review and approval as set forth in Section  
37 40.520.020.  
38 • "C" – Conditional uses which may be permitted subject to the approval of a  
39 conditional use permit as set forth in Section 40.520.030.  
40 • "X" – Uses specifically prohibited.

41  
42 Where there are special use standards or restrictions for a listed use, the  
43 applicable code section(s) in Chapter 40.260, Special Uses and Standards, or  
44 other applicable chapter is noted in the "Special Standards" column.  
45  
46  
47  
48  
49

Table 40.210.010-1. Uses:					
	FR-80	FR-4020	AG-2040	AG-WL	Special Standards
1. Residential.					
a. Single-family dwellings and accessory buildings	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P	40.260.010
b. Guest house	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>	40.260.010
c. Family day care centers	P	P	P	P	40.260.160
d. Adult family homes	P	P	P	P	40.260.190
e. Home business – Type I	P	P	P	P	40.260.100
f. Home business – Type II	R/A	R/A	R/A	R/A	40.260.100
g. Bed and breakfast establishments (up to 2 guest bedrooms)	R/A	R/A	R/A	R/A	40.260.050
h. Bed and breakfast establishments (3 or more guest bedrooms)	C	C	C	C	40.260.050
i. Garage sales	P	P	P	P	40.260.090
j. Temporary dwellings	P	P	P	X	40.260.210
2. Services, Business.					
a. Commercial nurseries predominantly marketing locally produced plants and associated landscaping materials	R/A	R/A	R/A	C	
b. Roadside farm stand	P	P	P	P	40.260.025
c. Agricultural market	P	P	P	X	40.260.025
d. Commercial kennels on a parcel or parcels 5 acres or more	R/A	R/A	R/A	X	40.260.110
e. Private kennels	P	P	P	P	40.260.110
f. Animal boarding and day use facilities	P	P	P	X	40.260.040
3. Services, Amusement. <sup>10</sup>					
a. Public recreation, scenic and park use <sup>10</sup>	P	P	P	C <sup>3</sup>	
b. Public interpretive/educational uses <sup>10</sup>	P	P	P	P	
c. Dispersed recreation and recreational facilities such as primitive campsites, trails, trailheads, snowparks and warming huts <sup>10</sup>	P	P	P	X	
d. Public recreation accessways, trails, viewpoints, and associated parking <sup>10</sup>	P	P	P	P	
e. Regional recreational facilities designed and	P	P	P	P	

Table 40.210.010-1. Uses.					
developed through a public master planning process <sup>10</sup>					
f. Private recreation facilities, including retreats, but excluding such intensive uses as country clubs and golf courses	C	C	C	C <sup>3</sup>	
g. Country club and golf courses	X	X	C	X	
h. Equestrian facility	P	P	P	X	40.260.040
i. Equestrian events center	C	C	C	X	
j. Circuses, carnivals or amusement rides	R/A	R/A	R/A	R/A	
4. Services -- General.					
a. Event facilities < 5,000 sq. ft.	X	C	C	X	
b. Tasting room and event facilities in conjunction with a winery	P	P	P	X	40.260.245
5. Services, Membership Organization.					
a. Churches	X	C	C	X	
6. Services, Educational. <sup>10</sup>					
a. Public and private elementary and middle schools serving a student population primarily outside of urban growth boundaries	C	C	C	X	40.260.160
7. Public Service and Facilities. <sup>10</sup>					
a. Ambulance dispatch facilities <sup>10</sup>	C	C	C	C	40.260.030
b. Government facilities <sup>10</sup>	C <sup>4</sup>	C <sup>4</sup>	C <sup>4</sup>	C <sup>5</sup>	
c. Public corrections facilities <sup>10</sup>	C	C	C	X	
8. Resource Activities.					
a. Agricultural	P <sup>6</sup>	P <sup>6</sup>	P <sup>6</sup>	P	
b. The growing, harvesting and transport of timber, forest products and associated management activities in accordance with the Washington Forest Practices Act of 1974 as amended, and regulations adopted pursuant thereto	P	P	P	X	
c. Wildlife game management	P	P	P	P	
d. Plant nurseries	P	P	P	P	
e. Removal, harvesting, wholesaling and retailing of vegetation from forest lands including but not limited to fuel wood, Christmas trees, salal,	P	P	P	C	Chapter 40.440

Table 40.210.010-1. Uses.					
berries, ferns, greenery, mistletoe, herbs and mushrooms					
f. Silviculture	P	P	P	C	40.260.080
g. Aggregate extraction and processing for the purposes of construction and maintenance of a timber or agricultural management road system	P <sup>7</sup>	P <sup>7</sup>	P <sup>7</sup>	X	40.260.120
h. Exploration for rock, gravel, oil, gas, mineral and geothermal resources	P	P	P	X	40.260.120
i. Extraction of oil, gas and geothermal resources, in accordance with all applicable local, state and federal regulations	R/A	R/A	R/A	X	40.260.120
j. Commercial uses supporting resource uses	P <sup>8</sup>	P <sup>8</sup>	P <sup>8</sup>	X	
k. Accessory buildings	P	P	P	P	40.260.010
l. Housing for temporary workers	P	P	P	P	40.260.105
m. Sawmills greater than ten thousand (10,000) board feet per day, and other products from wood residues, drying kilns and equipment	C	C	C	X	
n. Forestry, environmental and natural resource research and facilities	P	P	P	C	
o. The processing of oil, gas and geothermal resources	C	C	C	X	
p. Heliports, helipads and helispots used in conjunction with the resource activity	P	P	C	X	40.260.170
9. Other.					
a. Signs	P	P	P	P	Chapter 40.310
b. Utilities, structures and uses including but not limited to utility substations, pump stations, wells, watershed intake facilities, gas and water transmission lines	P	P	P	C	40.260.240
c. Wireless communications facilities	P/C <sup>9</sup>	P/C <sup>9</sup>	P/C <sup>9</sup>	P/C <sup>9</sup>	40.260.250
d. Dams for flood control and hydroelectric generating facilities	C	C	C	C	
e. Solid waste handling and disposal sites	C	C	C	C	40.260.200
f. Private use landing strips for aircraft	C	C	C	X	40.260.170
g. New cemeteries and mausoleums, crematoria, columbaria, and mortuaries within cemeteries;	X	X	X	C	

Table 40.210.010-1. Uses.					
provided, that no crematoria is within two hundred (200) feet of a lot in a residential district					
h. Expansion of existing cemeteries	P	P	P	P	
i. Temporary uses	P	P	P	P	40.260.220
j. Electric vehicle infrastructure	P	P	P	P	40.260.075
k. Marijuana-related facilities	X	X	X	X	

<sup>1</sup> One (1) single-family dwelling on legal lot or legal nonconforming lot of record.

<sup>2</sup> One (1) guesthouse in conjunction with a single-family dwelling or mobile home.

<sup>3</sup> Public, where no public master planning process has been completed or private outdoor recreational facilities requiring limited physical improvements which are oriented to the appreciation, protection, study or enjoyment of the fragile resources of this area. In addition to those findings as specified by Section 40.520.030 (Conditional Use Permits), such uses shall be approved only upon the applicant establishing both of the following:

- There will be no significant environmental impact, especially as it relates to wildlife, resulting from the proposed use; and
- The subject site cannot be put to any reasonable economic use which is provided for in this section.

<sup>4</sup> Government facilities necessary to serve the area outside urban growth boundaries, including fire stations, ambulance dispatch facilities and storage yards, warehouses, or similar uses.

<sup>5</sup> Limited to fire stations only.

<sup>6</sup> Agriculture including: floriculture, horticulture, general farming, dairy, the raising, feeding and sale or production of poultry, livestock, furbearing animals, and honeybees including feedlot operations, animal sales yards, Christmas trees, nursery stock and floral vegetation and other agricultural activities and structures accessory to farming or animal husbandry.

<sup>7</sup> Additional surface mining and associated activities subject to zone change to add the surface mining overlay district, Section 40.250.020.

<sup>8</sup> Commercial uses supporting resource uses, such as packing, first stage processing and processing which provides value added to resource products. Chippers, pole yards, log sorting and storage, temporary structures for debarking, accessory uses including but not limited to scaling and weigh operations, temporary crew quarters, storage and maintenance facilities, disposal areas, saw mills producing ten thousand (10,000) board feet per day or less, and other uses involved in the harvesting of forest products.

<sup>9</sup> See Table 40.260.250-1.

<sup>10</sup> Once a property has been developed as a public facility, a docket is required to change the comprehensive plan designation from the current zone to the Public Facility zone.

(Amended: Ord. 2004-06-10; Ord. 2005-04-12; Ord. 2006-05-01; Ord. 2006-09-13; Ord. 2008-12-15; Ord. 2009-12-01; Ord. 2009-12-15; Ord. 2010-10-02; Ord. 2011-03-09; Ord. 2011-06-14; Ord. 2011-08-08; Ord. 2011-12-09; Ord. 2012-02-03; Ord. 2012-06-02; Ord. 2012-07-03; Ord. 2012-12-23; Ord. 2013-07-08; Ord. 2014-01-08; Ord. 2014-05-07; Ord. 2014-11-02; Ord. 2016-09-04)

### C. Development Standards.

1. New lots and structures and additions to structures subject to this section shall comply with the applicable standards for lots and building height, and setbacks in Tables 40.210.010-2 and 40.210.010-3, subject to the provisions of Chapter 40.200 and Section 40.550.020.

Table 40.210.010-2. Lot Requirements				
Zoning District	Use/Activity	Minimum Lot Area (acres)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)
FR-80	All Uses	80 <sup>1</sup> or legally described as one-eighth (1/8) of a section	660 <sup>2</sup>	None
<del>FR-40</del> 20	All Uses	<del>20</del> <sup>40</sup> <sup>1</sup> or legally described as one-sixteenth (1/16) of a section	660 <sup>2</sup>	None
<del>AG-20</del> 40	All Uses	40 <sup>20</sup> <sup>1</sup> or legally described as one-thirty-second (1/32) of a section	660 <sup>2</sup>	None
AG-WL	Agricultural	20 or legally described as one-thirty-second (1/32) of a section	None	None
	Wildlife game management	20 or legally described as one-thirty-second (1/32) of a section	None	None
	Public interpretive/educational uses	N/A	None	None
	Single-family dwellings	160 or legally described as one-fourth (1/4) of a section	None	None
	Plant nurseries	20 or legally described as one-thirty-second (1/32) of a section	None	None
	Silviculture	20 or legally described as one-thirty-second (1/32) of a section	None	None
	Public recreation accessways and associated parking and trails	N/A	None	None

1  
2

<sup>1</sup> The following uses may be permitted on newly approved lots of less than the minimum parcel size:

- 1 a. Utilities, structures and uses including but not limited to utility substations, pump stations, wells,  
 2 watershed intake facilities, gas and water transmission lines and telecommunication facilities.  
 3 b. Dams for flood control and hydroelectric generating facilities.  
 4 <sup>2</sup> Minimum lot width – One hundred forty (140) feet for legal lots created under Section 40.210.010(D).  
 5 (Amended: Ord. 2006-05-01; Ord. 2007-11-13)  
 6

Table 40.210.010:3. Setbacks, Lot Coverage and Building Height:

Zoning District	Minimum Setbacks <sup>1</sup>			Rear (feet)	Maximum Lot Coverage	Maximum Building Height (feet)
	Front (feet)	Side				
		Street (feet)	Interior (feet)			
FR-80	50 <sup>2</sup>	25	50 <sup>3</sup>	50 <sup>3</sup>	N/A	35 <sup>4</sup>
<del>FR-4020</del>	50 <sup>2</sup>	25	50 <sup>3</sup>	50 <sup>3</sup>	N/A	35 <sup>4</sup>
<del>AG-2040</del>	50 <sup>2</sup>	25	50 <sup>3</sup>	50 <sup>3</sup>	N/A	35 <sup>4</sup>
AG-WL	None	None	None	None	N/A	None

- 7  
 8 <sup>1</sup> See Section 40.530.010(D)(2) for nonconforming lots.  
 9 <sup>2</sup> From public road right-of-way or private road easement.  
 10 <sup>3</sup> All structures.  
 11 <sup>4</sup> Residential buildings only.  
 12

13 (Amended: Ord. 2005-05-20; Ord. 2010-08-06)

- 14  
 15 2. Signs. Signs shall be permitted according to the provisions of Chapter 40.310.  
 16 3. Previous Land Divisions.  
 17 a. Within the FR-80, ~~FR-40 20~~ and ~~AG-20 40~~ districts, until the affected  
 18 property is included within an urban growth boundary, no remainder lot of a  
 19 previously approved agriculture or forest district "cluster" land division or lot  
 20 reconfiguration shall be:  
 21 (1) Further subdivided or reduced in size below seventy percent (70%) of  
 22 the total developable area of the original parent parcel constituting the  
 23 cluster subdivision; or  
 24 (2) Reduced by a total of more than one (1) acre.  
 25 b. Applications for reduction in remainder lot size consistent with this provision  
 26 shall be processed as a plat alteration pursuant to Section 40.540.120.  
 27 c. Exceptions to Subsections (C)(3)(a) and (b) of this section. A remainder lot  
 28 with an existing residence may be short platted further to contain the  
 29 residence on its own lot, subject to the following:  
 30 (1) Process. Creation of the new lot is subject to the requirements of  
 31 Section 40.540.030.  
 32 (2) Lot Size. The new lot shall be sized to require the minimum reduction in  
 33 the remainder lot, but still meet minimum requirements of this section  
 34 and for on-site sewage disposal as required by the Clark County Public  
 35 Health.  
 36 (3) The new lot may not include critical areas unless no other alternative  
 37 exists. If no alternative is available, encroachment into these areas shall  
 38 be limited to the least amount possible consistent with applicable critical

1 areas ordinances.

2 (4) A building envelope containing the existing residence and accessory  
3 buildings shall be established within the new lot, subject to the following:

4 (a) A minimum one hundred (100) foot setback between the envelope  
5 and the remainder parcel is maintained, unless it can be shown that  
6 a lesser setback with existing or proposed landscaping or existing  
7 vegetation will provide the same or greater buffering. In no case shall  
8 a setback less than fifty (50) feet be approved.

9 (b) A minimum twenty (20) foot setback between the envelope and other  
10 cluster lots is maintained.

11 (5) A note shall be placed on the plat stating the following:

12  
13 The residential property is adjacent to agricultural or forest lands on which a  
14 variety of resource-related activities may occur that are not compatible with  
15 residential development. Potential discomforts or inconvenience may  
16 include, but are not limited to: Noise, odors, fumes, dust, smoke, insects,  
17 operation of machinery (including aircraft) during any twenty-four (24) hour  
18 period, storage and disposal of manure, and the application by spraying or  
19 otherwise of chemical fertilizers, soil amendments, herbicides and  
20 pesticides.

21  
22 (6) An open space, farm or forest management plan is required for the  
23 remainder parcel, which shall prohibit additional residential  
24 development. The plan shall be submitted and approved with the  
25 preliminary application. The plan shall identify permitted uses and  
26 management of the parcel so that it maintains its open space or other  
27 designated functions and provides for the protection of all critical areas.  
28 The management plan shall identify the responsibility for maintaining the  
29 remainder parcel. The plan shall also include any construction activities  
30 (trails, fencing, agricultural buildings) and vegetation clearing that may  
31 occur on site. All subsequent activities must be conducted in  
32 conformance with the approved management plan. Management plans  
33 may be modified through a Type II process. A note shall be placed on  
34 the plat and a restrictive covenant shall be recorded that clearly states  
35 that only the above uses are permitted on the remainder parcel. The  
36 note and covenant shall also incorporate the management plan, as  
37 described above.

38 4. Nonconforming lots may be reconfigured pursuant to Section 40.530.020(B).

39  
40 *(Amended: Ord. 2005-04-12; Ord. 2011-08-08; Ord. 2014-01-08)*

41  
42 **D. Nonconforming Lots – Lot Reconfiguration Standards.**

43 1. Purpose. It is in the public interest to encourage the protection of sensitive  
44 lands, expand the amount of commercially viable resource land under single  
45 ownership, reduce the amount of road and utility construction and, within the  
46 FR-80, FR-40 20 and AG-20 10 districts, to protect and buffer designated  
47 resource lands.

48 2. Lot Reconfiguration. Except for previously approved agricultural or forest zoned  
49 clusters or rural residential planned unit developments, these substandard lots

1 may be modified where consistent with the following criteria. Parcels which  
2 meet all of the following criteria are eligible for reconfiguration and reduction in  
3 size subject to a Type II review:

4 a. Existing parcel(s) is:

5 (1) smaller than the minimum lot size established for new lots in the  
6 applicable zoning district. Parcels which meet the minimum lot size may  
7 be adjusted as a part of this process, but may not be decreased below  
8 the established minimum lot size.

9 (2) determined to be legally created, and be reasonably buildable. Within  
10 the FR-80, FR-~~40 20~~ and AG-~~20 40~~ districts, this section authorizes lot  
11 reconfiguration only where existing divisions are determined to have a  
12 reasonable probability of developing. For the purposes of this section  
13 the review authority shall determine whether the existing lots are  
14 reasonably buildable by considering the following: road access, septic  
15 suitability, topography, costs of providing infrastructure and the presence  
16 of sensitive land.

17 b. Proposed parcel(s) results in the following:

18 (1) No additional parcels;

19 (2) Have septic suitability approval;

20 (3) Have adequate potable water at the time of occupancy, subject to  
21 Section 40.370.020;

22 (4) Each resulting legal nonconforming parcel shall be at least one (1) acre  
23 in size with a minimum width of at least one hundred forty (140) feet;  
24 and

25 (5) In addition, within the FR-80, FR-~~40 20~~ and AG-~~20 40~~ districts:

26 (a) The location of the resulting reconfigured lots shall have the least  
27 impact on sensitive and resource lands;

28 (b) Access to reconfigured lots shall meet the minimum standards  
29 necessary to obtain a building permit;

30 (c) The remainder lot shall not be further subdivided or reduced in size  
31 unless the affected property is included within an urban growth  
32 boundary;

33 (d) Reconfigured lots shall not be further adjusted by boundary line  
34 adjustment without approval under this section.

35 c. Reconfigured lots shall result in achieving one (1) or more of the identified  
36 public interest issues in Section 40.210.010(D)(1).

37 3. Lot Requirements. The setback, dimensional, use and height standards for  
38 these lots shall be as established for the Rural-5 (R-5) district except that  
39 reductions in side and rear setbacks shall be granted where necessary to  
40 permit construction of a dwelling on the parcel; providing, when the parcel is  
41 abutting, or surrounded by, property zoned for resource uses, the minimum  
42 setback from those property lines shall be fifty (50) feet for all structures.

43 4. The review authority may impose conditions on the lot reconfiguration to further  
44 the purposes of this section.

45 5. Lot reconfigurations shall be finalized upon the filing of a record of survey or  
46 covenant.

1 E. Land Divisions in the AG-20 40 and FR-40 20 Zones.

2 1. Applicability.

- 3 a. The provisions of this subsection shall apply to all land divisions in the AG-  
4 20 40 and FR-40 20 zoning districts after July 1, 2016.
- 5 b. Available options for land division are authorized:
- 6 (1) Pursuant to Chapter 40.540; or  
7 (2) Pursuant to Chapter 40.540 and by using the cluster provisions in  
8 Section 40.210.010(E)(3).
- 9 c. In the AG-20 40 zoning district:
- 10 (1) Land divisions that result in parcels twenty (20) acres (or lots capable  
11 of being described as one-thirty-second (1/32) of a section) in size or  
12 larger are allowed under the exemption provisions of Section  
13 40.540.020(B)(4)(b).  
14 (2) Land divisions that result in parcels less than twenty (20) acres in  
15 size must be platted and meet the additional requirements of this  
16 chapter.
- 17 d. In the FR-40 20 zoning district, land divisions that result in parcels less than  
18 forty (40) acres in size must be platted and meet the additional  
19 requirements of this chapter.
- 20 e. Previously approved cluster or lot reconfiguration remainder lots are not  
21 eligible to use the provisions of this section.

22  
23 2. Definitions. For the purposes of this subsection, the following definitions shall  
24 apply:  
25

Critical lands	"Critical lands" mean those lands classified by <u>Subtitle 40.4</u> . <del>Chapter 40.440 as habitat areas, by Chapter 40.450 as any wetland category and associated buffers, by Chapter 40.430 as landslide hazard areas, all lands subject to Shoreline Management Act jurisdiction by Chapter 40.460, and all lands within a designated one hundred (100) year floodplain or floodway by Chapter 40.420.</del>
Remainder parcel	"Remainder parcel" means the remainder parcel of the cluster subdivision that contains the majority of the land within the development and is devoted to resource or open space use.

- 26  
27 3. Development Standards for Subdivisions or Short Plats. Subdivisions and short  
28 plats are allowed pursuant to Chapter 40.540. The density shall be based on  
29 one hundred percent (100%) of the gross area of the site.
- 30 4. Development Standards for Clustering.
- 31 a. Cluster developments are allowed at a maximum density equivalent to that  
32 which would be permitted by applying the otherwise applicable minimum lot  
33 size requirements of this section. The density shall be based on one  
34 hundred percent (100%) of the gross area of the site.
- 35 b. Cluster lots shall be created, as follows:
- 36 (1) To minimize conflicts between housing and agricultural or forest uses;  
37 (2) Along parent property boundary lines, adjacent to existing roads, and to  
38 minimize the need for new roads and driveways;  
39 (3) To have building envelopes that avoid critical areas;  
40 (4) On parcels with an existing house, one (1) of the cluster lots has to

- 1 include the existing house;
- 2 (5) To be adjacent to each other and to any preexisting residence, unless
- 3 the location of the existing residence would preclude compliance with
- 4 the other provisions of this subsection;
- 5 (6) If located on agriculturally zoned land; and to the extent not precluded
- 6 by other provisions of this subsection, to be limited to lands with poor
- 7 soils or soils otherwise unsuitable for agricultural purposes; and
- 8 (7) Each cluster lot shall contain a buffer from abutting resource uses.

- 9 c. Remainder Parcel.
- 10 (1) The remainder parcel shall be contiguous. Fragmentation of the parcel
- 11 by public or private road easements and/or building sites shall not occur
- 12 unless no other reasonable alternative exists. Remainder parcels shall
- 13 also be located adjacent to other bordering remainder parcels or public
- 14 parks and open space, if practical.
- 15 (2) The remainder parcel shall be nonbuildable and used for the agriculture
- 16 and forestry uses as listed in Table 40.210.010-1(8)(a), (b) and (d), or as
- 17 open space.
- 18 (3) A farm or forest management plan is required for the remainder parcel.
- 19 The plan shall be submitted and approved with the preliminary
- 20 application. The plan shall:
- 21 (a) Identify permitted uses and management of the parcel so that it
- 22 maintains designated agricultural or forest functions and provides for
- 23 the protection of all critical areas;
- 24 (b) Identify the responsibility for maintaining agriculture or forest uses on
- 25 the parcels; and
- 26 (c) Include any construction activities (for example, fencing or
- 27 agricultural buildings) and vegetation clearing that may occur on site.

28  
29 If in current use, the plan submitted for the current use taxation program shall  
30 suffice for meeting this requirement.

- 31
- 32 (4) A note shall be placed on the plat that the remainder parcel shall not be
- 33 further subdivided or reduced in size unless brought into an urban
- 34 growth area. In addition, a restrictive covenant shall be recorded that
- 35 clearly states that only the above uses are permitted on the parcel. The
- 36 note and covenant shall also incorporate the management plan, as
- 37 described above.

- 38 d. Lot Requirements. New lots and structures and additions to structures
- 39 subject to this section shall comply with the applicable standards for lots
- 40 and building height, and setbacks in Tables 40.210.010-4 and 40.210.010-
- 41 5, subject to the provisions of Chapter 40.200 and Section 40.550.020.
- 42

Table 40.210.010-4. Lot Requirements – FR-40-20 and AG-20-40 Cluster Developments			
Lot Type	Lot Size	Minimum Lot Width (feet)	Minimum Lot Depth (feet)
Cluster Lot	1 acre <sup>1</sup>	140	140

**Table 40.210.010-4. Lot Requirements – FR-40-20 and AG-20-40 Cluster Developments**

Lot Type	Lot Size	Minimum Lot Width (feet)	Minimum Lot Depth (feet)
Remainder Lot	85% or greater of the parent parcel <sup>2</sup>	None	None

<sup>1</sup> Unless a larger size is required by Clark County Public Health. In no case shall a cluster lot exceed one-and-one-half (1.5) acres in size. Cluster lots can use right-of-way to meet the minimum lot size as permitted by Section 40.200.040(C)(1).

<sup>2</sup> The minimum standard for remainder parcels controls the maximum size of cluster lots.

**Table 40.210.010-5. Setbacks, Lot Coverage and Building Height – FR-40-20 and AG-20-40 Cluster Developments**

Zoning District and Lot Type	Location or Structure Type	Minimum Setbacks			Maximum Lot Coverage	Maximum Building Height (feet)
		Front (feet)	Side (feet)	Rear (feet)		
FR-40-20 and AG-20-40 Cluster Lots	Residential or agricultural structures abutting a cluster lot	20	20	20	N/A	35 <sup>2</sup>
	Residential structures abutting a resource district	50 <sup>1</sup>	50 <sup>1</sup>	50 <sup>1</sup>		
	Agricultural structures	20	20	20		
	Vehicle entry gates	20	20	20		
	All other situations	50	20	50		

<sup>1</sup> Except in cases where it can be shown that requiring the normal setback will result in the location of the building sites within inappropriate areas such as areas containing good agricultural soils, wildlife habitat or wetlands, or the dimensions of the development site render it unbuildable.

<sup>2</sup> Residential buildings only.

- e. Design Requirements. The design requirements for cluster developments are listed below. These requirements shall be recorded on the plat.
  - (1) No entryway treatments, monument or other permanent development signs are permitted. This shall not be construed to prohibit landscaping.
  - (2) To the maximum practicable extent, existing historic rural features shall be preserved as part of the cluster development. These features include but are not limited to rock walls, fences, functional and structurally safe farm buildings, monuments and landscape features.
- f. Landscaping Standards. Cluster developments shall be landscaped within the cluster lots to reduce views of the development from public right(s)-of-way, so that a filtered view is provided of the cluster and the cluster does not dominate the landscape.
  - (1) At a minimum, proposed or existing landscaping and vegetation shall be of sufficient size and type to provide a buffer of vegetation six (6) feet in height and fifty percent (50%) opaque year round within three (3) years of planting. New landscaping materials shall consist of native vegetation as provided on

1 the Clark County plant list (see the Standard Details Manual). A  
2 combination of trees and shrubs must be used.  
3 (2) All landscaping shall be installed prior to final plat unless financial  
4 guarantees are made for its installation prior to any building permit activity.  
5 Any required landscaping materials that fail to survive within the first two (2)  
6 years shall be promptly replaced.

7 g. Notice of Resource Activities. For any areas abutting property zoned for  
8 agricultural or forestry uses, the following notice shall be recorded as part of  
9 the developer covenants to Clark County for each parcel within the cluster:

10  
11 The subject property is adjacent to commercial agricultural or forest lands on which a  
12 variety of commercial activities may occur that are not compatible with residential  
13 development. Potential discomforts or inconvenience may include, but are not limited  
14 to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including  
15 aircraft) during any twenty-four (24) hour period, storage and disposal of manure, and  
16 the application by spraying or otherwise of chemical fertilizers, soil amendments,  
17 herbicides and pesticides.

18  
19 *(Amended: Ord. 2016-06-12)*

20 \*\*\*\*\*

1 **EXHIBIT 7**

2  
3 **40.260 SPECIAL USES AND STANDARDS**

4  
5 **40.260.030 AMBULANCE DISPATCH FACILITY**

6  
7 A. In the R1-5, R1-6, R1-7.5, R1-10, R1-20, R-12, R-18, R-22, R-30, R-43, OR-  
8 15, OR-18, OR-22, OR-30, OR-43, R-5, R-10, R-20, FR-80, FR-40 ~~FR-20~~, AG-  
9 20 ~~AG-10~~, and AG-WL districts, an ambulance dispatch facility may be  
10 permitted upon issuance of a conditional use permit; provided, that the site has  
11 a minimum lot size of ten thousand (10,000) square feet in the urban area and  
12 should be on a street designated as an arterial on the county's comprehensive  
13 plan.

14  
15 B. Properties will develop per the standards of the current zone.

16  
17 C. Once a property has been developed as a public facility, a docket is required to  
18 change the comprehensive plan designation from the current zone to the Public  
19 Facility zone.

20  
21 *(Amended: Ord. 2016-06-12)*

22  
23 \*\*\*\*\*

1 **EXHIBIT 8**

2  
3 **40.260 SPECIAL USES AND STANDARDS**

4  
5 **40.260.050 BED AND BREAKFAST ESTABLISHMENTS**

6  
7 **A. Purpose.**

8 This section provides standards for the establishment of bed and breakfast  
9 facilities. The regulations are intended to allow for a more efficient use of large,  
10 older houses for a purpose which has been found to be compatible with residential  
11 uses. These regulations enable owners to protect and maintain large residential  
12 structures in a manner which keeps them primarily in residential uses. The  
13 proprietor can take advantage of the scale and often the architectural and  
14 historical significance of a residence. The regulations also provide an alternative  
15 form of lodging for visitors who prefer a residential setting.

16  
17 **B. Use-Related Regulations.**

- 18 1. A bed and breakfast establishment must be accessory to a household living on  
19 the site. This means that an individual or family who operates the  
20 establishment must own and occupy the house as their primary residence. The  
21 house must have been used as a residence for at least a total of five (5) years  
22 prior to filing the application for a bed and breakfast establishment.
- 23 2. Banquets, parties, weddings or meetings for guests or other non-family  
24 members are prohibited. Services may only be provided to overnight patrons of  
25 the facility.
- 26 3. Establishments containing three (3) to six (6) bedrooms for guests must meet  
27 the Department of Social and Health Services (DSHS) bed and breakfast  
28 guidelines administered by DSHS.
- 29 4. Bed and breakfast establishments are only allowed on resource lands (FR-80,  
30 FR-40,20, AG-20,40 and AG-WL) when they do not diminish the primary use  
31 of the land for long-term commercial production of agriculture or forest products  
32 and other natural resources.

33  
34 *(Amended: Ord. 2010-08-06; Ord. 2011-03-09; Ord. 2012-12-14)*

35  
36 \*\*\*\*\*

1 **EXHIBIT 10**

2  
3 **40.260 SPECIAL USES AND STANDARDS**

4  
5 **40.260.160 NURSERY SCHOOLS, PRESCHOOLS, KINDERGARTENS,**  
6 **COMMERCIAL DAY CARE CENTERS, AND FAMILY DAY CARE**

7  
8 A. Nursery schools, preschools, kindergartens and commercial day care centers shall  
9 comply with the following criteria:

- 10 1. Minimum site size shall be ten thousand (10,000) square feet, except, when a  
11 preschool, kindergarten or commercial day care center is designed as a part of  
12 an integrated industrial, commercial or multifamily development, in which case  
13 the minimum lot size may be reduced by the review authority, provided all other  
14 applicable code requirements are met.
- 15 2. Provide and maintain outdoor play areas with a minimum area of one hundred  
16 (100) square feet per individual based upon total capacity.
- 17 a. The outdoor play area requirement shall not apply to strictly "drop-in  
18 facilities" where the individuals cared for are not on the premises for more  
19 than three (3) hours in a twenty-four (24) hour period; provided, that the  
20 requirements of the Washington Administrative Code are met.
- 21 b. Facilities with a capacity of forty (40) individuals or more, under the licensing  
22 authority of the state Department of Social and Health Services (DSHS),  
23 and with an approved "shifting schedule" for the use of outdoor play area by  
24 DSHS, may calculate the outdoor play area based on one hundred (100)  
25 square feet per individual using the outdoor area at any one (1) time;  
26 however, a minimum of four thousand (4,000) square feet of outdoor play  
27 area must be provided.
- 28 c. Facilities with a capacity of thirty-nine (39) or less, or which do not qualify  
29 with a "shifting" schedule as stated above, may count up to fifty (50) square  
30 feet of dedicated indoor play area per individual of capacity toward the  
31 outdoor play area requirements.
- 32 3. The play area shall be abutting the indoor facility.
- 33 4. A sight-obscuring fence of at least four (4) feet, but not more than six (6) feet in  
34 height, shall be provided around the outdoor play area.
- 35 5. Adequate off-street parking and loading space shall be provided pursuant to  
36 Chapter 40.340.

37  
38 *(Amended: Ord. 2008-06-02)*

39  
40 B. Family day care facilities shall comply with the following criteria:

- 41 1. When located in a resource, rural or residential zone (R1-5, R1-6, R1-7.5, R1-  
42 10, R1-20, R-12, R-18, R-22, R-30, R-43, OR-15, OR-18, OR-22, OR-30, OR-  
43 43, R-5, R-10, R-20, FR-80, FR-40, FR-20, AG-20, AG-10, and AG-WL  
44 districts), no exterior structural or decorative alteration which will alter the  
45 residential character of a residence is permitted.
- 46 2. Adequate off-street parking and loading space shall be provided pursuant to  
47 Chapter 40.340.
- 48 3. Two (2) nonresident or non-family member employees are permitted if located  
49 within a resource, rural or residential zone.
- 50 4. Signage shall be limited to one (1) sign, not to exceed two (2) square feet in

1 area, for identification purposes only.

2

3

*(Amended: Ord. 2016-06-12)*

1 **EXHIBIT 11**

2  
3 **40.260 SPECIAL USES AND STANDARDS**

4  
5 **40.260.170 PRIVATE USE LANDING STRIPS FOR AIRCRAFT AND HELIPORTS**

6  
7 All landing strips for aircraft or heliports shall be so designed and the runways and  
8 facilities so oriented that the incidence of aircraft passing directly over dwellings  
9 during their landing or taking off patterns is minimized. They shall be located so that  
10 traffic shall not constitute a nuisance to neighboring uses. The proponents shall show  
11 that adequate controls or measures will be taken to prevent offensive noise,  
12 vibrations, dust or bright lights.

13  
14 A. Private landing strips and heliports may be permitted upon approval of a  
15 conditional use permit only in the R-5, R-10, R-20, AG-20, AG-40, FR-40, FR-20,  
16 IL and IH zoning districts.

17  
18 *(Amended: Ord. 2012-12-14)*

19  
20 B. Heliports, helipads and helispots are permitted outright only in the FR-80 district.

21  
22 C. Private use heliports may also be permitted upon approval of a conditional use  
23 permit in the CC, CL, GC and OR districts.

24  
25 *(Amended: Ord. 2016-06-12)*

1 **EXHIBIT 12**

2  
3 **40.260 SPECIAL USES AND STANDARDS**

4  
5 **40.260.210 TEMPORARY DWELLINGS**

6  
7 **A. Authorized – Hardship.**

8 Subject to the conditions and upon the issuance of the permit provided for herein,  
9 one (1) or more temporary dwellings may be established and maintained on a lot,  
10 tract, or parcel if the parcel is already occupied by one (1) or more principal  
11 dwellings, for use by one (1) of the following:

- 12 1. A person who is to receive from or administer to a resident of the principal  
13 dwelling, continuous care and assistance necessitated by advanced age or  
14 infirmity, the need for which is documented by a physician's medical statement;  
15 or  
16 2. A caretaker, hired-hand or other similar full-time employee working on the lot,  
17 tract or parcel in connection with an agricultural or related use of the premises;  
18 or  
19 3. Relatives over sixty-two (62) years of age with an adjusted household gross  
20 income, as defined on IRS Form 1040 or its equivalent, which is at or below  
21 fifty percent (50%) of the median family income for Clark County (as adjusted),  
22 who are related by blood or marriage to a resident of the principal dwelling;  
23 4. Within the forest and agricultural districts (Section 40.210.010) only:  
24 a. Relatives; or  
25 b. A purchaser of the lot, tract, or parcel if a seller who is at least sixty (60)  
26 years of age has retained a life estate to occupy the principal dwelling as a  
27 primary residence.

28  
29 **B. Conditions.**

30 Temporary dwellings authorized herein shall be subject to the following minimum  
31 conditions:

- 32 1. The lot, tract or parcel shall be of such size and configuration, and the  
33 temporary dwelling shall be located in such a manner as to enable compliance  
34 with such zoning and subdivision regulations as would be applicable but for the  
35 authorization of this section; provided, that:  
36 a. One (1) temporary dwelling may be approved for each authorized permanent  
37 dwelling, if the tract or parcel of which it is a part is either:  
38 (1) One (1) acre or larger in size; or  
39 (2) Able to comply with the residential density standards for the applicable  
40 zoning district with the addition of the temporary dwelling(s). For  
41 example, the addition of one (1) temporary dwelling on a ten thousand  
42 (10,000) square foot lot in the R1-5 zoning district with one (1) existing  
43 dwelling.  
44 b. Within the agriculture and forest districts (FR-80, FR-40, FR-20, AG-20-  
45 40):  
46 (1) The additional dwelling(s) private well and septic system shall be located  
47 where they will minimize adverse impacts on resource land;  
48 (2) If practical, the temporary dwelling shall be located within two hundred  
49 (200) feet of the principal dwelling.

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- c. The temporary dwelling shall be a temporary structure such as a mobile home designed, constructed and maintained in a manner which will facilitate its removal at such time as the justifying hardship or need no longer exists; provided, that the additional dwelling authorized by Section 40.260.210(A)(4)(b) need not be a temporary structure if the declaration required by Section 40.260.210(C)(1)(e) includes a covenant obligating the purchaser or successors to remove the existing dwelling upon the death or permanent change in residency of the seller retaining a life estate.
- 2. A current vehicular license plate, if applicable, shall be maintained on the temporary dwelling.
- 3. No more than one (1) temporary dwelling shall be authorized under this chapter if the primary dwelling is a mobile home.
- 4. Upon cessation of the hardship or need justifying the temporary dwelling permit, either such dwelling shall be removed or the owner of the lot, tract or parcel shall comply with all applicable zoning subdivision requirements.

*(Amended: Ord. 2016-06-12)*

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Support structure	"Support structure" means an existing building or other structure to which an antenna is or will be attached, including, but not limited to, buildings, steeples, water towers, and signs. Support structures do not include support towers or any building or structure used for residential purposes.
Support tower	"Support tower" means a structure designed and constructed exclusively to support a wireless communications facility or an antenna array, including monopoles, self-supporting towers, guy-wire support towers, and other similar structures, excluding existing utility poles in any dedicated right-of-way.
Temporary facility	"Temporary facility" means any wireless communications facility which is not deployed in a permanent manner, and which does not have a permanent foundation.
Utility pole placement/replacement	"Utility pole placement/replacement" means the placement of antennas or antenna arrays on existing or replaced structures such as utility poles, light standards, and light poles for streets and parking lots.
Wireless communications	"Wireless communications" mean any personal wireless services as defined by the Federal Telecommunications Act of 1996, including but not limited to cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar FCC licensed commercial wireless telecommunications services that currently exist or that may in the future be developed.
Wireless communications facility	"Wireless communications facility (WCF)" means any unstaffed facility for the transmission and/or reception of radio frequency (RF) signals for the provision of wireless communications.

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- D. Site Location of Wireless Communications Facilities. Wireless communications facilities are permitted in any zone in the unincorporated county subject to the following preferences and the limitations in Section 40.260.250(E)(2). New wireless communications facilities shall be in conformance with all applicable standards as provided by this section.
3. Location Priorities for New Towers. The county's preferences for new support tower locations in rural areas and in urban areas are listed below in descending order with the highest preference first. There is no preference for urban versus rural locations.
- a. Order of preference for new support towers in rural areas:
- (1) Rural Industrial outside rural centers (IH), to include UR-20 and UR-40;
  - (2) Forest Tier I (FR-80) and Tier II (FR-40-FR-20);
  - (3) Rural Industrial inside rural centers (IH);

- 1 (4) Agriculture (AG-20-AG-10);
- 2 (5) Rural (R-20);
- 3 (6) Rural (R-10; R-5), to include UR-10;
- 4 (7) Rural Commercial outside rural centers (CR-1);
- 5 (8) Rural Commercial inside rural centers (CR-2);
- 6 (9) Rural Center Residential (RC-2.5; RC-1).
- 7 b. Order of preference for new support towers in urban areas:
- 8 (1) Heavy Industrial (IH);
- 9 (2) Light Industrial (IL), to include UH-20;
- 10 (3) General Commercial (GC);
- 11 (4) Other commercial districts, to include UH-10;
- 12 (5) Mixed Use (MX) districts;
- 13 (6) Residential districts.

14 4. Lease Areas.

- 15 a. Except as otherwise required in this section, lease areas for new support
- 16 towers shall be exempt from all lot standards of the zone in which they are
- 17 permitted.
- 18 b. Approval of a tower site under this section shall not be construed as
- 19 creating a separate building lot for any other purpose unless it is created
- 20 through platting or binding site plan approval.

21 *(Amended: Ord. 2005-04-12; Ord. 2010-12-12; Ord. 2012-12-14; Ord. 2014-01-08; Ord.*  
 22 *2016-06-12)*

24 E. Development Standards.

- 25 1. Collocation. Wireless communications facilities shall be collocated to the
- 26 greatest extent possible to minimize the total number of support towers
- 27 throughout the county. To this end, the following requirements shall apply:
- 28 a. The county shall deny an application for a new support tower if the applicant
- 29 does not demonstrate a good faith effort to collocate on an existing facility.
- 30 Applicants for new support towers shall demonstrate to the responsible
- 31 official that collocation is infeasible by showing that at least one (1) of the
- 32 following conditions exists:
- 33 (1) No existing towers or structures are located within the applicant's
- 34 projected or planned service area for their facility; or
- 35 (2) According to a qualified RF specialist, existing towers or structures
- 36 cannot be reconfigured or modified to achieve sufficient height; or
- 37 (3) According to a qualified RF specialist, collocation would result in
- 38 electronic, electromagnetic, obstruction or other radio frequency
- 39 interference with existing or proposed installations; or
- 40 (4) According to a structural engineer, existing towers or structures do not
- 41 meet minimum structural specifications or structural integrity for
- 42 adequate and effective operations to meet service objectives; or
- 43 (5) Collocation would cause a nonconformance situation (e.g., exceeding
- 44 height restrictions); or
- 45 (6) A reasonable financial arrangement between the applicant and the
- 46 owner(s) of existing facilities could not be reached.
- 47 b. Carriers who collocate on existing towers or structures shall be allowed to
- 48 construct or install accessory equipment and shelters as necessary for
- 49 facility operation. Such development shall be subject to regulations under

(Amended: Ord. 2006-09-13; Ord. 2006-11-07; Ord. 2007-06-05; Ord. 2014-01-08)

G. Permit Process.

1. Process Review. Table 40.260.250-1 shows required levels of WCF application review in terms of district location. Each type is subject to Section 40.520.040, Site Plan Review, and Chapter 40.510, Type I, II and III processes. Proposals requiring Type III review shall necessitate approval of a conditional use permit. Facilities exempt from threshold determination and EIS requirements under SEPA are listed in WAC 197-11-800(25).

Table 40.260.250-1. Processing Requirements for Wireless Communications Facilities.			
	Collocation <sup>1</sup> on Existing Support Towers or Support Structures	New <sup>2</sup> Attached WCFs on Existing Support Structures	New Support Towers
WCFs in Rural Areas (outside UGBs)	Review Type <sup>3</sup>		
Industrial outside rural centers (IH)	I	I	II; III <sup>4</sup>
Forest Tier I (FR-80) and Tier II (FR-40 FR-20)	I	I	II; III <sup>4</sup>
Industrial inside rural centers (IH)	I	I	II; III <sup>4</sup>
Agriculture (AG-20 AG-40)	I	I	III
Rural 20, Rural 10, Rural 5 (R-20; R-10; R-5)	I	I	III
Rural Commercial outside rural centers (CR-1)	I	I	III
Rural Commercial inside rural centers (CR-2)	I	I	III
Rural Center Residential (RC-2.5; RC-1)	I	I	III
Urban Reserve (UR)	I	I	III

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- family residential districts are located in Table 40.310.010-2. These standards apply to the following land use districts: R1-5, R1-6, R1-7.5, R1-10, and R1-20.
- b. Multifamily Residential and Office Residential Zones. Additional standards for signs in multifamily residential and office residential districts are located in Table 40.310.010-3. These standards apply to the following land use districts: R-12, R-18, R-22, R-30, R-43, OR-15, OR-18, OR-22, OR-30 OR-43, MU, U, and BP.
  - c. Commercial Districts. Additional standards for signs in commercial districts are located in Table 40.310.010-4. These standards apply to the following land use districts: GC, CR-1, CR-2, NC, and CC.
  - d. Industrial Districts. Additional standards for signs in industrial districts are located in Table 40.310.010-5. These standards apply to the following land use districts: IL and IH.
  - e. Rural and Resource Districts. Additional standards for signs in rural and resource districts are located in Table 40.310.010-6. These standards apply to the following land use districts: ~~AG-10, AG-20, FR-20, FR-40, FR-80, AG-WL~~, R-5, R-10, R-20, RC-1, and RC-2.5.

(Amended: Ord. 2012-12-14; Ord. 2016-06-12)

<b>Table 40.310.010-2. Additional Sign Standards for Single-Family Residential Districts</b>				
<b>Sign Type/Use</b>	<b>Number of Signs Allowed on Premises</b>	<b>Maximum Area</b>	<b>Height</b>	<b>Lighting</b>
<b>Home Business,<sup>1</sup></b> Temporary Tract Office, or Model Home	1 per home business	2 square feet per sign	Maximum 6 feet	Not allowed
<b>On-Premises Freestanding<sup>2</sup></b>	1 per street frontage, with 50 square feet minimum spacing between signs	32 square feet total	15 feet	Allowed, with restrictions <sup>3</sup>
<b>Fascia<sup>2</sup></b>	1 per building side	32 square feet total	None	
<b>Business Complex Freestanding<sup>2</sup></b>	1 per frontage	32 square feet total and limited to 2 square feet per tenant and 16 square feet for complex identification	20 feet	

Table 40.310.010-5. Additional Sign Standards for Industrial Districts				
Sign Type/Use	Number of Signs Allowed on Premises	Maximum Area	Height	Lighting
Sign Types	<ul style="list-style-type: none"> <li>On-premises fascia signs, projecting signs and a freestanding sign; or</li> <li>On-premises fascia signs, projecting signs and industrial complex signs.</li> </ul>			
Roadside Farm Stands, Agricultural Markets	See standards in Section 40.260.025			

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<sup>1</sup> Provided, that a premises with less than thirty-two (32) LF of street frontage shall be allowed a maximum thirty-two (32) SF sign.

<sup>2</sup> Projecting signs shall not project horizontally more than eight (8) feet from the wall of a building and shall not project vertically more than six (6) inches above the eave or parapet and shall not project over a roof or canopy. Further, projecting signs shall be prohibited within the front setback.

<sup>3</sup> Provided, that a building elevation with less than thirty-two (32) LF of horizontal length shall be allowed a maximum thirty-two (32) SF sign.

<sup>4</sup> Provided, that a premises with less than forty-three (43) LF of street frontage shall be allowed a maximum sixty-four (64) SF sign.

<sup>5</sup> Real estate signs are for the purpose of advertising a particular lot, building or premises for sale, lease or hire. All real estate signs are temporary.

(Amended: Ord. 2005-04-12; Ord. 2010-12-12; Ord. 2012-06-02)

Table 40.310.010-6. Additional Sign Standards for Rural and Resource Districts				
Sign Type/Use	Number of Signs Allowed on Premises	Maximum Area	Height	Lighting
Agricultural Signs <sup>1</sup>	1 per 660 linear feet of road frontage on any one property under the same ownership	32 square feet per sign	Maximum 20 feet	None allowed
Roadside Farm Stands, Agricultural Markets	See standards in Section 40.260.025			
Home Businesses	1 per home business	6 square feet	Maximum 8 feet	None allowed
High School Electronic Message Center	1 per high school	25 square feet	Maximum 20 feet	Review and approval

<b>Table 40.310.010-6. Additional Sign Standards for Rural and Resource Districts</b>				
<b>Sign Type/Use</b>	<b>Number of Signs Allowed on Premises</b>	<b>Maximum Area</b>	<b>Height</b>	<b>Lighting</b>
<b>Commercial and Industrial</b>	See additional standards for signs in Commercial Districts			None allowed
<b>Conditional Uses</b>	See additional standards for Conditional Use signs in Single-Family Residential Districts			None allowed
<b>Real Estate Signs<sup>2</sup></b>	See additional standards for Real Estate signs in Single-Family Districts			None allowed

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<sup>1</sup> *Agricultural signs are for the purpose of advertising handicraft and farm products produced on the premises.*

<sup>2</sup> *Real estate signs are for the purpose of advertising a particular lot, building or premises for sale, lease or hire. All real estate signs are temporary.*

*(Amended: Ord. 2005-04-12; Ord. 2006-05-01; Ord. 2012-06-02)*

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1 maintenance or repair of any public utility, restrict pedestrian or vehicular  
 2 access, or obstruct sight distance at intersections as provided in Section  
 3 40.320.020.

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 5 H. Plant List.

6 The county shall maintain a plant list to assist in administration of this chapter (see  
 7 the Standard Details Manual).

8  
 9 I. Verification of the Installation of Required Landscape.

10 Prior to the issuance of an approval of occupancy for a site plan, the applicant  
 11 shall provide verification in accordance with Section 40.320.030(B) that the  
 12 required landscape has been installed in accordance with the approved landscape  
 13 plan(s).  
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Table 40.320.010-1 Landscaping Standards

Zoning of land abutting development site		Zoning of Proposed Development											
		Single-family <sup>A,4</sup>		Multifamily <sup>4</sup>		Office Residential <sup>4</sup> , Employment and University		Commercial and Mixed Use		Industrial and Airport			
		R1, R, RC, UH and UR zones		R-12 through R-43		OR, BP and U zones		All C zones, MX		IL, A		IH/IR	
Zoning of land abutting development site		Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street	Separated from site by a street	Not separated by a street
Single-Family	All R1, R-5, R-10, R-20, UH-10 <sup>6</sup> , and RC zones	None	None	L2 10-ft	L3 5-ft	L2 10-ft	L3 10-ft <sup>11</sup>	L2 10-ft	L4 in 10-ft L5 in 15-ft	L2 10-ft	L3 10-ft <sup>8, 9, 11</sup>	L3 <sup>10</sup> 10-ft	L3 10-ft <sup>8, 9, 11</sup>
Multifamily	R-12 - R-43	None	L1 5-ft	L1 5-ft	L1 5-ft	L2 10-ft	L3 10-ft	L2 <sup>1</sup> 10-ft	L4 in 10-ft L5 in 15-ft	L2 10-ft	L3 10-ft <sup>8, 9, 11</sup>	L3 <sup>10</sup> 10-ft	L3 10-ft <sup>8, 9, 11</sup>
Office Residential, Employment and University	OR, BP and U zones	L1 5-ft	L1 <sup>7</sup> 5-ft	L1 5-ft	L1 5-ft	L2 10-ft	None	L2 <sup>1</sup> 10-ft	L3 5-ft	L2 10-ft	L3 5-ft <sup>8, 11</sup>	L3 <sup>10</sup> 10-ft	L3 10-ft <sup>8, 9, 11</sup>
Commercial and Mixed Use	All C zones, MX, UR-10	L1 5-ft	L3 10-ft	L2 5-ft	L3 10-ft	L2 5-ft	L3 10-ft	L2 <sup>1</sup> 10-ft	L1 <sup>2</sup> 0 - 5-ft	L2 10-ft	L3 5-ft	L2 10-ft	L3 10-ft
Industrial and Airport	IL, A, UR-20, UH-20,	L3 <sup>9</sup> 10-ft	L1 <sup>7</sup> 10-ft	L3 <sup>6</sup> 5-ft	L1 <sup>7</sup> 10-ft	L2 10-ft	L2 5-ft	L2 10-ft	L2 5-ft	L2 10-ft	None	L2 10-ft	None
	IH/IR	L3 <sup>9</sup> 10-ft	L1 <sup>7</sup> 10-ft	L3 <sup>8</sup> 10-ft	L1 <sup>7</sup> 10-ft	L2 10-ft	L3 10-ft	L2 10-ft	L3 10-ft	L2 10-ft	L1 5-ft	L2 10-ft	None
Resource	FR-80, FR-40, FR-20, AG-20, AG-40, AG-WL			L2 5-ft	L3 50-ft	L2 5-ft	L3 10-ft	L2 10-ft	L2 5-ft	L2 10-ft	L1 5-ft	L2 10-ft	L3 10-ft

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 16 <sup>1</sup> If building wall is to be built within ten (10) feet of a public right-of-way the required buffer shall be  
 17 L1 five (5) feet for that portion of the site. The front setback for a commercial building may be  
 18 reduced to zero (0) feet if the Storefront Design Standards in Section 3.3 of Appendix F are  
 19 implemented, subject to obtaining any necessary overhead easements or licenses as required.  
 20 <sup>2</sup> If building is to be built on the property line there is no required buffer for that portion of the site.

1 **EXHIBIT 16**

2  
3 **40.510 TYPE I, II, III, AND IV PROCESSES**

4  
5 **40.510.010 TYPE I PROCESS – MINISTERIAL DECISIONS**

6  
7 **A. Review for Counter Complete Status.**

- 8 1. Before accepting an application for review for fully complete status, and unless  
9 otherwise expressly provided by code, the responsible official shall determine  
10 the application is counter complete.  
11 2. The responsible official shall decide whether an application is counter complete  
12 when the application is submitted, typically "over the counter."  
13 3. In order to review the applicable requirements with the applicant and to  
14 expedite the review process, a preliminary review meeting is strongly  
15 encouraged prior to submittal of an application for final site plan/final  
16 construction plan.  
17 a. To request a preliminary review meeting, an applicant shall submit a  
18 completed form provided by the responsible official for that purpose. The  
19 applicant is encouraged to provide in advance or bring to the meeting all  
20 available draft application submittal requirements.  
21 b. The responsible official shall coordinate the involvement of agency staff.  
22 Relevant staff shall attend the preliminary review meeting or shall take other  
23 steps to fulfill the purposes of the meeting.  
24 c. If feasible, the preliminary review meeting shall be scheduled not more than  
25 fourteen (14) calendar days after the responsible official accepts the  
26 request for a preliminary review meeting.  
27 4. An application is counter complete if the responsible official finds that the  
28 application purports and appears to include the information required by Section  
29 40.510.010(B); provided, no effort shall be made to evaluate the substantive  
30 adequacy of the information in the application in the counter complete review  
31 process. Required information which has been waived by the responsible  
32 official shall be replaced by a determination from the responsible official  
33 granting the waiver.  
34 5. If the responsible official decides the application is counter complete, then the  
35 application shall be accepted for review for fully complete status; provided, that  
36 for final plat applications, submittal requirements may be requested and  
37 reviewed in increments established by the responsible official.  
38 6. If the responsible official decides the application is not counter complete, then  
39 the responsible official shall immediately reject and return the application and  
40 identify what is needed to make the application counter complete.

41  
42 **B. Review for Fully Complete Status.**

- 43 1. Except as noted below, before accepting an application for processing, the  
44 responsible official shall determine that the application is fully complete.  
45 a. Final plat applications shall not be deemed fully complete until all of the  
46 required materials specified in Section 40.540.070 have been submitted;  
47 however, the responsible official may establish application procedures to  
48 allow final plat applications to be processed in increments in advance of a  
49 fully complete application.

- 1 compliance with additional requirements including, but not limited to,  
2 wetland review, required dedications, and approval letters from other  
3 agencies. County staff shall notify the applicant or the applicant's  
4 representative when the reviewed submittal materials are available to be  
5 picked up and, unless waived by the responsible official, shall schedule a  
6 meeting with the applicant or the applicant's representative to review county  
7 staff's comments.
- 8 (1) If, after the initial review, the responsible official concludes that the  
9 application complies with the requirements of the code the responsible  
10 official shall issue a decision pursuant to Section 40.510.010(C)(2)(d).  
11 (2) If, after the initial review, the responsible official concludes that the  
12 application does not comply, the applicant shall amend the application  
13 and submit the amended application to the county for a second review.
- 14 b. Second Review. The second review shall be completed within fourteen (14)  
15 calendar days of the submittal of corrected plans. County staff shall notify  
16 the applicant or the applicant's representative when the reviewed submittal  
17 materials are available.
- 18 (1) If, after the second review, the responsible official concludes that the  
19 application complies with the requirements of the code, the responsible  
20 official shall issue a decision pursuant to Section 40.510.010(C)(2)(d).  
21 (2) If, after the second review, the responsible official concludes that the  
22 application does not comply, the applicant shall amend the application  
23 and submit the amended application to the county for a third review.
- 24 c. Third Review. The third review shall be completed within seven (7) calendar  
25 days of the submittal of corrected plans. Upon completion of the third  
26 review, the responsible official shall issue a decision pursuant to Section  
27 40.510.010(C)(2)(d).
- 28 d. Within five (5) calendar days of the completion of the county's review, the  
29 responsible official shall approve or deny the application; provided:
- 30 (1) An applicant may request additional reviews (fourth review, etc.). Such a  
31 request shall be made in writing and shall be accompanied by the fees  
32 required for such additional reviews.
- 33 (2) An applicant may request in writing to extend the time in which the  
34 responsible official shall issue a decision. The responsible official may  
35 consider new evidence the applicant introduces with or after such a  
36 written request.
- 37 3. Notice of a decision regarding a Type I process shall be mailed to the applicant  
38 and applicant's representative within seven (7) days of the issuance of the  
39 decision. The applicant may appeal the decision pursuant to Section  
40 40.510.010(E) or may apply for post-decision changes pursuant to Section  
41 40.520.060.
- 42 4. Notice of agricultural, forest or mineral resource activities.
- 43 a. All plats, building permits or development approvals under this title issued  
44 for residential development activities on, or within a radius of five hundred  
45 (500) feet for lands zoned agriculture-wildlife (AG-WL), agriculture (AG-40  
46 AG-20), forest (~~FR-40~~ ~~FR-20~~ and FR-80), or surface mining (S), or in  
47 current use pursuant to Chapter 84.34 RCW, shall contain or be  
48 accompanied by a notice provided by the responsible official. Such notice  
49 shall include the following disclosure:

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The subject property is within or near designated agricultural land, forest land or mineral resource land (as applicable) on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. Potential discomforts or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any twenty-four (24) hour period; storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.

b. In the case of subdivisions or short plats, such notice shall be provided in the Developer Covenants to Clark County; in the case of recorded binding site plans, such notice shall be recorded separately with the County Auditor.

*(Amended: Ord. 2005-04-12; Ord. 2016-06-12)*

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1 **EXHIBIT 17**

2  
3 **40.510 TYPE I, II, III, AND IV PROCESSES**

4  
5 **40.510.020 TYPE II PROCESS – ADMINISTRATIVE DECISIONS**

6  
7 **A. Pre-Application Review.**

- 8 1. The purposes of pre-application review are:
- 9 a. To acquaint county staff with a sufficient level of detail about the proposed  
10 development to enable staff to advise the applicant accordingly;
- 11 b. To acquaint the applicant with the applicable requirements of this code and  
12 other law. However, the conference is not intended to provide an exhaustive  
13 review of all the potential issues that a given application could raise. The  
14 pre-application review does not prevent the county from applying all  
15 relevant laws to the application; and
- 16 c. To provide an opportunity for other agency staff and the public to be  
17 acquainted with the proposed application and applicable law. Although  
18 members of the public can attend a pre-application conference, it is not a  
19 public hearing, and there is no obligation to receive public testimony or  
20 evidence.
- 21 2. Pre-application review is required for applications, with the following  
22 exceptions:
- 23 a. The application is for one (1) of the following use classifications:
- 24 (1) Section 40.210.010, Forest and Agriculture districts;
- 25 (2) Section 40.520.020, Planning Director reviews and similar use  
26 determinations;
- 27 (3) Chapter 40.260, special uses (unless specified as a Type III review);
- 28 (4) Section 40.260.220, temporary permits;
- 29 (5) Section 40.530.010(F)(6), change in nonconforming use;
- 30 (6) Section 40.260.210, temporary dwelling permit;
- 31 (7) Section 40.520.060, post-decision reviews;
- 32 (8) Section 40.450.040, preliminary (stand-alone) wetland permit;
- 33 (9) SEPA review for projects that are not otherwise Type II reviews (e.g.,  
34 grading);
- 35 (10) Section 40.500.010, interpretations;
- 36 (11) Section 40.550.020, administrative variances; or
- 37 b. The applicant applies for and is granted a pre-application waiver from the  
38 responsible official. The form shall state that waiver of pre-application  
39 review increases the risk the application will be rejected or processing will  
40 be delayed. Pre-application review generally should be waived by the  
41 responsible official only if the application is relatively simple. The decision  
42 regarding a pre-application waiver can be appealed as a Type I decision.
- 43 3. To initiate pre-application review, an applicant shall submit a completed form  
44 provided by the responsible official for that purpose, the required fee, and all  
45 information required by the relevant section(s) of this code. The applicant shall  
46 provide the required number of copies of all information as determined by the  
47 responsible official.
- 48 4. Information not provided on the form shall be provided on the face of the  
49 preliminary plat, in an environmental checklist or on other attachments. The

1 new information is required or substantial changes to the proposed action  
2 occur.

3 (Amended: Ord. 2006-05-01; Ord. 2012-07-03)  
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5 D. Procedure.

- 6 1. Within fourteen (14) calendar days after the date an application is accepted as  
7 fully complete, the responsible official for the application shall issue a public  
8 notice of the application pending review consistent with the requirements of  
9 Section 40.510.020(E).  
10 2. The responsible official shall mail to the applicant a copy of comments timely  
11 received in response to the notice together with a statement that the applicant  
12 may respond to the comments within fourteen (14) calendar days from the date  
13 the comments are mailed. The responsible official shall consider the comments  
14 timely received in response to the notice and timely responses by the applicant  
15 to those comments. The responsible official may consider comments and  
16 responses received after the deadline for filing.  
17 3. A decision shall be made within the timelines specified by Section  
18 40.510.020(F), and shall include:  
19 a. A statement of the applicable criteria and standards in this code and other  
20 applicable law;  
21 b. A statement of the facts that the responsible official found showed the  
22 application does or does not comply with each applicable approval criterion  
23 and assurance of compliance with applicable standards;  
24 c. The reasons for a conclusion to approve or deny; and  
25 d. The decision to deny or approve the application and, if approved, conditions  
26 of approval necessary to ensure the proposed development will comply with  
27 applicable law.  
28 4. Within seven (7) calendar days of the decision, the responsible official shall  
29 mail a notice of decision to the applicant and applicant's representative, the  
30 neighborhood association in whose area the property in question is situated,  
31 and all parties of record regarding the application. The mailing shall include a  
32 notice which includes the following information:  
33 a. A statement that the decision and SEPA determination are final, but may be  
34 appealed as provided in Section 40.510.020(H) to the hearing examiner  
35 within fourteen (14) calendar days after the notice of decision. The appeal  
36 closing date shall be listed in boldface type. The statement shall describe  
37 how a party may appeal the decision or SEPA determination or both,  
38 including applicable fees and the elements of an appeal statement; and  
39 b. A statement that the complete case file, including findings, conclusions and  
40 conditions of approval, if any, is available for review. The notice shall list the  
41 place, days and times where the case file is available and the name and  
42 telephone number of the county representative to contact about reviewing  
43 the case file.  
44 5. Notice of Agricultural, Forest or Mineral Resource Activities.  
45 a. All plats, building permits or development approvals under this title issued  
46 for residential development activities on, or within a radius of five hundred  
47 (500) feet for lands zoned agriculture-wildlife (AG-WL), agriculture (AG-20  
48 AG-10), forest (FR-40 FR-20 and FR-80), or surface mining (S), or in  
49 current use pursuant to Chapter 84.34 RCW, shall contain or be

1 accompanied by a notice provided by the responsible official. Such notice  
2 shall include the following disclosure:

3  
4 The subject property is within or near designated agricultural land, forest land or  
5 mineral resource land (as applicable) on which a variety of commercial activities  
6 may occur that are not compatible with residential development for certain periods  
7 of limited duration. Potential discomforts or inconveniences may include, but are  
8 not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery  
9 (including aircraft) during any twenty-four (24) hour period, storage and disposal of  
10 manure, and the application by spraying or otherwise of chemical fertilizers, soil  
11 amendments, herbicides and pesticides.

12  
13 b. In the case of subdivisions or short plats, such notice shall be provided in  
14 the Developer Covenants to Clark County; in the case of recorded binding  
15 site plans, such notice shall be recorded separately with the County Auditor.

16  
17 *(Amended: Ord. 2005-04-12; Ord. 2016-06-12)*

18  
19 \* \* \* \* \*

1 **EXHIBIT 18**

2  
3 **40.510 TYPE I, II, III, AND IV PROCESSES**

4  
5 **40.510.030 TYPE III PROCESS – QUASI-JUDICIAL DECISIONS**

6  
7 **A. Pre-Application Review.**

- 8 1. The purposes of pre-application review are:
- 9 a. To acquaint county staff with a sufficient level of detail about the proposed  
10 development to enable staff to advise the applicant accordingly;
- 11 b. To acquaint the applicant with the applicable requirements of this code and  
12 other law. However, the conference is not intended to provide an exhaustive  
13 review of all the potential issues that a given application could raise. The  
14 pre-application review does not prevent the county from applying all  
15 relevant laws to the application; and
- 16 c. To provide an opportunity for other agency staff and the public to be  
17 acquainted with the proposed application and applicable law. Although  
18 members of the public can attend a pre-application conference, it is not a  
19 public hearing, and there is no obligation to receive public testimony or  
20 evidence.
- 21 2. Pre-application review is required for applications, with the following  
22 exceptions:
- 23 a. The application is for a post-decision review, as described in Section  
24 40.520.060; or
- 25 b. The applicant applies for and is granted a pre-application waiver from the  
26 responsible official. The form shall state that waiver of pre-application  
27 review increases the risk the application will be rejected or processing will  
28 be delayed. Pre-application review generally should be waived by the  
29 responsible official only if the application is relatively simple. The decision to  
30 waive a pre-application can be appealed as a Type I decision.
- 31 3. To initiate pre-application review, an applicant shall submit a completed form  
32 provided by the responsible official for that purpose, the required fee, and all  
33 information required by the relevant section(s) of this code. The applicant shall  
34 provide the required number of copies of all information as determined by the  
35 responsible official.
- 36 4. Information not provided on the form shall be provided on the face of the  
37 preliminary plat, in an environmental checklist or on other attachments. The  
38 responsible official may modify requirements for pre-application materials and  
39 may conduct a pre-application review with less than all of the required  
40 information. However, failure to provide all of the required information may  
41 prevent the responsible official from identifying all applicable issues or  
42 providing the most effective pre-application review and will preclude contingent  
43 vesting under Section 40.510.030(G). Review for completeness will not be  
44 conducted by staff at the time of submittal and it is the responsibility of the  
45 applicant.
- 46 5. Within fifteen (15) calendar days after receipt of an application for pre-  
47 application review, the responsible official shall mail written notice to the  
48 applicant and to other interested agencies and parties, including the  
49 neighborhood association in whose area the property in question is situated.

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record;

(3) That the application(s) is/are taken under advisement, and a final order will be issued as provided in Section 40.510.030(D)(6); or

(4) That the application(s) is/are denied, approved or approved with conditions, together with a brief summary of the basis for the decision, and that a final order will be issued as provided in Section 40.510.030(D)(5).

5. Unless the applicant agrees to allow more time, within fourteen (14) calendar days after the date the record closes, the hearing examiner shall issue a written decision regarding the application(s); provided, the hearing examiner shall not issue a written decision regarding the application(s) until at least fifteen (15) calendar days after the threshold determination under Chapter 40.570 is made. The decision shall include:

- a. A statement of the applicable criteria and standards in this code and other applicable law;
- b. A statement of the facts that the hearing examiner found showed the application does or does not comply with each applicable approval criterion and standards;
- c. The reasons for a conclusion to approve or deny; and
- d. The decision to deny or approve the application and, if approved, any conditions of approval necessary to ensure the proposed development will comply with applicable criteria and standards.

6. Within seven (7) calendar days from the date of the decision, the responsible official shall mail via regular mail, or by e-mail if the receiving party agrees to this method, the notice of decision to the applicant and applicant's representative, the neighborhood association in whose area the property in question is situated, and all parties of record. The mailing shall include a notice which includes the following information:

- a. A statement that the decision and SEPA determination, if applicable, are final, but may be appealed as provided in Section 40.510.030(H) to the board within fourteen (14) calendar days after the date the notice is mailed. The appeal closing date shall be listed in boldface type. The statement shall describe how a party may appeal the decision or SEPA determination, or both, including applicable fees and the elements of a petition for review;
- b. A statement that the complete case file is available for review. The statement shall list the place, days and times where the case file is available and the name and telephone number of the county representative to contact for information about the case.

7. Notice of Agricultural, Forest or Mineral Resource Activities.

- a. All plats, building permits or development approvals under this title issued for residential development activities on, or within a radius of five hundred (500) feet for lands zoned agriculture-wildlife (AG-WL), agriculture (AG-20 AG-10), forest (FR-40 FR-20, and FR-80), or surface mining (S), or in current use pursuant to Chapter 84.34 RCW, shall contain or be accompanied by a notice provided by the responsible official. Such notice shall include the following disclosure:

The subject property is within or near designated agricultural land, forest land or mineral resource land (as applicable) on which a variety of commercial activities

1 may occur that are not compatible with residential development for certain periods  
2 of limited duration. Potential discomforts or inconveniences may include, but are  
3 not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery  
4 (including aircraft) during any twenty-four (24) hour period, storage and disposal of  
5 manure, and the application by spraying or otherwise of chemical fertilizers, soil  
6 amendments, herbicides and pesticides.

7  
8 b. In the case of subdivisions or short plats, such notice shall be provided in  
9 the Developer Covenants to Clark County; in the case of recorded binding  
10 site plans, such notice shall be recorded separately with the County Auditor.

11  
12 *(Amended: Ord. 2005-04-12; Ord. 2008-06-02; Ord. 2016-06-12)*

13  
14 \* \* \* \* \*

1 **EXHIBIT 19**

2  
3 **40.530 NON-CONFORMING USES, STRUCTURES AND LOTS**

4  
5 **40.530.010 NON-CONFORMING LOTS, STRUCTURES AND USES**

6  
7 **A. Purpose.**

8 Lots, uses, and structures exist which were lawful when established but whose  
9 establishment would be restricted or prohibited under current zoning regulations.  
10 The intent of this chapter is to allow continuation of such nonconforming uses and  
11 structures. It is also the intent of this chapter to, under certain circumstances and  
12 controls, allow modifications to nonconforming uses and structures consistent with  
13 the objectives of maintaining the economic viability of such uses and structures  
14 while protecting the rights of surrounding property owners to use and enjoy their  
15 properties.

16  
17 **B. Applicability.**

18 All nonconforming lots, uses and structures shall be subject to provisions of this  
19 chapter.

- 20 1. If a lot, use or structure deemed legal nonconforming under past zoning  
21 regulations is brought into compliance with current standards, it shall be  
22 considered conforming.  
23 2. The provisions in this chapter do not supersede or relieve a property owner  
24 from compliance with building, fire, health or other life safety requirements of  
25 the code.

26  
27 **C. Nonconforming Status.**

- 28 1. Any lot, use, or structure which, in whole or part, is not in conformance with  
29 current zoning requirements shall be considered as follows:  
30 a. Legal Nonconforming. Lots, uses and structures legally created or  
31 established under prior zoning and/or platting regulations. These lots, uses  
32 and structures may be maintained or altered subject to provisions of this  
33 chapter.  
34 b. Illegal Nonconforming. Lots, uses and structures which were not in  
35 conformance with applicable zoning and/or platting regulations at the time  
36 of creation or establishment. Illegal nonconforming lots, uses and structures  
37 shall be discontinued, terminated or brought into compliance with current  
38 standards.  
39 2. It shall be the burden of a property owner or proponent to demonstrate the legal  
40 nonconformity of a lot, use, and structure.

41  
42 **D. Legal Nonconforming Lots.**

43 A legal lot of record, as defined in Section 40.100.070 and created as a building  
44 site, which does not conform to minimum lot area, width or depth requirements of  
45 the zoning district in which it is currently situated may be developed, subject to the  
46 following:

- 47 1. A permitted use or structure shall meet all existing development standards of  
48 the zoning district within which it is located including, but not limited to, required  
49 yards/setbacks, lot coverage, density, parking, landscaping, storm drainage,

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- signage, and road standards.
- 2. For the purpose of establishing setbacks from property lines, any residential lot of record in the rural (R-5, R-10 and R-20), resource (FR-80 and FR-40, FR-20, AG-20, AG-10, and AG-WL), urban reserve (UR-10 and UR 20) and urban holding (UH-10 and UH-20) districts which has a smaller lot area, width and/or depth than that required by the zone in which it is located may use that residential zoning classification which most closely corresponds to the area or dimensions of the lot of record.
- 3. A legal nonconforming lot shall not be further diminished in size or dimension unless approved through a lot reconfiguration under Section 40.210.010(D) or Section 40.230.070(C)(2).
- 4. A legal nonconforming lot may be increased in size to bring it into closer conformance with area requirements of the zone in which it is located.
- 5. A legal nonconforming lot which is increased in area or dimension such that it is brought into compliance with any or all of the lot requirements for the zoning district in which it is located shall thereafter remain in compliance.
- 6. A legal lot of record that is reduced through governmental action or adverse possession below, or further below the required minimum size of the zoning district in which it is located shall be deemed a legal nonconforming lot, subject to review through a Type I process.

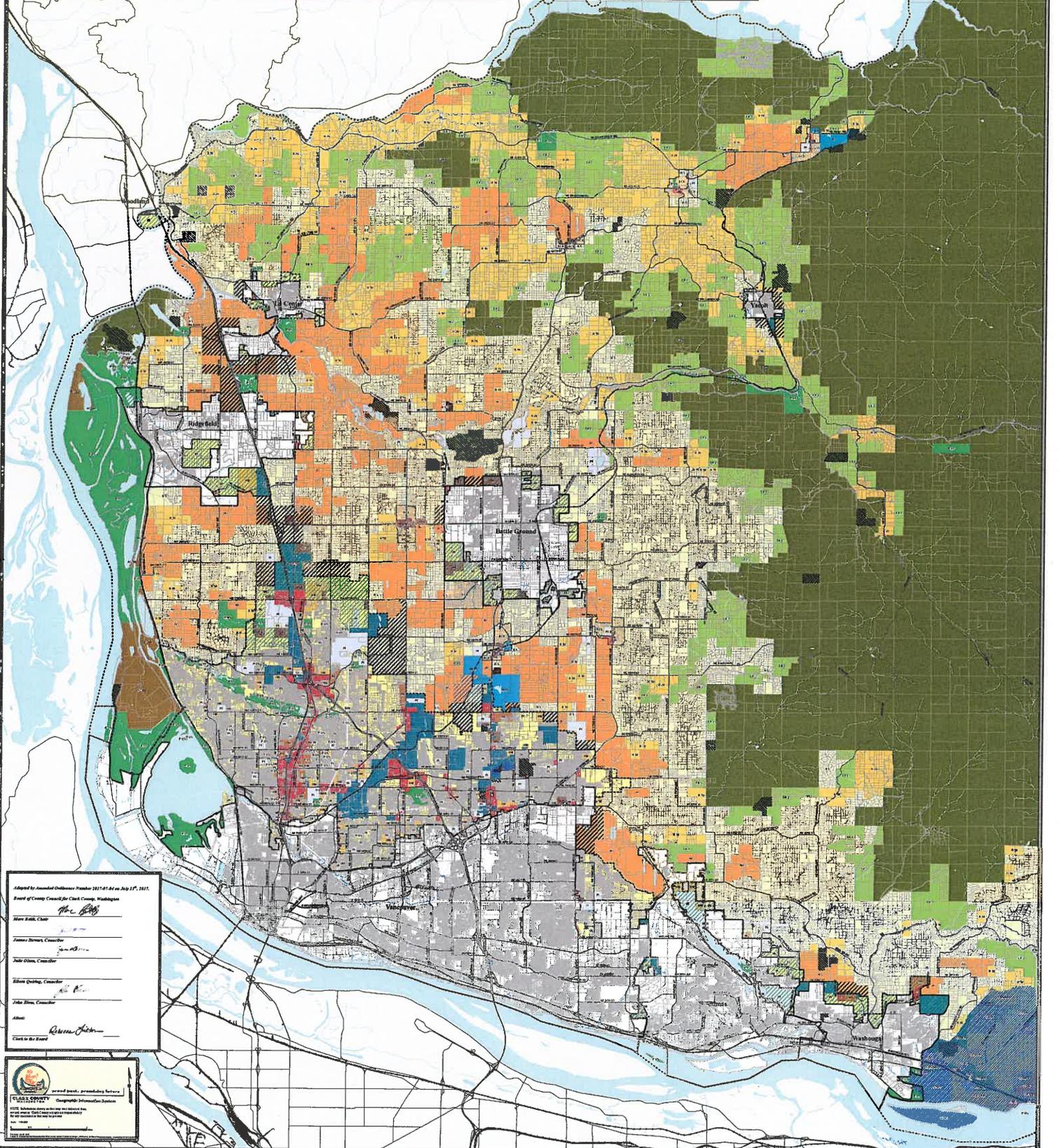
*(Amended: Ord. 2012-07-03; Ord. 2016-06-12)*

\*\*\*\*\*

# APPENDIX 4

# Adopted Comprehensive Plan Clark County, Washington

Comprehensive Plan	RURAL	RESOURCE	Comprehensive Plan - CRGNSA	Comprehensive Plan Overlay	Rural Center
<b>URBAN</b> Urban Low Density Residential Urban Medium Density Residential Urban High Density Residential Commercial Mixed Use Industrial Heavy Industrial	Rural-5 Rural-10 Rural-20 Rural Center Residential Rural Commercial Rural Industrial Rural Industrial Land Bank Parks/Open Space	Agriculture Agri-Wildlife Forest: Tier 1 Forest: Tier 2 OTHER Public Facility Airport Bonneville Power Administration Water	Gorge Residential 0 Gorge Residential 10 Gorge Small-scale Agriculture Gorge Large-scale Ag 40 Gorge Large-scale Ag 80 Gorge SMA Agriculture Gorge SMA Open Space Gorge SMA Federal Forest Gorge SMA Non-Federal Forest Gorge Small Woodland 20 Gorge Small Woodland 40 Gorge Public Recreation	Urban Reserve Urban Holding Railroad Industrial Urban Reserve Surface Mining Columbia River Gorge Scenic Area Rural Center Mixed Use	Rural Center City Limits Urban Growth Area (UGA) Boundary



Adopted by Assailed Ordinance Number 2017-01-01 on July 17<sup>th</sup>, 2017.  
 Board of County Commissioners Clark County, Washington

Steve Belski, Chair  
 James Demko, Councilor  
 John Olson, Councilor  
 Edward Oshiro, Councilor  
 John Stone, Councilor  
 Clerk of the Board: *Rebecca Johnson*



# CLARK COUNTY PROSECUTING ATTORNEY

November 05, 2018 - 4:36 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50847-8  
**Appellate Court Case Title:** Friends of Clark County and Futurewise, Appellants v Clark County, et al, Respondents  
**Superior Court Case Number:** 17-2-00929-0

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### Comments:

Brief of Petitioner/Cross-Respondent Clark County

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