

NO. 90398-1
(Court of Appeals No. 71363-9-I)

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SUPREME COURT OF THE STATE OF WASHINGTON

SAVE OUR SCENIC AREA and
FRIENDS OF THE COLUMBIA GORGE,

Respondents,

v.

SKAMANIA COUNTY,

Petitioner.

**SUPPLEMENTAL BRIEF OF PETITIONER
SKAMANIA COUNTY**

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GLOSSARY

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

1. INTRODUCTION

After enacting land use legislation, how long must a local jurisdiction wait before it is free from the threat of litigation? The Legislature and appellate courts have answered this question: 60 days. Yet, FOCG waited **five years** to appeal the County's Comprehensive Plan and **seven years** to appeal a County GMA decision. To circumvent the appeal deadline, FOCG used an appeal of a separate County ordinance which had partially renewed a moratorium to challenge decisions made years ago. The Superior Court readily saw through this ploy, and dismissed the appeal as time barred. But, instead of respecting finality, the Court of Appeals found the separately enacted moratorium renewal may have nullified County zoning and suspended the appeal period. Moratoria do not void legislative actions, nor do they suspend appeal periods for one day, much less five years. Regardless of moratoria decisions, all County Plan and zoning requirements remained in force from their adoption dates. Skamania County asks this Court to apply the statutory 60-day appeal period and over two decades of appellate precedent to reverse the Court of Appeals, and uphold the Superior Court's dismissal of FOCG's untimely land use appeal.

This case will likely determine whether optional land use planning continues in Skamania County. The County voluntarily embarked on a journey several years ago to update its planning documents. At the time, its Comprehensive Plan had been untouched for 30 years and almost 60,000 acres of private and County held land were zoned as Unmapped,

allowing any non-nuisance use. Although the County's 2007 Comprehensive Plan specifically authorized this zoning designation and the County was not required to rezone this acreage, the County rezoned 75% of it by amending both the zoning map and zoning code, following an extremely controversial process. FOCG, not satisfied with 75%, now seeks judicial relief five years after the fact.

This appeal is one of last resort. If finality is not respected, given its resources constraints, voluntary planning may very well be abandoned in Skamania County. If so, the positive steps the County has made in recent years will have been for naught. That is why this case matters, and it brings home why it is important to respect the finality of land use decisions, as the Legislature and courts have recognized by establishing a 60-day appeal period.

2. SUPPLEMENTAL STATEMENT OF ISSUES

1. Under GMA, and established appellate precedent, land use legislation must be appealed within 60 days.¹ Did the Court of Appeals err in failing to uphold dismissal of FOCG's 2012 appeal (filed five years after the County adopted its 2007 Comprehensive Plan and seven years after the County's 2005 GMA decision), when it reasoned that separately enacted moratoria could suspend the 60-day appeal period for years?

¹ RCW 36.70A.290(2); *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007) (GMA consistency challenge must be brought within 60 days; rezone appeal could not be later used as a "back door" to raise GMA issues); *Brutsche v. City of Kent*, 78 Wn. App. 370, 898 P.2d 319 (1995) (absent a prescribed appeal period, appeal must be brought within 30 days; untimely appeal of 305 acre area-wide rezone dismissed).

2. Did the Court of Appeals err in deciding disputed material facts precluded dismissal of FOCG's claim that the County had not completed its 2005 GMA periodic review of its natural resource lands designation where: (1) the County complied with this requirement in 2005 when it designated its GMA natural resource lands and FOCG waited seven years to appeal?; and (2) FOCG failed to address this issue on summary judgment in Superior Court?

3. STATEMENT OF THE CASE

3.1. Overview

The requirement that a land use appeal be filed within the statutory time period is consistent with the over-riding legislative objective behind the Planning Enabling Act, Ch. 36.70 RCW, to encourage jurisdictions to plan for their futures.² A key purpose of finality is to conserve the public resources necessary for orderly planning. In Skamania County, those resources are at the breaking point.

The federal and state governments own 90% of the land in Skamania County, a factor which has led to tax base erosion and job losses as the timber economy declined.³ Due to its limited resources, this distressed rural area has done all the voluntary planning it can accomplish,

² RCW 36.70.010.

³ CP 73:9-13 (Skamania County is 85% National Forest); CP 26 (map of County).

including a recent, unappealed, 42,663 acre rezone.⁴ This Court has previously recognized the County's dire situation.

Economically, the area has seen a significant decline since the spotted owl was listed as an endangered species, which greatly reduced the output of the lumber industry in the region. Much of the land in the county is owned by the state and federal governments, protected under various statutes, or used for commercial forest land. **Only three percent of the county is available for residential, commercial, or industrial use.**⁵

In areas of the state with greater resources, citizens often take planning for granted, so it can be difficult to appreciate what this case means in a rural jurisdiction like Skamania County. When a jurisdiction is on the ropes, and when domestic violence and subsidized school lunch rates are high, resources matter.⁶ They matter a lot. Those resources are jeopardized when, after considerable work is put into a voluntary comprehensive plan update, and though not required, over 40,000 acres are rezoned, the courts then accept jurisdiction of an appeal filed five years after the final Plan was adopted. The situation forces the jurisdiction to ask if planning for the future is worth the cost.

This is not consistent with the objectives behind the Planning Enabling Act. And it certainly is not consistent with decades of precedent

⁴ CP 21, ¶ 3. The rezone took significant resources and political courage. The Board of County Commissioners which enacted the rezone is not the same Board in office today. *See e.g.*, Reply Brief of Appellants, pg. 19.

⁵ *Friends of the Columbia Gorge, Inc. v. EFSEC*, 178 Wn.2d 320, 328, 310 P.3d 780 (2013), emphasis added; *see also* CP 71-80; CP 393.

⁶ *See generally* AR 71-80, 393; specifically, AR 79:16-22 (77 bed nights at County's domestic violence shelter in one month alone; this figure is within a jurisdiction with only 11,000 residents, AR 393, ¶ 4), AR 80:3-8 (subsidized school lunch rates).

respecting finality in land use. With the added stress of litigation costs, the voluntary planning many take for granted will no longer be feasible.

3.2. 2007 Plan, the GMA Decision, and the 42,663 Acre Rezone

Despite the severe economic conditions and limited land base subject to local controls, the ability to plan for how land will be used matters in Skamania County. That is why in 2007, although not required to, the County updated its 30-year-old comprehensive plan.⁷ This action was taken pursuant to the Planning Enabling Act, Ch. 36.70 RCW, which provides for planning but, unlike GMA, does not require it.

The County then embarked on an extensive planning effort, in which it debated to what extent it should rezone land and whether to designate additional land as GMA forest resource, beyond what the County had previously designated in 2005. That year, the County designated its GMA Resource lands and determined that designation complied with **all** of GMA's natural resource requirements.⁸

[T]he Skamania County Board of Commissioners has determined the designation of forest and agricultural lands ... meets the requirements of the Growth Management Act ... for the conservation of forest, agricultural, and mineral resource lands.⁹

⁷ CP 37-9, attached at Tab 1; CP 38 (The County "**adopts and endorses the Final 2007 Comprehensive Plan...**"), emphasis added; CP 40 (former plan was from 1977).

⁸ CP 34-35, attached at Tab 2.

⁹ CP 34, emphasis added. The County designated 43,656 acres within the heavily regulated Columbia River Gorge National Scenic Area. CP 34-35, attached at Tab 2. Although over 90% of the County is protected for forest use through federal and state ownership, FOCG's position is that additional land should be designated.

This action occurred the same year as the County's GMA 2005 periodic review deadline.¹⁰ To the extent that GMA requirement applied to the designation decision, the County's GMA action complied, and no appeal was filed.

Two years later, on the day it adopted its 2007 Comprehensive Plan, the County enacted the first of a series of moratorium ordinances. The moratorium was renewed, with some lapses, including a 28-day lapse, until 2012.¹¹ The moratorium was then allowed to partially lapse after the County enacted extensive zoning code and map amendments, including a 42,663 acre rezone.¹²

3.3. The Plan and Zoning Remained in Force

The moratoria did not suspend the County's 2007 Plan or zoning. Rather, in six month increments, the moratoria prohibited County staff from accepting and processing building permit, plat, and site analysis applications on parcels larger than 20 acres; and, accepting SEPA checklists for forest conversions.¹³ **During these periods, the 2007 Plan and Unmapped zoning designation remained in force.** For example, the Whistling Ridge Wind Project, proposed for location on land designated

¹⁰ RCW 36.70A.130(4)(b). **After** the County designated its resource lands, in 2006, the Legislature provided a three year extension for 2005 periodic reviews. Laws of 2006, Ch. 285, § 2, formerly codified at RCW 36.70A.130(5)(b).

¹¹ CP 287 (staff report, documenting lapse and re-establishment); CP 323 (staff report, noting 2012 rezone); CP 21 (describing rezone action). The moratorium was allowed to partially lapse as there was no development warranting its continuation, CP 393.

¹² CP 323 ("**The subarea plan final zoning was adopted in May 2012 so the moratorium can be modified.**"), emphasis added; CP 21, ¶ 3; CP 30-32 (Ordinance 2012-08), attached at Tab 3; CP 22, ¶ 4 (moratorium applied to 4,500 acres). The rezone and code amendments were adopted by Ordinance 2012-02, amending Title 21.

¹³ CP 32.

as Unmapped, was reviewed for consistency with the 2007 Plan and Unmapped zoning designation.¹⁴ While the moratorium was in effect, the County and EFSEC found the project consistent with both, and this Court upheld EFSEC's decision, holding that the **"project is authorized outright by the local zoning code."**¹⁵

3.4. No Requirement to Rezone Additional Land

Before embarking on the major rezone effort, 56,780 private and County owned acres were zoned as Unmapped.¹⁶ With the 42,663 acre rezone in 2012, 75% of this acreage was rezoned.¹⁷ The remaining Unmapped acreage is spread throughout the County, requiring greater resources to rezone. Given financial conditions, rezoning that acreage is not presently an option.¹⁸

Nevertheless, although no law requires it, FOCG has hoped to force a rezone on the remaining 9,617 acres.¹⁹ The Comprehensive Plan explicitly provides for the Unmapped Zoning to remain in place,²⁰ but even if it did not, **"[t]he GMA does not require [a partially planning**

¹⁴ *Friends of the Columbia Gorge, Inc. v. EFSEC*, 178 Wn.2d at 330, 345.

¹⁵ *Id.* at 345, emphasis added, *see also* 330, 346.

¹⁶ CP 21, ¶¶ 2-3. FOCG has not suggested the County should zone the almost 800,000 acres of federal and state owned land the Plan designates as Conservancy, and is zoned Unmapped. CP 21; CP 20.

¹⁷ CP 21, ¶¶ 2-3; (42,663 rezoned + 14,117 private and County acreage Unmapped).

¹⁸ CP 26; CP 393.

¹⁹ CP 21-22. This remaining acreage constitutes 1.3% of the County and is spread throughout the jurisdiction. CP 21, 26. The ordinance FOCG appealed extended the moratorium on 4,500 acres. CP 22.

²⁰ CP 210-11, attached at Tab 4 (Unmapped zoning designation consistent with Plan's Conservancy designation); CP 210 ("Table 2-1 shows the comprehensive plan designation and the consistency of each potential zoning classification.").

county] ... to adopt a comprehensive land use plan or development regulations...."²¹

This does not mean land uses are unregulated. As this Court recognized in the *Whistling Ridge* case, in areas zoned Unmapped any use which is not deemed a nuisance is authorized.²² But, regardless of zoning, such uses are regulated through various state laws and local implementing ordinances, including:

- Shoreline Management Act, Ch. 90.58 RCW;
- Clean Water Act, Ch. 90.48 RCW;
- Hydraulic Project Approvals, Ch. 77.55 RCW;
- Subdivision Laws, Ch. 58.17 RCW;
- Building Code, Ch. 19.27 RCW;
- GMA Critical Areas Ordinance, Ch. 36.70A RCW;
- Clean Air Act, Ch. 70.94 RCW;
- Cultural Resources, Ch. 27.53 RCW; and,
- State Environmental Policy Act, Ch. 43.21C RCW.²³

Despite this pervasive regulatory landscape, to those used to all land being zoned, this may seem unsettling. Given how prevalent zoning now is, it is hard to fathom that there was a time when there was a question as to whether local governments even had basic police power to zone, a matter the U.S. Supreme Court ultimately resolved.²⁴ After that decision, prior to GMA, zoning, while authorized, was largely voluntary. But, even GMA

²¹ *Moore v. Whitman County*, 143 Wn.2d 96, 98-99, 18 P.3d 566 (2001), emphasis added.

²² *Friends of the Columbia Gorge, Inc. v. EFSEC*, 178 Wn.2d at 330, 345.

²³ Certain uses may trigger preemption of local laws, such as through the State Energy Facility Site Evaluation Council, Ch. 80.50 RCW.

²⁴ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

does not (except for critical areas and natural resources), require all counties to plan. Skamania is one of ten Washington counties exempted.²⁵

With the bulk of the state's population clustered in the Puget Sound area and a few areas east of the Cascades, addressing compatibility among uses and infrastructure challenges is less of an issue in more sparsely populated areas. Thus, exempting these slower growing counties from most planning requirements has been the approach taken since GMA's enactment in 1990.²⁶ Rather than backing away from this 24-year-old policy decision, in 2014 the Legislature expanded the exemption to increase the number of smaller counties which may opt out of most GMA planning requirements.²⁷

Despite these exceptions for areas experiencing slower growth, most partially planning jurisdictions do elect to engage in some planning. However, if they embark on this path, it is with the understanding that, like their fully planning brethren, finality will be respected, and litigation will not place an undue strain on limited planning resources. Unfortunately, that is not what has occurred here, where FOCG appealed land use decisions issued years ago through the guise of a moratorium ordinance appeal. This violates the statutory appeal period, and is particularly troublesome as FOCG has appealed the same decisions twice.

²⁵ CP 28 (map of counties subject to only GMA's natural resource lands and critical areas requirements); *see also* RCW 36.70A.040, .170.

²⁶ RCW 36.70A.040.

²⁷ Chapter 147, Laws of 2014, referred to as EHB 1224. The legislation amended RCW 36.70A.040, .060, and .280.

3.5. This is FOCG's Second Appeal of the Same Decisions

This is not FOCG's first appeal. Four years earlier, in 2008, FOCG appealed the same two decisions at issue here.²⁸ After the Court dismissed for want of prosecution,²⁹ FOCG re-filed a second appeal.³⁰ This time though, in an attempt to avoid the appeal period,³¹ FOCG asserted it was challenging a 2012 ordinance which had partially continued a moratorium.

3.6. The Superior Court Properly Dismissed

The Superior Court dismissed FOCG's appeal as time barred.³² FOCG appealed. Despite FOCG's failure to adhere to the 60-day appeal period, the Court of Appeals determined material disputed facts prevented summary judgment, and remanded. The Court of Appeals did so under a novel theory lacking any case support: that moratorium ordinances can create yawning multi-year appeal periods on final land use decisions. The County requests reversal.

4. ARGUMENT

4.1. Land Use Decisions Must be Timely Appealed

"The consistent policy in this state is to review decisions affecting use of land expeditiously so that legal uncertainties can be promptly

²⁸ CP 372-77.

²⁹ CP 371-381.

³⁰ CP 1-19.

³¹ The 2007 Plan and zoning code consistency claim was raised twice. Compare CP 13-15 and CP 374-76. The GMA claim was also raised twice, with the periodic review issue added to the second appeal, but not argued on summary judgment. *See* section 4.3 of this brief.

³² CP 413-416.

resolved...."³³ Washington law has been unwavering for decades: land use decisions must be timely appealed and "promptly determined."³⁴ In partially planning counties such as Skamania County, GMA appeals are filed in Superior Court within 60 days.³⁵ In Superior Court, FOCG did not dispute the relevant appeal period and was precluded from doing so on appeal.³⁶ Over two decades of appellate decisions addressing appeals to legislative and permitting decisions alike are uniform in their respect for finality.³⁷ Not one case supports FOCG's multi-year delay.

³³ *Federal Way v. King County*, 62 Wn. App. 530, 538, 540, 815 P.2d 790 (1991), ("Given the requirement that decisions directly affecting the use of land be promptly determined we can only hold that this lengthy delay [of 38 days] in challenging the ordinance was unreasonable"), emphasis added.

³⁴ *Id.*, at 540; *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007) (GMA consistency challenge must be brought within 60 days; rezone appeal could not be used as a "back door" to raise GMA issues); *Samuel's Furniture v. Dept. of Ecology*, 147 Wn.2d 440, 54 P.3d 1194 (2002) (Ecology's failure to appeal decision determining project was outside shoreline jurisdiction precluded enjoinder of construction); *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1 (2002) (having failed to appeal, county could not withdraw permit issued in error); *Montlake Community Club v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 110 Wn. App. 731, 43 P.3d 57 (2002) (where challenged provisions of subarea plan did not amend previously adopted comprehensive plan, no new appeal period was triggered); *Brutsche v. City of Kent*, 78 Wn. App. 370, 898 P.2d 319 (1995) (appeal dismissed as it was filed 73 days after enactment of 305 acre rezone); *Concerned Organized Women and People Opposed to Offensive Proposals, Inc. v. The City of Arlington*, 69 Wn. App. 209, 847 P.2d 963 (1993) (applying analogous appeal period from subdivision statute, court dismissed appeal of plan amendment, rezone, plat, and shoreline permit not filed within 30 days of ordinance adoption).

³⁵ *Moore v. Whitman County*, 143 Wn.2d 96, 18 P.3d 566 (2001); RCW 36.70A.290(2); *Brutsche v. City of Kent*, 78 Wn. App. 370, 380, 898 P.2d 319 (1995) ("where ... there is no other appeal period prescribed by statute or local ordinance governing the type of land use action involved, the appeal must be brought within 30 days...."), emphasis added. See also, RCW 36.70C.040(3) (21 days to appeal land use permit decisions); RCW 34.05.542(2) (30 days to appeal agency decisions); RCW 36.32.330 (20 days to appeal county commissioner decisions); Response Brief of Skamania County, section 4.3.1.

³⁶ See Response Brief of Skamania County, section 4.3.1.

³⁷ See footnotes 33-35 above.

4.2. Moratoria Do Not Suspend Appeal Periods

The County moratorium ordinances did not toll the 60-day appeal period for over five years. No appellate decision supports the Court of Appeals' departure from established precedent. To the contrary, this Court held in *Biggers v. City of Bainbridge Island*, in dissenting analysis with which a majority of the split Court concurred, "[b]ecause a moratorium is only a temporary suspension of established regulations, it does not repeal, amend, or contradict them."³⁸ The Court further explained that "the moratorium did not amend or violate any requirements of the SMA; at most, it delayed acceptance of applications."³⁹ Similarly, the County moratorium ordinances did not repeal or amend the County's Plan or zoning. However, unlike the *Biggers* situation, the County did not indefinitely continue the moratorium after it amended the zoning code and rezoned 42,663 acres, the type of action this Court found "unlawful."⁴⁰

The County's moratorium ordinances were renewed, lapsed on several occasions, and re-established,⁴¹ before partially lapsing in 2012 after the rezone.⁴² These ordinances prohibited application submittal and processing for certain types of proposals in areas designated as Unmapped.⁴³ They did not prevent the Comprehensive Plan or GMA

³⁸ *Biggers v. City of Bainbridge Island*, 162 Wn.12d 683, 709, 169 P.3d 14 (2007), emphasis added. Four members of the Court agreed with the dissent's legal analysis, including the concurring opinion, which, other than finding the City's rolling moratoria "unreasonable" and concurring with the majority result, stated "I largely agree with Justice Fairhurst's analysis of the law applicable to this case." *Id.* at 703.

³⁹ *Id.* at 711.

⁴⁰ *Id.* at 702.

⁴¹ CP 287; CP 323.

⁴² CP 30-32; CP 323 (given unappealed rezone, "moratorium can be modified.").

⁴³ CP 32.

decision from being final and appealable. Upon adoption, both were effective and final. The adopting ordinance for the Comprehensive Plan even states that this is the “Final” Plan.⁴⁴ Yet, under the Court of Appeals’ rationale, relevant appeal periods could have been continually tolled for over five years.

[R]easonable minds could differ on whether the moratorium ordinances **rendered the unmapped zoning classification practically inoperative**, thereby temporarily eliminating any actionable inconsistency between the classification and the 2007 conservancy plan designation.⁴⁵

This analysis is directly contrary to *Friends of the Columbia Gorge, Inc. v. EFSEC*, where despite the moratorium, this Court upheld County and state findings of consistency with the Plan and zoning code.⁴⁶ Further, in that decision, this Court unanimously held that Skamania County's "moratorium does not regulate how land is *used*."⁴⁷ It simply prohibited acceptance and processing of certain applications.⁴⁸ In contrast, comprehensive plans "plan" for development and development regulations "regulate" those planned for uses. Consistently, the County Comprehensive Plan's Conservancy designation (which FOCG has erroneously assumed preserved land for conservation) identifies a wide array of uses appropriate for the Conservancy designation, from wind

⁴⁴ CP 38.

⁴⁵ *Save Our Scenic Area v. Skamania County*, ___ Wn. App. ___ (March 31, 2014), Slip. Op., pg. 8, emphasis added.

⁴⁶ *Friends of the Columbia Gorge, Inc. v. EFSEC*, 178 Wn.2d at 330, 345-46.

⁴⁷ *Id.* 346, emphasis in text; *see also* RCW 36.70.795.

⁴⁸ AR 32.

projects to mining operations and aircraft landing strips.⁴⁹ And, **the Plan specifically identifies the Unmapped zoning designation as a zoning designation which may implement the Plan's Conservancy designation.**⁵⁰ The moratoria did not "cure" this planning structure, to the extent FOCG believed it needed revision.

There is not one case in which the Washington appellate courts⁵¹ have taken jurisdiction over comprehensive plan and development regulation consistency issues in the absence of a timely filed appeal. "Back door" challenges such as FOCG's -- appealing one decision as a way to challenge another earlier decision -- are impermissible.⁵² There is no authority supporting the proposition that an appeal period may be suspended based on a litigant's hope, well founded or not, that at some point during a five year period, a local jurisdiction might address a litigant's concerns, thereby avoiding the need for an appeal. Once a decision is final, the appeal period begins to run.

⁴⁹ CP 213-14 (telecommunication facilities, utility substations, recreational vehicle parks, surface mining, logging and mining camps, aircraft landing strips); *see also* FOCG's 2008 Complaint, CP 375; *Friends of the Columbia Gorge, Inc. v. EFSEC*, 178 Wn.2d at 345.

⁵⁰ CP 210-11, attached at Tab 4.

⁵¹ Lacking appellate precedent to support this extraordinary contention, FOCG pointed not to an appellate case, but a Growth Board decision. The decision in fact supports the County as a moratorium itself, not decisions made years ago, was directly challenged through a timely appeal. *Master Builders Ass'n of King & Snohomish Counties v. City of Sammamish*, Growth Management Hearings Board No. 05-3-0030c (August 4, 2005).

⁵² *Woods v. Kittitas County*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007) (GMA consistency challenge must be brought within 60 days and rezone could not be used as a "back door" to raise such challenges); *Montlake Community Club v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 110 Wn. App. 731, 43 P.3d 57 (2002) (where city incorporated portions of previously adopted plan into new planning document, no new appeal period was triggered). *See also* *Twin Bridge Marine Park, LLC v. Dept. of Ecology*, 162 Wn.2d 825, 175 P.3d 1050 (2008) and *Samuel's Furniture v. Dept. of Ecology*, 147 Wn.2d 440, 54 P.3d 1194 (2002).

Failing to accord finality to land use legislation breeds uncertainty and is fundamentally unfair to prospective appellants, who will not know when a decision is ripe to appeal. As the public does not know if any particular moratorium will be renewed, and appellants may not even be aware of appeal opportunities as moratoria are often enacted without any public notice whatsoever,⁵³ appellants would be left to guess as to when a decision should be appealed. Adding to this uncertainty, under the Court of Appeals' analysis, an appeal period could be reinitiated every time a moratorium was renewed or partially renewed. If the judiciary were to countenance multi-year delays for appealing legislative actions, this would deprive the public of the ability to expeditiously seek relief on plans and regulations with legal infirmities. The Legislature and appellate courts alike have refused to inject such uncertainty into determining appeal periods. Once a decision is final, the appeal period commences.⁵⁴ A moratorium does not turn a final decision into a "suspended" decision which can continually re-spring to life, becoming newly appealable every time a moratorium ordinance is enacted.

This is not a failure to act situation. If FOCG believed the 2007 Plan and Zoning were inconsistent under RCW 36.70.545⁵⁵ FOCG's duty to appeal was triggered in 2007, not five years later after rezones had occurred and a separate planning decision - a moratorium - partially

⁵³ RCW 36.70.795 (moratorium may be adopted "without holding a public hearing").

⁵⁴ *Mellish v. Frog Mountain Pet Care, Inc.*, 172 Wn.2d 208, 257 P.3d 641 (2011) (once hearing examiner decided reconsideration motion, decision was final, and appeal period commenced).

⁵⁵ Enacted in 1990, the statute was in effect well before the 2007 Plan was adopted.

lapsed. If FOCG believed the 2005 GMA Decision was not consistent with a statutory requirement from that same year, it had a duty to appeal then. Skamania County is under no statutory or Plan requirement to further amend its zoning map.⁵⁶ Even if it were, since 2007, the County has revised both its zoning map and code on numerous occasions, including the 42,663 acre rezone and code revisions.⁵⁷ FOCG did not appeal these decisions. Instead, FOCG appealed an ordinance which partially renewed a moratorium, which the County could not indefinitely maintain.⁵⁸

FOCG was aware of the imperative to timely appeal. FOCG appealed the County's 2005 and 2007 decisions in 2008.⁵⁹ That court dismissed the appeal for want of prosecution.⁶⁰ Rather than contesting dismissal, or requesting a stay, FOCG re-filed its appeal.⁶¹ A moratorium is not a catch all salve to allow litigants multi-year appeal periods. The Superior Court properly dismissed.

4.3. Applying a 2005 Periodic Review Requirement to a 2005 Decision was an Ad-Hoc Argument Newly Raised on Appeal to Support a "Back Door Appeal"

Skamania County determined in 2005 that it was in complete compliance with GMA's natural resource requirements. The County "has determined the designation" of 39,416 acres of forest land and 4,240 acres of agricultural land "meets the requirements of" GMA "for the

⁵⁶ See section 3.4 of this brief.

⁵⁷ See section 3.2 of this brief.

⁵⁸ RCW 36.70.795.

⁵⁹ CP 372-381.

⁶⁰ CP 381.

⁶¹ CP 1-19.

conservation of forest, agricultural, and mineral resource lands."⁶² In Superior Court, FOCG argued only that the County had not adequately designated its natural resource lands.⁶³ On appeal, FOCG conceded the issue, and reversed course. To skirt the fact that the 60-day appeal period had run, FOCG re-characterized its issue as a failure to act. This of course was an impermissible new issue. There was no evidence in the Record to support that FOCG had raised the issue below, so the Court of Appeals simply quoted from FOCG's appellate briefing.⁶⁴

Friends' opening brief states, "[Friends] argued below that the County failed to meet both its 1991 deadline to designate resource lands and its 2008 deadline to complete its first round of periodic review of these designations. On appeal, [Friends] assign[s] error only to the County's failure to meet the latter deadline."⁶⁵

There is no Record support for FOCG's assertion. This issue was originally included in FOCG's complaint.⁶⁶ But when the County sought summary judgment dismissal, FOCG did not present written or oral argument to the Superior Court contesting dismissal of the periodic review issue.⁶⁷ The only arguments before the Superior Court concerning the natural resources designation were **whether the County should have**

⁶² CP 34-35, attached at Tab 2.

⁶³ CP 141-144 (section of FOCG's Superior Court briefing addressing natural resources claim); *see also* TR (transcript from summary judgment hearing, November 9, 2012).

⁶⁴ Response Brief of Skamania County, pgs. 6, 13-14, and 19.

⁶⁵ *Save Our Scenic Area v. Skamania County*, ___ Wn. App. ___ (March 31, 2014), Slip. Op., footnote 1. (The statutory deadline was 2005. After the County complied with it, the Legislature provided a three year optional extension. *See* footnote 10 above.)

⁶⁶ Appellants' Brief, filed with Court of Appeals, pgs. 17 and 19, FN 24. FOCG cited to CP 3-5, 11-12, and 16-17, which are all references to its complaint.

⁶⁷ CP 141-144 (section of FOCG's Superior Court briefing addressing the natural resources claim); TR (Transcript from summary judgment hearing, November 9, 2012).

designated more land in 2005, not whether the County should have completed a virtually simultaneous "review" of the 2005 decision. FOCG took the position that the County should have "reviewed" its 2005 designation pursuant to GMA's 2005 "periodic review" requirement for the first time in the Court of Appeals.

If a party does not raise a legal argument or call evidence to the superior court's attention establishing a disputed material fact, it may not raise those arguments or disputed facts on appeal.⁶⁸ "On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court."⁶⁹ Any other approach allows arguments and evidence to lay in wait, and "spring to life" on appeal, which is fundamentally unfair to opposing parties and precludes efficient dispute resolution. This is of added concern here, given FOCG's earlier 2008 appeal challenging the County's 2005 decision.⁷⁰ FOCG should not be afforded a third opportunity to litigate the natural resources designation claim.

Even if FOCG can raise this new issue, it would be absurd for a 2005 periodic review requirement to apply to a 2005 GMA designation decision. There was nothing new to review, which is the "raison d'être" for

⁶⁸ See *Bankston v. Pierce County*, 174 Wn. App. 932, 941-42, 301 P.3d 495 (2013); *Griffin v. Thurston County*, 137 Wn. App. 609, 622, 154 P.3d 296 (2007), *aff'd on other grounds*, 165 Wn. 2d 50, 196 P.3d 141 (2008).

⁶⁹ RAP 9.12; *Schreiner Farms, Inc. v. American Tower, Inc.*, 173 Wn. App. 154, 158, 293 P.3d 407 (2013) (on appeal, only issues "called to the trial court's attention" may be addressed).

⁷⁰ CP 372-381, *see specifically* CP 373, ¶ 3.4 (FOCG's complaint challenges Resolution 2005-35, the County's GMA natural resource lands designation decision).

GMA's periodic review requirement. Further, this Court has held that a periodic review challenge is not entertained, **unless** relevant GMA provisions have been amended.

The Court of Appeals reasoned any limitation on the type of challenge that may be brought against an update "would undermine the purpose of requiring periodic reviews." ... **We disagree. ... We hold a party may challenge a county's failure to revise a comprehensive plan only with respect to those provisions that are directly affected by new or recently amended GMA provisions....** Limiting the scope of failure-to-revise challenges recognizes the original comprehensive plan was legally deemed GMA compliant. A comprehensive plan is presumed valid upon adoption, RCW 36.70A.320(1), and is conclusively deemed legally compliant if it is not challenged within 60 days. The seven year update does not strip the original comprehensive plan of its legal status as GMA compliant, and we will not presume the legislature intended such a drastic measure in the absence of statutory language to that effect. **If the laws have not changed, the comprehensive plan remains GMA compliant.**

Finally, limiting failure-to-revise challenges to those aspects of a comprehensive plan directly affected by new or substantively amended GMA provisions serves the public policy of preserving the finality of land use decisions.⁷¹

Contrary to *Thurston County*, FOCG seeks a redundant 2005 review without identifying any new amendments. In any case, the County remains subject to GMA's periodic review requirements, with its next review due in a few years.⁷² With no duty to "re-review" the 2005 decision, finality should be respected, and the Superior Court's dismissal affirmed.

⁷¹ *Thurston County v. Western Wash. Growth Mgmt. Hrgs. Bd.*, 164 Wn.2d 329, 343-345, 190 P.3d 38 (2008), emphasis added.

⁷² RCW 36.70A.130(5)(c).

5. CONCLUSION

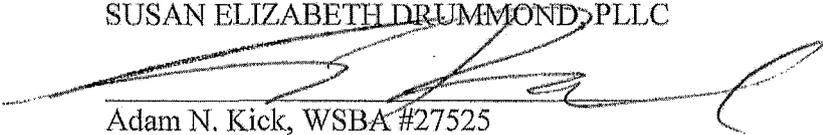
The Court of Appeals, in failing to affirm the Superior Court's dismissal of FOCG's 2012 appeal of two decisions made in 2005 and 2007, rested its holding on analysis directly contrary to established principles of finality in land use decisions. Such an approach provides the public with no certainty as to the relevant appeal period, forcing appellants to guess as to when a decision is ripe for review. It also increases the costs associated with planning on economically stressed jurisdictions, ensuring that planning occurs primarily in wealthy communities that can afford the litigation which often comes with planning for the future.

The County requests that this Court respect finality, reverse the Court of Appeals, and affirm the Superior Court's dismissal of FOCG's appeal as time barred.

RESPECTFULLY SUBMITTED this 7th day of November, 2014.

SKAMANIA COUNTY PROSECUTOR
ADAM N. KICK

LAW OFFICES OF
SUSAN ELIZABETH DRUMMOND, PLLC



Adam N. Kick, WSBA #27525
Susan Elizabeth Drummond, WSBA #30689

CERTIFICATE OF SERVICE

I certify that on November 7, 2014, I served the foregoing SUPPLEMENTAL BRIEF OF PETITIONER SKAMANIA COUNTY on the parties listed below by email and first class U.S. mail, postage prepaid.

Nathan J. Baker Friends of the Columbia Gorge 522 SW 5 th Avenue, Suite 720 Portland, OR 97204-2100 nathan@gorgefriends.org	J. Richard Aramburu Aramburu & Eustis, LLP 720 Third Avenue, Suite 2000 Seattle, WA 98104-1825 rick@aramburu-eustis.com
Gary K. Kahn Reeves, Kahn, Hennessy & Elkins 4035 SE 52 nd Avenue Portland, OR 97206 P. O. Box 86100 Portland, OR 97286 gkahn@rke-law.com	

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Signed this 7th day of November, 2014 at Kirkland, Washington.

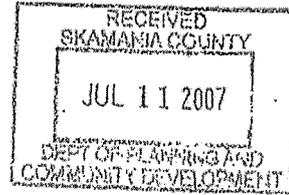


Allyson Adamson

Appendices

Tab 1

**County's 2007 Comprehensive
Plan Decision
(Resolution 2007-25)
CP 37-39**



RESOLUTION 2007-25

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

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

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

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

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

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

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

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

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

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

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

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

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

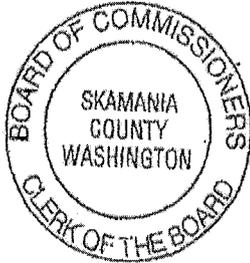
WHEREAS, the Board of County Commissioners reviewed the Planning Commission proposed changes at workshop on June 25, 2007; and,

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

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

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

SKAMANIA COUNTY
BOARD OF COMMISSIONERS



Paul Lee
Chairman

Jani D. Richardson
Commissioner

Jani Tolgus
Commissioner

ATTEST:

Jane Johnson
Clerk of the Board

Approved as to form only:

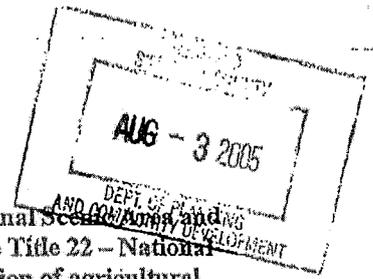
[Signature]
Skamania County Prosecuting Attorney

AYE 3
NAY
ABSTAIN
ABSENT

Tab 2

**County's 2005 GMA Decision
(Resolution 2005-35)
CP 34-35**

RESOLUTION 2005-35



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

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

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

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

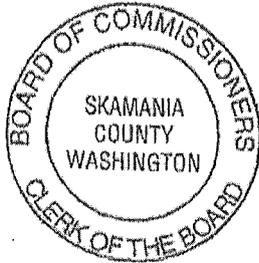
WHEREAS, the development regulations in Skamania County Code (SCC) Title 22 – National Scenic Area designated 39,416.10 acres as forest land (SMA Forest, GMA Commercial Forest, and GMA Large Woodland) meeting the intent of RCW 36.70A, and designated 4,240.23 acres as agricultural land (SMA Agriculture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

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

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

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

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



SKAMANIA COUNTY
BOARD OF COMMISSIONERS

Albert E. Miller
Chairman

[Signature]
Commissioner

Jan D. Richman
Commissioner

ATTEST:

Pamela Johnson
Clerk of the Board

Approved as to form only:
[Signature]
Skamania County Prosecuting Attorney

AYE 3
NAY 0
ABSTAIN 0
ABSENT 0

Tab 3

Moratorium Ordinance

No. 2012-08

CP 30-32

ORDINANCE 2012-08

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

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

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

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

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

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

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

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

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

0-000000030

plat) process; and,

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

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

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

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

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

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

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

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

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

0-000000031

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

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



BOARD OF COUNTY COMMISSIONERS
SKAMANIA COUNTY, WASHINGTON

[Signature]
Chairman

[Signature]
Commissioner

Commissioner

ATTEST:

[Signature]
Clerk of the Board

APPROVED AS TO FORM ONLY:

[Signature]
Skamania County Prosecuting Attorney

AYE 3
NAY _____
ABSTAIN _____
ABSENT 1

0-000000032

Tab 4

Comprehensive Plan Excerpts Providing for the Unmapped Zoning Designation CP 210-211

CHAPTER 2: LAND USE ELEMENT

Introduction

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

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

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

Land Use Designations

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

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

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

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

Rural I

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

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

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

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

OFFICE RECEPTIONIST, CLERK

To: Allyson Adamson
Subject: RE: Electronic Filing Supreme Court Case No. 90398-1

Rec'd 11/7/14

From: Allyson Adamson [mailto:allyson@susandrummond.com]
Sent: Friday, November 07, 2014 1:33 PM
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Subject: Electronic Filing Supreme Court Case No. 90398-1

Attached please find Skamania County's Supplemental Brief, with attachments.

Case Name: *Save Our Scenic Area and Friends of the Columbia Gorge v. Skamania County.*

Case Number: Supreme Court No. 90398-1 (Court of Appeals No. 71363-9-1).

Name, phone number, bar number and email address of person filing:

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Thank you.

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