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IN THE SUPREME COURT
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SAVE OUR SCENIC AREA and
FRIENDS OF THE COLUMBIA GORGE, INC.

Respondents,

v.

SKAMANIA COUNTY,

Petitioner.

**AMICI CURIAE BRIEF OF FUTUREWISE, FRIENDS OF THE
WHITE SALMON RIVER, COLUMBIA RIVERKEEPER,
SPOKANE RIVERKEEPER, NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, FRIENDS OF GRAYS HARBOR, GRAYS
HARBOR AUDUBON SOCIETY, PALOUSE AUDUBON SOCIETY,
SPOKANE AUDUBON SOCIETY, VANCOUVER AUDUBON
SOCIETY, WILLAPA HILLS AUDUBON SOCIETY, AND NORTH
CENTRAL WASHINGTON AUDUBON SOCIETY**

Tim Trohimovich, WSBA No. 22367
Futurewise
816 Second Avenue, Suite 200
Seattle, Washington, 98104
Telephone: 206-343-0681 Ext. 118
tim@futurewise.org
Attorney for *Amici Curiae*

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I. INTRODUCTION

All counties and cities in Washington State are required to designate natural resource lands, which are agricultural, forest, and mineral resource lands of long-term commercial significance.¹ This Court has held that “[w]hen read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land.”² These provisions also apply to forest lands and mineral resource lands and also evidence a legislative mandate to conserve those resource lands.³ While only RCW 36.70A.170 applies to Skamania County, the duty to designate natural resource lands and to periodically review those designations must be viewed in light of the legislative mandate to conserve natural resource lands.

Citizen appeals are the principal method of enforcing these mandates.⁴ For the reasons set out below, the organizations that file this *amicus curie* brief urge this Court to affirm the Washington State Court of Appeals and hold that when a county that does not plan under RCW 36.70A.040 fails to take an action required by the Growth Management

¹ RCW 36.70A.170(1)(a) – (c).

² *King County v. Central Puget Sound Growth Management Hearings Bd.*, 142 Wn.2d 543, 562, 14 P.3d 133, 143 (2000).

³ RCW 36.70A.020(8), 36.70A.060(1), 36.70A.170.

⁴ *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 175 – 77, 979 P.2d 374, 380 – 82 (1999).

Act (GMA, chapter 36.70A RCW) or the Planning Enabling Act (PEA, chapter 36.70 RCW), a “failure to act” claim against that county is timely so long as an applicable deadline for action has passed.

II. IDENTITY AND INTERESTS OF *AMICI CURIAE*

Futurewise is a statewide nonprofit organization working to ensure that local governments responsibly manage growth. The mission of Friends of the White Salmon River is to protect the White Salmon River and its watershed in order to restore and preserve the river and riparian habitats. Columbia Riverkeeper’s mission is to protect and restore the water quality of the Columbia River and all life connected to it. Spokane Riverkeeper is dedicated to protecting and restoring the health of the Spokane River Watershed. The Neighborhood Alliance of Spokane County is a nonprofit public interest organization that works to promote the self-determination of Spokane County’s neighborhoods and to protect county farmlands, forests, and shorelines. The Friends of Grays Harbor is a nonprofit whose mission is to foster and promote the economic, biological, and social uniqueness of a healthy Grays Harbor estuary. The mission of the Grays Harbor Audubon Society is to seek a sustainable balance between human activity and the needs of the environment, and to promote enjoyment of birds and the natural world. The mission of the Palouse Audubon Society is to promote education, conservation, and the

restoration of natural ecosystems focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity. The Spokane Audubon Society's mission is to provide services that allow natural ecosystems to become more healthy, thriving, and restorative, to nurture and protect birds and other wildlife and their habitats, and to encourage biological diversity for the benefit of people and nature in the Spokane region. The Vancouver Audubon Society believes in the wisdom of nature's design and promotes this through education, involvement, stewardship, enjoyment and advocacy. The mission of the Willapa Hills Audubon Society is to support ecologically responsible ways of life, to help maintain biologically diverse habitats, and to promote environmental understanding and enjoyment of nature. The North Central Washington Audubon Society is dedicated to furthering the knowledge and the conservation of the environment.

Taken together, the *Amici* work in all of the counties that do not plan under RCW 36.70A.040. *Amici* share an interest in public participation in the planning decisions that will define our cities, counties, and state; the protection of natural resource lands; and the effective implementation of the GMA and PEA.

III. STATEMENT OF THE CASE

Amici rely on the statement of the case in the Supplemental Brief of Respondents Save Our Scenic Area (SOSA) and Friends of the Columbia Gorge, Inc. (Friends).

IV. ARGUMENT

A. Skamania County's key duties under the GMA.

The GMA requires Skamania County to designate and protect critical areas; designate natural resource lands including agricultural, forest, and mineral resource lands of long-term commercial significance; and to periodically update these provisions.⁵ The deadline for designating critical areas and natural resource lands was September 1, 1991.⁶ Because the duties applicable to counties such as Skamania County are focused on critical areas and natural resource lands, such counties are often referred to as “CARL” counties, “Counties Planning for *Critical Areas* and Natural *Resource Lands* only under [the] GMA.”⁷ They are also referred to as counties that do not plan under RCW 36.70A.040, the GMA section that sets out many of the duties for the other categories of counties and cities.

The GMA also provides that “each county” “shall establish and broadly disseminate to the public a public participation program consistent

⁵ Clerks Papers (CP) 28, RCW 36.70A.170(1), 36.70A.060(2), 36.70A.130.

⁶ RCW 36.70A.170(1).

⁷ CP 28 (emphasis added).

with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county ...”⁸ RCW 36.70A.035(1) provides that “[t]he public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation.” Allegations of GMA violations by CARL counties are subject to judicial review.⁹

B. The benefits of land use planning to Skamania County, its residents, and its property owners.

Since the adoption of the GMA, there has been an increase in scholarship evaluating the effectiveness of growth management techniques. This section summarizes research related to the duties of CARL counties.

Kline analyzed changes in farmland using National Resources Inventory data from 1982 through 1997 for each state and the United States as a whole. Washington used 0.48 acres of newly developed farmland per new resident between 1982 and 1997; the comparable

⁸ RCW 36.70A.130(2)(a).

⁹ *Moore v. Whitman County*, 143 Wn.2d 96, 104, 18 P.3d 566, 570 (2001).

national figure was 1.03 acres.¹⁰ Washington had the seventh lowest rate of land conversion; only six states converted less land per net new resident.¹¹

Robinson, Newell, and Marzluff compared geo-referenced aerial photos and building permit data to determine land use changes on the fringe of the King County urban growth along I-90 east of Seattle. This area includes suburban cities, rural areas, and natural resource lands.¹² They concluded that designated agricultural lands and forest lands of long-term commercial significance were protecting natural resource lands.¹³

Burby compared insurance property losses in states that required comprehensive planning and states that did not, concluding that:

Examination of the distribution of \$33 billion paid by private insurance companies for losses incurred in natural catastrophes between January 1, 1994, and December 31, 2000, indicates that losses are lower in states that require local governments to prepare comprehensive plans and lower yet when states require that these plans address natural hazards. Over the period studied, if all states had required comprehensive plans with hazard mitigation elements, the toll in privately insured losses to residential property from weather-related natural disasters would have

¹⁰ Jeffrey D. Kline, *Comparing States With and Without Growth Management Analysis Based on Indicators With Policy Implications Comment*, 17 LAND USE POLICY 349, 353 (2000). Land Use Policy is a peer-reviewed journal.

¹¹ *Id.*

¹² Lin Robinson, Joshua P. Newell, & John M. Marzluff, *Twenty-five years of sprawl in the Seattle Region: growth management responses and implications for conservation*, 71 LANDSCAPE & URBAN PLANNING 51, 54 (2005). Landscape and Urban Planning is a peer-reviewed journal.

¹³ *Id.* at 69.

been reduced by approximately \$213 million (\pm \$98 million at the 95% level of confidence).¹⁴

Further, “[t]he findings reported here suggest that if local governments prepare comprehensive plans and pay attention to hazard mitigation in their planning, they can contribute to a reduction of property losses in natural disasters.”¹⁵ While the GMA does not require Skamania County to undertake comprehensive planning, it does require the county to address natural hazards such as frequently flooded areas and landslide hazards as part of the County’s periodic review of its critical areas regulations.¹⁶

Effective protections for agricultural and forest land have the potential to save money for taxpayers. The *Washington Agriculture Strategic Plan 2020 and Beyond* documents that:

For each \$1 paid in taxes by farm and forest lands in [Skagit] county, those lands received back about 51 cents in services, contributing a 49 cent subsidy for the rest of the taxpayers in the county. For every \$1 paid in taxes by residential properties, those properties received \$1.25 in public services.¹⁷

C. Because Skamania County did not undertake its required periodic review of its natural resource lands designations in

¹⁴ Raymond J. Burby, *Have State Comprehensive Planning Mandates Reduced Insured Losses from Natural Disasters?* 6 NATURAL HAZARDS REVIEW 67, 79 (2005). Natural Hazards Review is a peer-reviewed journal.

¹⁵ *Id.* at 78.

¹⁶ RCW 36.70A.030(5), 36.70A.030(9), 36.70A.060(2), 36.70A.130. Skamania County Ordinance 2012-04, at CP 315, recognized planning’s ability to reduce hazards such as forest fires.

¹⁷ Washington State Department of Agriculture, *Washington Agriculture Strategic Plan 2020 and Beyond* p. 53 (2009) accessed on Dec. 30, 2014 at: <http://agr.wa.gov/fof/>

Resolution 2005-35, the failure to act claims of SOSA and Friends are proper.

1. The three types of GMA appeals.

In considering this matter, it is important to note that appeals by citizens and citizen groups are the mechanism that the Legislature and Governor adopted to enforce the GMA.¹⁸ Unlike some laws, such as the Shoreline Management Act, there is no state agency that reviews and approves or disapproves most GMA comprehensive plans and development regulations.¹⁹ The responsibility to appeal noncompliant comprehensive plans and development regulations falls to citizens and groups such as SOSA and Friends.

The Washington State Supreme Court has recognized three distinct types of appeals under the GMA. It is important to identify which type of appeal is being presented, as the rules among them differ.

The first type of appeal is a “failure to act” appeal.²⁰ In this type of appeal, a GMA deadline (such as a periodic review deadline) has passed without a county or city having taken action to comply with the requirement. The remedy is to direct the county or city to act.

¹⁸ *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 175 – 77, 979 P.2d 374, 380 – 82 (1999).

¹⁹ RCW 90.58.090.

²⁰ *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 – 59, 958 P.2d 962, 970 (1998).

The second type of appeal is where a county or city acts by adopting or amending a comprehensive plan or development regulation, and that action is appealed.²¹ As this Court wrote in the *Thurston County* decision, “[i]f a county amends a comprehensive plan, the amendment must comply with the GMA and may be challenged within 60 days of publication of the amendment adoption notice.”²²

The third type of appeal is a “failure to revise” appeal.²³ In a failure to revise appeal, a county or city has taken action to update its comprehensive plan as required by RCW 36.70A.130, but has not amended the specific provision that was appealed. This is one of the types of appeals recognized in the *Thurston County* decision, in which the Washington State Supreme Court held that “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, meaning those provisions related to mandatory elements of a comprehensive plan that have been adopted or substantively amended

²¹ *Id.*, 135 Wn.2d at 559, 958 P.2d at 970.

²² *Thurston County v. W. Wash. Growth Mgmt. Hr'gs. Bd.*, 164 Wn.2d 329, 347, 190 P.3d 38, 46 (2008).

²³ *Id.*, 164 Wn.2d at 344, 190 P.3d at 45.

since the previous comprehensive plan was adopted or updated, following a seven year update.”²⁴

In the next section we will see that Skamania County did not conduct its required periodic review. So Friends and SOSA’s claims are properly understood as a failure act appeal.

2. Skamania County Resolution 2005-35 did not undertake Skamania County’s required periodic review for its designations of natural resource lands.

Public participation is an important part of the periodic review required by the GMA. That is why RCW 36.70A.130(2)(a) provides in relevant part that:

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. ... “Updates” means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section.²⁵

²⁴ *Id.* Updates now take place every eight or ten years, depending on the population and growth rate of the county or city. RCW 36.70A.130(5), (6)(e) – (f). For a failure to revise appeal of an urban growth area (UGA), “[a] party may challenge a county’s failure to revise its UGA designations during a 10 year update only if the [Washington State Office of Financial Management] OFM population projection for the county changed.” *Thurston County*, 164 Wn.2d at 346–47, 190 P.3d at 46. Since Skamania County is a CARL county, it is not obligated to have urban growth areas and so this rule does not apply to the County. CP 28; RCW 36.70A.110(1).

²⁵ RCW 36.70A.130(2)(a).

Because RCW 36.70A.130(2)(a) applies to “each county and city,” Skamania County must comply with this requirement. RCW 36.70A.035(1) requires that “[t]he public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation[s].”

RCW 36.70A.130(1)(b) provides in relevant part:

Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

When Resolution 2005-35 was adopted on August 2, 2005, the deadline for Skamania County’s first periodic review for natural resource lands designations was December 1, 2005.²⁶ It was subsequently extended to December 1, 2008.²⁷

In *Thurston County v. Western Washington Growth Management Hearings Board*, Thurston County argued before the Washington State

²⁶ RCW 36.70A.130(4)(b) (2005), CP 5.

²⁷ RCW 36.70A.130(4)(b), (6)(b) (2014).

Court of Appeals that the county's criteria for designating agricultural lands of long-term significance could not be part of a failure to update appeal because the county "updated that portion of its comprehensive plan in 2003 and no person filed a petition challenging that part of the County's update within 60 days after its adoption."²⁸ The court of appeals rejected this argument:

The Board did not err in finding that the 2003 amendment was not part of the County's periodic update. The Act distinguishes between required periodic reviews and other amendments to comprehensive plans and development regulations. RCW 36.70A.130(2) requires counties to create public participation programs that identify procedures and schedules "whereby updates, proposed amendments, *or* revisions of the comprehensive plan are considered by the governing body." (Emphasis added.) To "update" means to "review and revise, if needed, according to subsection (1) of this section, and the time periods specified in subsection (4) of this section or in accordance with the provisions of subsections (5) or (8) of this section." RCW 36.70A.130(2)(a). Subsection (1) contains the definition of legislative action. RCW 36.70A.130(1)(b). Subsection (4) requires updates every seven years. RCW 36.70A.130(4). An amendment that does not meet the requirements of both subsection (1) and subsection (4) is not an update. Otherwise, as the Board noted, a county could argue after the fact that an amendment was actually part of an update to its comprehensive plan and thereby circumvent review of a decision not to revise a plan or regulations.²⁹

²⁸ *Thurston County v. W. Wash. Growth Mgmt. Hr'gs. Bd.*, 137 Wn. App. 781, 796, 154 P.3d 959, 966 (2007), *aff'd in part and rev'd in part on other grounds*, 164 Wn.2d 329, 190 P.3d 38 (2008).

²⁹ *Id.*, 137 Wn. App. at 797 – 98, 154 P.3d at 967.

While *Thurston County* involved a county that “fully” plans under RCW 36.70A.040,³⁰ all of the provisions cited by the court of appeals apply to Skamania County, except for the definition of legislative action in RCW 36.70A.130(1)(b). Moreover, the court’s conclusion that an amendment that does not meet the requirements of both RCW 36.70A.130(1) and (4) “is not an update”³¹ also applies to Skamania County. “Otherwise . . . , a county could argue after the fact that an amendment was actually part of an update to its comprehensive plan and thereby circumvent review of a decision not to revise a plan or regulations.”³²

Skamania County Resolution 2005-35 does not meet the requirements of RCW 36.70A.130(1) and (4), and so is not an update, also referred to in the GMA as a review. Resolution 2005-35 does not state that Skamania County took “action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter”³³ The words

³⁰ *Id.*, 137 Wn. App. at 788, 154 P.3d at 962.

³¹ *Id.*, 137 Wn. App. at 798, 154 P.3d at 967.

³² *Id.*

³³ RCW 36.70A.130(1)(b); CP 34 – 35.

“action,” “review,” and “update” do not appear in Resolution 2005-35.³⁴

Nor is there any reference to RCW 36.70A.130.³⁵

Resolution 2005-35’s operative provision does not even state that the designations of forest, agricultural, and mineral resource lands meet the requirements to designate natural resource lands. It provides instead:

NOW THEREFORE, BE IT RESOLVED, that the Skamania County Board of County Commissioners has determined the designation of forest and agricultural lands within the National Scenic Area and the development regulations adopted under see Title 22 *meets the requirements of the Growth Management Act (RCW 36.70A) for the conservation* of forest, agricultural, and mineral resource lands.³⁶

The requirement in RCW 36.70A.060(1)(a) to conserve natural resource lands is separate from RCW 36.70A.170(1)’s requirement to designate natural resource lands. And unlike RCW 36.70A.170(1)’s duty to designate natural resource lands, RCW 36.70A.060(1)(a)’s duty to conserve natural resource lands does not apply to Skamania County,³⁷ although the county can certainly undertake voluntary efforts to conserve these economically valuable lands.

No member of the public would have read the operative provision as the county taking action to review and, if needed revise, its designations

³⁴ CP 34 – 35.

³⁵ *Id.*

³⁶ CP 34 (emphasis added).

³⁷ RCW 36.70A.060(1)(a), 36.70A.170(1); *see also* CP 28.

of natural resource lands, as RCW 36.70A.130(1)(b) and (2)(a) require. Nor would any member of the public have read Resolution 2005-35 as having undertaken an RCW 36.70A.130(1)(b) review or an RCW 36.70A.130(2)(a) update.³⁸ The County's failure to state that it reviewed its natural resource lands designations and its failure to reference the review and revise requirement is inconsistent with the requirements and procedures for an RCW 36.70A.130(1)(b) periodic review and a (2)(a) periodic update. It is also inconsistent with the GMA requirements in RCW 36.70A.130(2)(a) for public involvement in GMA updates.

3. Because Skamania County did not undertake its required periodic review of its natural resource lands designations, the *Thurston County* “failure to revise” limitations on appeals do not apply; rather, the “failure to act” rules apply.

In its Supplemental Brief at page 19, Petitioner Skamania County argues that the *Thurston County* decision prevents the courts from entertaining SOSA's and Friends' claims. The County's argument fails. The *Thurston County* rule argued by Skamania County applies only where a county or city has completed its periodic review as required by RCW 36.70A.130. As the *Thurston County* court wrote, “We hold a party may challenge a county's failures to revise aspects of a comprehensive plan

³⁸ CP 34 – 35.

that are directly affected by new or recently amended GMA provisions if a petition is filed within 60 days after publication of the county's seven year update."³⁹ Publication refers to publication of the notice of adoption required by RCW 36.70A.290(2). Since Skamania County did not conduct its periodic review, the "failure to revise" rule from *Thurston County* does not apply. Instead, the rule for failure to act appeals from the *Skagit Surveyors* decision applies.⁴⁰ This rule allows a party to maintain an appeal when a deadline has passed with no action from the county or city (a failure to act)—whether or not applicable amendments have been made to the GMA. The *Thurston County* decision specifically cited the *Skagit Surveyors* decision as good law, writing "[s]ee *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 – 59, 958 P.2d 962 (1998) (a GMHB may consider whether a county's actions, or failure to act, comply with the GMA)."⁴¹

There are good policy reasons for the different types of appeals. In a failure to act appeal, an appellant does not know what comprehensive plan policies or development regulations a local government will ultimately amend or adopt. It is more efficient for the local government, the court, and the appellant to simply address whether or not the local

³⁹ *Thurston County*, 164 Wn.2d at 360 – 61, 190 P.3d at 53.

⁴⁰ *Skagit Surveyors & Eng'rs*, 135 Wn.2d at 558 – 59, 958 P.2d at 970.

⁴¹ *Thurston County*, 164 Wn.2d at 344, 190 P.3d at 45.

government has failed to meet the review deadline, rather than inventorying all the provisions the appellant believes should be revised due to changes in state law—provisions the local government may decide to address once the missed deadline is drawn to its attention.

In its Supplemental Brief at page 18, Skamania County argues that “it would be absurd for a 2005 periodic review requirement to apply to a 2005 GMA designation decision.” But the County never made a review decision nor adopted findings articulating this position; instead, the County makes this argument solely in its appellate brief as a post-hoc rationalization. The statutory deadline raised in Friends’ and SOSA’s natural resource lands claims is December 1, 2008.⁴² Skamania County has failed to take the actions required by the GMA by that deadline.

4. Because Skamania County has not updated its development regulations to achieve consistency with its 2007 Comprehensive Plan, Friends’ and SOSA’s “failure to act” claims under the PEA are timely.

Just as this Court authorizes “failure to act” appeals under the GMA, this Court should also recognize “failure to act” appeals under the PEA. In this case, Skamania County has failed to act to make its development regulations consistent with its comprehensive plan.⁴³

⁴² RCW 36.70A.130(4)(b), (6)(b) (2014); CP 5.

⁴³ CP 20, CP 26.

RCW 36.70.545 provides that “[b]eginning July 1, 1992, the development regulations of each county that does not plan under RCW 36.70A.040 shall not be inconsistent with the county’s comprehensive plan.” “Development regulations” include zoning ordinances and maps.⁴⁴

Skamania’s *2007 Comprehensive Plan Land Use Designation Map* gives the “unzoned lands” a comprehensive plan designation of “Conservancy.”⁴⁵ The *2007 Comprehensive Plan* sets out a defined list of twelve uses allowed in the Conservancy designation including “[r]esidential ([s]ingle family units),” home businesses, recreational vehicle parks, forest management, and surface mining by conditional use permit.⁴⁶ The *2007 Comprehensive Plan* directs that the Conservancy designation “shall” have a ten-acre minimum lot size “unless the specific land use zoning classification or the Local Health Authority requires a larger lot size.”⁴⁷ Skamania County has not taken action to update its zoning map and zoning regulations to be consistent with the *2007 Comprehensive Plan*,⁴⁸ despite being obligated to do so since July 1, 1992.⁴⁹ SOSA’s and Friends’ PEA “failure to act” claims are timely.

⁴⁴ RCW 36.70.545, 36.70A.030(7).

⁴⁵ CP 20, CP 26.

⁴⁶ CP 213 – 14.

⁴⁷ CP 214.

⁴⁸ CP 20, 26.

⁴⁹ RCW 36.70.545.

The *2007 Comprehensive Plan* Table 2-1, Plan Designation to Zoning Classification Consistency Chart,⁵⁰ does indicate that the “Unmapped” zone is consistent with the Conservancy comprehensive plan designation. However, to be consistent with the *2007 Comprehensive Plan*, it would have to be an “Unmapped” zone that allows only uses consistent with the twelve uses listed in *2007 Comprehensive Plan* and that has a ten-acre or larger minimum lot size.⁵¹ Instead, Skamania’s current zoning ordinance allows in the “Unmapped” zone any use that has not been declared a nuisance⁵² and the “Unmapped” zone does not have any minimum lot size.⁵³ Thus, the current “Unmapped” zone is inconsistent with the plain text of the *2007 Comprehensive Plan*. Because Skamania County has failed to take any action to update its zoning ordinance and maps to achieve consistency with the Comprehensive Plan, Friends’ and SOSA’s PEA failure to act claims are timely.

The County has worked with its Planning Commission to prepare a “Recommended Draft (and associated zoning map)”⁵⁴ that would “[z]one

⁵⁰ CP 211.

⁵¹ CP 213 – 14.

⁵² CP 84, SCC 6.10.20 (Skamania County Ordinance 1985-05 version).

⁵³ CP 84.

⁵⁴ CP 333.

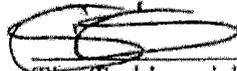
all previously unmapped land”⁵⁵ Thus, the County should be able to expeditiously and economically comply with RCW 36.70.545.

V. CONCLUSION

At page 20 of its Supplemental Brief, Petitioner Skamania County decries the allegedly high cost of litigation that can accompany land use planning. One way to address such costs would be for the courts to adopt clear rules for counties and cities.

This Court has clear rules on “failure to act” appeals that the courts and Growth Management Hearings Boards have successfully applied for 15 years.⁵⁶ This Court should apply these rules to the CARL counties and hold that when a CARL county fails to take an action required by the GMA or PEA, a “failure to act” claim against that county is timely so long as it is ripe when filed, *i.e.*, a deadline has passed without action by the county. Applying this rule to this case should lead this Court to find SOSA’s and Friends’ claims timely, affirm the court of appeals, and remand to the superior court for further proceedings.

Respectfully submitted this 5th day of January 2015.



Tim Trohimovich, WSBA No. 22367, Counsel for *Amici*

⁵⁵ CP 333.

⁵⁶ See *Skagit Surveyors & Engineers*, 135 Wn.2d at 558 – 59, 958 P.2d at 970.

CERTIFICATE OF SERVICE

I, Tim Trohimovich, declare under penalty of perjury and the laws of the State of Washington that, on January 5, 2015, I caused a PDF file of the original and true and correct copies of the following document to be served on the persons listed below in the manner shown: **Futurewise et al.'s Amici Curiae Brief in Case No. 90398-1.**

The Supreme Court of the State
of Washington
415 12th Ave SW
Olympia, WA 98501-2314
Mailing: PO Box 40929
Olympia, WA 98504-0929

Ms. Susan Elizabeth Drummond
Law Offices of Susan Elizabeth
Drummond, PLLC
5400 Carillon Point, Bldg. 5000,
Ste. 476
Kirkland, WA 98033
Tel. (206) 682-0767
Attorneys for Skamania County

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| <input type="checkbox"/> | By United States Mail postage prepaid |
| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: Supreme@courts.wa.gov |

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| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: susan@susandrummond.com |

Mr. Adam Nathaniel Kick
Skamania County Prosecutor
P.O. Box 790
Stevenson, WA 98648
Tel: (509) 427-3790
Attorneys for Skamania County

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | By United States Mail postage prepaid |
| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: kick@co.skamania.wa.us |

Mr. J. Richard Aramburu
Aramburu & Eustis, LLP
720 Third Ave., Suite 2112
Pacific Building
Seattle, WA 98104-1860
Attorneys for Save Our Scenic Area

- | | |
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| <input checked="" type="checkbox"/> | By United States Mail postage prepaid |
| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: rick@aramburu-eustis.com |

Mr. Gary K. Kahn
Reeves, Kahn, Hennessy & Elkins
4035 SE 52nd Ave.
Portland, OR 97286-0100
Attorneys for the Friends of the Columbia Gorge, Inc.

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | By United States Mail postage prepaid |
| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: gkahn@rke-law.com |

Mr. Nathan J. Baker
Friends of the Columbia Gorge
522 SW 5th Ave., Suite 720
Portland, OR 97204-2100
Attorneys for the Friends of the Columbia Gorge, Inc.

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | By United States Mail postage prepaid |
| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: nathan@gorgefriends.org |

Mr. Josh Weiss
WA State Assn of Counties
206 10th Ave SE
Olympia, WA, 98501-1311

| | |
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| <input checked="" type="checkbox"/> | By United States Mail postage prepaid |
| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: jweiss@wacounties.org |

| | |
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| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input type="checkbox"/> | By Email: |

Dated this 5th day of January 2015.



Tim Trohimovich, WSBA No. 22367

OFFICE RECEPTIONIST, CLERK

To: Tim Trohimovich
Cc: susan@susandrummond.com; kick@co.skamania.wa.us; Rick Aramburu; Gary Kahn; nathan@gorgefriends.org; jweiss@wacounties.org
Subject: RE: Futurewise et al.'s Amici Curiae Motion and Brief in SOSA v Skamania Co Case No. 90398-1

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Subject: Futurewise et al.'s Amici Curiae Motion and Brief in SOSA v Skamania Co Case No. 90398-1

Dear Sirs and Madams:

Enclosed please find Futurewise *et al.'s Amici Curiae* Motion and Brief in *SOSA v Skamania County*, Supreme Court Case No. 90398-1.

Here is the information required by the Court:

Case name: *Save Our Scenic Area and Friends of the Columbia Gorge, Inc. Respondents v. Skamania County*, Petitioner.

Case number: 90398-1

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

Tim Trohimovich
206-343-0681 Ext. 118
WSBA No. 22367
tim@futurewise.org

We are mailing the paper copies to the parties. Please contact if you require anything else.



Tim Trohimovich, AICP

Director of Planning & Law

email: tim@futurewise.org

web: www.futurewise.org

816 Second Avenue, Suite 200
Seattle, WA 98104-1535
p 206 343-0681 Ext. 118

Our mission at Futurewise is to promote healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations.