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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.

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**RESPONDENTS' SUPPLEMENTAL BRIEF**

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## **GLOSSARY OF ACROYNMS**

GMA	Growth Management Act, Chapter 36.70A RCW
GMHB	Growth Management Hearings Board
EIS	Environmental Impact Statement
PEA	Planning Enabling Act, Chapter 36.70 RCW
SCC	Skamania County Code
SEPA	State Environmental Policy Act, Chapter 43.21C RCW
SOSA	Save Our Scenic Area

## I. INTRODUCTION

This case is about Skamania County's *failure to take action* to comply with its fundamental obligations required by two cornerstones of Washington state land use planning law: the Growth Management Act ("GMA"), Chapter 36.70A RCW, and the Planning Enabling Act ("PEA"), Chapter 36.70 RCW. The County is in violation of the GMA because it has failed to complete periodic review of its natural resource lands designations.<sup>1</sup> The County is in violation of the PEA because it has failed to take action to amend its zoning ordinance (Skamania County Code ("SCC") Title 21) to bring it into consistency with its Comprehensive Plan.

For several years, the County adopted a series of ordinances containing findings that the County intended to comply with these statutory mandates and would be taking final action at a later date. In the same ordinances, the County also enacted and maintained a development moratorium to protect lands that had not yet been zoned under the PEA or designated under the GMA, in order to preserve the status quo on these lands until the County could complete its planning work.

Then, in August 2012, the County abruptly reversed course: it repealed the protections of its moratorium from approximately 9,600 acres

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<sup>1</sup> Natural resource lands ("resource lands") include agricultural lands, commercial forest lands, and mineral resource lands. RCW 36.70A.170(1)(a), (b), (c).

of private and County-owned lands, and abandoned its planning work for these lands. Respondents Save Our Scenic Area and Friends of the Columbia Gorge, Inc. (“SOSA”) promptly filed this action to require that the County meet its recognized responsibilities under the GMA and PEA.

The County, notwithstanding its continuing promises of action, argues that SOSA’s claims are attempted untimely appeals of prior land use decisions from years past. The County is wrong. SOSA is not attempting to appeal any prior action. Rather, because the County has failed to take statutorily required legislative actions, SOSA filed “failure to act” claims against the County. This Court should reject the County’s appeal and hold that SOSA’s claims are not time-barred.

Perhaps recognizing the tenuous nature of its defense, the County now throws down the gauntlet to this Court, declaring that if this Court holds the County must meet its statutory responsibilities, “the County may be forced to abandon its planning efforts altogether.” Pet. for Rev. at 1. SOSA urges this Court to disregard the County’s threats, uphold long-established Washington statutory law, and require the County to take action to meet its planning responsibilities.

## **II. STANDARD OF REVIEW**

When appellate courts review orders granting summary judgment, they engage in de novo review, taking all facts and inferences in the light

most favorable to the nonmoving party.<sup>2</sup>

### III. ISSUES PRESENTED

The overarching question in this appeal is whether SOSA's claims under the GMA and PEA are time-barred. This question also presents the following issues<sup>3</sup>:

- When a partial planning county<sup>4</sup> fails to take a legislative action required by the GMA or PEA, is a "failure to act" claim against the county timely so long as it is ripe when filed?
- When a county adopts moratorium ordinances that promise future action to adopt new zoning and resource lands designations, and the county then takes action to formally modify the moratorium to revoke its protections from thousands of acres of land without zoning or designating these lands, is this a final legislative action of the County?

### IV. STATEMENT OF THE CASE

SOSA largely agrees with the facts as set forth in the Court of Appeals' March 31, 2014 Unpublished Opinion ("Op.").<sup>5</sup> A summary of the key statutory background and events, however, is useful.

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<sup>2</sup> *Boag v. Farmers Ins. Co. of Wash.*, 117 Wn. App. 116, 121, 69 P.3d 370 (2003).

<sup>3</sup> The Court need not address the second issue if it decides under the first issue that SOSA's failure to act claims were timely filed.

<sup>4</sup> "Partial planning" counties like Skamania are so named because only certain provisions of the GMA apply to them. They are also referred to as "CARL" counties, for the "critical areas" and "resource lands" provisions that apply to them, RCW 36.70A.170. In contrast, counties that fully plan under the GMA are called "full planning" counties.

<sup>5</sup> There is one important exception: the Opinion characterizes SOSA's PEA claims as involving consistency between the "1986 zoning ordinance" and the 2007 Comprehensive Plan. Op. at 1, 7, 11 (emphasis added); *see also id.* at 4 ("1986 unmapped zoning classification") (emphasis added). The reference to 1986 is inaccurate. SOSA's PEA claims involve the County's *current* development regulations—specifically, the County's failure to take action to zone its "unmapped" lands and revise its development regulations to achieve consistency with its Comprehensive Plan. *See* CP 13–15, 17–18.

## A. Statutory Requirements

The County was required by the GMA to designate resource lands by September 1, 1991. RCW 36.70A.170. The County missed this deadline and did not accomplish this task until nearly fourteen years later, when it adopted Resolution 2005-35 on August 2, 2005. CP 35.

After its initial designations of resource lands, the County is also required by the GMA to periodically review and revise those designations pursuant to a statutory timetable. The County's deadline to complete its first round of GMA periodic review was December 1, 2008.<sup>6</sup> The County missed this deadline, and still has not completed this task. CP 144–45, 165.

Since July 1, 1992, the County has had an ongoing mandate under the PEA to ensure that its development regulations are consistent with its Comprehensive Plan:

Beginning July 1, 1992, the development regulations of each city and county that does not plan under RCW 36.70A.040 shall not be inconsistent with the city's or county's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030.<sup>7</sup>

Finally, the County is required by the PEA to "precisely zone[] by

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<sup>6</sup> RCW 36.70A.130(1)(b), .130(4)(b), .130(6)(b), .170; *see also* SOSA's Op. Br. at 14–15. The periodic review requirement under the GMA is sometimes referred to as the "update" requirement. Technically, "update" under the GMA encompasses both *periodic review* under RCW 36.70A.130(4), (5), and (6), as well as *continuing review* under RCW 36.70A.130(1). *See* RCW 36.70A.130(2)(a) (definition of "update").

<sup>7</sup> RCW 36.70.545. Under the PEA and GMA, "development regulations" are "controls placed on development or land use activities." RCW 36.70A.030(7).

map” “*all* property within [the] county.” RCW 36.70.780 (emphasis added). Despite this mandate, more than 14,000 acres of privately owned lands in Skamania County remain “unmapped”, *i.e.*, unzoned in the County’s zoning ordinance. CP 21, 26, 256, 314.<sup>8</sup> The vast majority of these lands are “currently used as commercial forest land.” CP 256.

**B. The County’s promises to comply with the GMA and PEA.**

On July 10, 2007, the County adopted a new Comprehensive Plan. CP 39, 189. That same day, in acknowledgment of its statutory mandates to complete periodic review of its resource lands designations by its December 1, 2008 deadline, amend its zoning ordinance (SCC Title 21) to be consistent with the new Comprehensive Plan, and adopt zoning for the unmapped lands, the County enacted a development moratorium on the unmapped lands. CP 256–58. The County continued the moratorium via a series of ordinances for the next five years. CP 261–324.

As specified in each moratorium ordinance, the County found that the unmapped lands remained under threat of development in the absence of zoning, that this was “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

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<sup>8</sup> During oral argument at the Court of Appeals, Judge Becker referred to these unmapped lands as “free for all” lands, because the County allows nearly any use on them without review under the County’s zoning ordinance. *See* SCC § 21.64.020.

developing zoning classifications for the areas covered by the newly<sup>9</sup> adopted 2007 Comprehensive Plan.” *See, e.g.*, CP 258, 321. Similarly, the County found that “allowing new construction on [the unmapped lands] 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.” *See, e.g.*, CP 258, 321. Accordingly, with each ordinance, the County protected the unmapped lands by prohibiting development on them.

The County also adopted findings that it was working to zone the unmapped lands, bring the zoning ordinance into consistency with the Comprehensive Plan, and complete review of its resource lands designations. For example, the County adopted findings in its first moratorium ordinance that the County “is beginning the process to adopt zoning classifications for all land within unincorporated Skamania County,” that “a work plan for the . . . zoning classification process has been developed,” that the County was “determining which areas will be designated as commercial forest land and protected from the encroachment of residential uses as required by the [GMA],” and that a moratorium was necessary “until the zoning classifications related to the 2007

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<sup>9</sup> The word “newly” was omitted from Ordinance 2012-08, CP 321, but appeared in all prior ordinances.

Comprehensive Plan . . . are complete.” CP 256, 258.

In all subsequent moratorium ordinances, the County adopted findings that it was still “in the process of updating zoning classifications for all land within unincorporated Skamania County to be consistent with the adopted Comprehensive Plan”<sup>10</sup> and that it was still “determining which areas will be designated as commercial forest land and protected from the encroachment of residential uses as required by the [GMA].”<sup>11</sup>

**C. In 2012, the County reneged on its stated promises to comply with the GMA and PEA.**

On August 21, 2012, the County suddenly, and with no explanation, reneged on its stated promises to comply with the GMA and PEA, and formally amended its moratorium to lift its protections from approximately 9,600 acres of unmapped private and County-owned lands. CP 322. These lands, which are used almost exclusively for commercial forestry purposes, remain unmapped in the County’s zoning ordinance and undesignated as commercial forest lands. *See* CP 21–22, 26.

On September 6, 2012, the Washington State Department of

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<sup>10</sup> In 2008, the County prepared proposed revisions to its zoning ordinance that would have “[z]one[d] all [remaining] unmapped land.” CP 333. However, the 2008 proposal also included provisions that would have authorized industrial energy facilities and other large-scale uses throughout most of the County. CP 333–36. The Skamania County Hearing Examiner held that because this language was included in the proposal, the County must prepare an environmental impact statement (“EIS”) pursuant to SEPA before adopting it. CP 355–57. No EIS was ever prepared, and the County never completed nor took final action on the 2008 revisions.

<sup>11</sup> *See, e.g.*, CP 256, 261, 320–21.

Commerce (“Commerce”)<sup>12</sup> stated that Skamania County “is currently out of compliance with the . . . resource lands regulations update requirement under the GMA.” CP 165. Since then, the County has taken no further action to comply with its GMA periodic review duties.

Concerned over the County’s abandonment of its planning efforts, SOSA promptly sued the County for declaratory, injunctive, and writ relief. SOSA alleges that the County (1) failed to complete GMA periodic review by its December 1, 2008 statutory deadline and has yet to complete that review, and (2) has failed to take action required by the PEA to bring its zoning ordinance into consistency with its Comprehensive Plan.<sup>13</sup>

## V. ARGUMENT

### A. SOSA’s “failure to act” claims are timely.

Neither the PEA nor the GMA contain any limitation periods for SOSA’s claims that Skamania County has failed to take legislative actions required by these statutes. Accordingly, this Court should look by analogy<sup>14</sup> to the timelines for bringing failure to act claims under the GMA

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<sup>12</sup> Commerce is statutorily charged with tracking counties’ compliance with the periodic review requirement. RCW 36.70A.106; WAC 365-196-610(2)(d). Commerce also adopts substantive rules that govern GMA compliance by all counties. RCW 36.70A.050; *see also* WAC 365-190-060 (forest resource lands).

<sup>13</sup> CP 12–15, 143–44, 148–52; SOSA’s Op. Br. at 14–34; SOSA’s Reply Br. at 7–15.

<sup>14</sup> When a statute does not provide a limitation period, courts may apply analogous appeal periods from other sources of law, and when there is more than one analogous appeal period, the longest period is applied. *See Akada v. Park 12-01 Corp.*, 103 Wn.2d 717, 695 P.3d 994 (1985).

against full planning counties. Such claims may be brought to the Growth Management Hearings Boards (“GMHBs”<sup>15</sup>) “at any time”:

A petition relating to the *failure* of a state agency, city or county to *take an action* by a deadline specified in the [GMA] or the Shoreline Management Act *may be brought at any time* after the deadline for action has passed.<sup>16</sup>

Thus, failure to act claims do not involve limitation periods—neither expressly nor by analogy. Rather, such claims may be brought once they are ripe, *i.e.*, once a County has failed to take a required action.<sup>17</sup>

Here, because the County has failed to take statutorily required actions, SOSA’s claims were ripe when filed. If SOSA had filed its claims earlier,<sup>18</sup> the County would undoubtedly have argued that because, in the County’s own words, the moratorium “maintain[ed] the status quo” on the

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<sup>15</sup> The GMHBs do not have jurisdiction over claims against partial planning counties, like Skamania. *See* RCW 36.70A.280; *Moore v. Whitman County*, 143 Wn.2d 96, 18 P.3d 566 (2001). Accordingly, SOSA brought its claims in Superior Court as writ and declaratory judgment claims. *See* SOSA’s Op. Br. at 28–29.

<sup>16</sup> WAC 242-03-220(5) (emphasis added); *see also* RCW 36.70A.280(1)(a); *Skagit Surveyors & Eng’rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998) (“The language of [RCW 36.70A.280(1)(a)] authorizes a [GMHB] to determine whether actions—or failures to act—on the part of a [full planning] county comply with the requirements of the [GMA].”) (emphasis added).

<sup>17</sup> *See, e.g., Kittitas County Conservation v. Kittitas County*, No. 10-1-0013, 2011 WL 3528244, at \*3 (E. Wash. Growth Mgmt. Hr’gs Bd. June 6, 2011) (“[A] Failure to Act petition may be brought *at any time* after the specified statutory deadline for action has passed. Because the question posed in this appeal is whether the County *failed to act . . . , the appeal is timely.*”) (emphasis added).

<sup>18</sup> Indeed, one of the plaintiffs here, Save Our Scenic Area (but not Friends of the Columbia Gorge), brought similar failure to act claims against Skamania County in 2008. CP 372. SOSA chose not to prosecute those claims in 2008 because the County was protecting the unmapped lands via the moratorium ordinances, and SOSA accepted at face value the County’s findings that it was working to comply with its statutory obligations and would be taking final action at a later date. Moreover, six months after that suit was filed, the County proposed amendments to its zoning ordinance. *See supra* note 10.

affected lands until the County could complete its work and take final action (CP 258, 321), SOSA's claims were not yet ripe.<sup>19</sup>

This Court should hold that when a partial planning county fails to take a legislative action required by the GMA or PEA, a "failure to act" claim against the county is timely so long as it is ripe when filed. Here, SOSA timely filed "failure to act" claims. This Court should reject the County's appeal and hold that SOSA's claims are not time-barred.

**B. SOSA is not attempting to appeal any prior land use decision or legislative action.**

The County mischaracterizes SOSA's GMA and PEA claims as "appeals" of "land use decisions." Pet. for Rev. at 1–2, 4–14, 18–20. This is not correct. The County never made a land use decision; nor has SOSA ever sought to appeal any land use decision.<sup>20</sup> Nor does SOSA seek to appeal any prior legislative action. Because the County has yet to take final action to complete its resource lands periodic review process under the GMA and amend its zoning ordinance under the PEA, no appeal period to challenge either action has yet been triggered. Rather, SOSA filed claims

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<sup>19</sup> See *Grandmaster Sheng-Yen Lu v. King County*, 110 Wn. App. 92, 100, 38 P.3d 1040 (2002) ("[C]ourts should generally defer review of decisions involving the use of land until such decisions are final—that is[,] when the highest body or officer has finally acted."); *Harrington v. Spokane County*, 128 Wn. App. 202, 212, 114 P.3d 1233 (2005) ("Doubts as to finality are resolved against the agency.") (citing *WCHS, Inc. v. City of Lynnwood*, 120 Wn. App. 668, 679, 86 P.3d 1169, *rev. den.*, 152 Wn.2d 1034, 103 P.3d 202 (2004)).

<sup>20</sup> See RCW 36.70C.020(2) (definition of "land use decision"). Land use decisions are quasi-judicial, not legislative. No landowner has ever asserted that SOSA is attempting to challenge a land use decision.

regarding the County's *failure to take action*.

- 1. GMA Claims: Resolution 2005-35 was the County's initial designations of resource lands; it did *not* address, let alone complete, periodic review of those designations.**

For SOSA's claims that the County has failed to complete periodic review,<sup>21</sup> the County argues that SOSA should have appealed a 2005 County resolution. Pet. for Rev. at 2–3, 14–17.<sup>22</sup> But Resolution 2005-35, by its own terms, only designated resource lands. Nowhere does the resolution even mention periodic review or cite RCW 36.70A.130(1)(b)—let alone explain that periodic review had been completed or that the resolution was adopted pursuant to RCW 36.70A.130(1)(b).

Resolution 2005-35 was the County's initial designations of resource lands under the GMA.<sup>23</sup> The resolution could not have been (as the County contends) *both* the County's initial designations of resource lands *and* its subsequent periodic review of those designations, all within the same resolution. By law, resource lands designations are made first, and periodic review of those designations occurs later, pursuant to the timetable provided in RCW 36.70A.170 and 36.70A.130(4) and (5).

If the County wishes to claim the benefits of a limitation period

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<sup>21</sup> The County erroneously asserts that periodic review was never raised in the trial court. Pet. for Rev. at 2, 14–17. The County is wrong. *See* SOSA's Reply Br. at 7–8.

<sup>22</sup> Resolution 2005-35 is at CP 34–35.

<sup>23</sup> *See* SOSA's Op. Br. at 16–24. Even the County's Petition for Review repeatedly refers to Resolution 2005-35 as the County's "designation" of resource lands, rather than the County's first round of periodic review. Pet. for Rev. at 2–4, 6, 14–17.

barring subsequent challenges to a completed periodic review process, the County must follow the statutory procedures for periodic review<sup>24</sup> and must inform the public that it has in fact completed periodic review. “Otherwise . . . a county could argue after the fact that an amendment was actually part of [a periodic] update to its comprehensive plan and thereby circumvent review of a decision not to revise a plan or regulations.”<sup>25</sup>

The County’s own findings in its moratorium ordinances from 2007 to 2012 (CP 256–324), as well as Commerce’s 2012 statement (CP 165), confirm that the County was still working to complete its first round of periodic review during this time. In the summer of 2007 (just when its 2008 deadline was fast approaching), the County began adopting findings that it was still “*determining* which areas *will be designated* as commercial forest land and protected from the encroachment of residential uses as required by the [GMA].” *See, e.g.*, CP 256, 321 (emphasis added). And during the same time period, the County declared emergencies and enacted moratoria to protect the forested lands until it could complete its work. *See, e.g.*, CP 263. In addition, Commerce stated in September 2012 that the

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<sup>24</sup> Resolution 2005-35 was neither proposed nor adopted pursuant to the “public participation program,” “procedures,” and “schedules” required by the GMA for periodic review, which the County must “broadly disseminate to the public” prior to taking periodic review action. RCW 36.70A.130(2)(a).

<sup>25</sup> *Thurston County v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 137 Wn. App. 781, 797–98, 154 P.3d 959 (2007), *aff’d in part and rev’d in part on other grounds*, 164 Wn. 2d 329, 190 P.3d 38 (2008).

County had not yet completed its periodic review duties. CP 165.

The Court of Appeals held that the County's moratorium ordinances and the findings therein presented genuine issues of material fact as to whether the County completed periodic review in August 2005 (more than three years before its December 1, 2008 deadline), or whether the County's findings show that, from 2007 to 2012, the County was still working on this task. Op. at 7. If this Court agrees that there were genuine issues of material fact, it should affirm the Court of Appeals' decision. Otherwise, this Court should grant summary judgment in favor of SOSA on whether the County has completed its first round of periodic review,<sup>26</sup> and should remand to the trial court to establish a compliance schedule for the County to complete its periodic review duties.<sup>27</sup>

**2. PEA Claims: The County mistakenly contends that SOSA wishes to appeal the 2007 Comprehensive Plan.**

For SOSA's PEA claims, the entire premise of the County's argument is that SOSA failed to appeal the 2007 Comprehensive Plan, and is attempting to file such an appeal now. *See* Pet. for Rev. at 2, 6, 10–11, 14, 20. This assertion is incorrect.

SOSA has no desire to challenge the 2007 Comprehensive Plan,

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<sup>26</sup> When the facts are not in dispute, the appellate court may grant summary judgment for the nonmoving party. *See Impecoven v. Dep't of Revenue*, 120 Wn. 2d 357, 365, 841 P.2d 752 (1992).

<sup>27</sup> *See Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 740, 222 P.3d 791 (2009) (remanding with instructions for county to take action required by the GMA).

and has never attempted to do so. Rather, SOSA *supports* the 2007 Plan and seeks to *enforce* it. *See* CP 150–52.

SOSA’s concerns are with the zoning ordinance (SCC Title 21), not the 2007 Plan. SOSA asserts that the County must take action to amend Title 21 in order to bring it into consistency with the Comprehensive Plan, as required by the PEA, *see* RCW 36.70.545.

The County appears to assert that SOSA should have challenged the Comprehensive Plan for being inconsistent with SCC Title 21. *See* Pet. for Rev. at 6, 11, 14. The County has it backwards. The Comprehensive Plan is the controlling authority in the hierarchy; under the PEA, the County’s development regulations must be brought into conformity with the Plan, not the other way around.<sup>28</sup> Here, SOSA supports the Comprehensive Plan, and has no reason to challenge it.

The County has yet to take action to amend Title 21 to make it consistent with the Comprehensive Plan, despite repeatedly acknowledging this statutory requirement, effectively admitting that Title 21 is not

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<sup>28</sup> *See* RCW 36.70.545 (“Beginning 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.*”) (emphasis added). The same is true for the GMA and cases decided under it. *See generally* RCW 36.70A.130(1)(d) (“Any amendment of or revision to development regulations *shall be consistent with and implement the comprehensive plan.*”) (emphasis added); *City of Bellevue v. E. Bellevue Cmty. Council*, 138 Wn.2d 937, 947, 983 P.2d 602 (1999) (A local government is “obligated to rezone in conformity with an amended comprehensive plan.”); *Glenrose Cmty. Ass’n v. City of Spokane*, 93 Wn. App. 839, 848, 971 P.2d 82 (1999) (a county’s development regulations must “comply with its comprehensive plan.”).

consistent with the Plan and must be made consistent, and promising to comply.<sup>29</sup> Not until final action is taken on Title 21 will any appeal period begin to run for challenging Title 21.

In conclusion, SOSA has never attempted to appeal the 2007 Comprehensive Plan, and has no interest in doing so. Instead, SOSA is still waiting for the County to follow through on its numerous findings and statements that it will take action to bring Title 21 into consistency with the Plan. The County's arguments are misplaced and should be rejected. This Court should affirm the decision of the Court of Appeals and should remand to the trial court to hear SOSA's claims under the PEA.

**C. The Court of Appeals correctly held that the County's moratorium ordinances must be considered in determining the starting point of any limitation period under the PEA.<sup>30</sup>**

Skamania County has an ongoing obligation under the PEA to ensure that its development regulations are consistent with its Comprehensive Plan. RCW 36.70.545. The Court of Appeals apparently assumed, without deciding, that a limitation period for challenging the

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<sup>29</sup> See, e.g., CP 256 (announcing a "pending zoning classification process"), 257 (same), 258 (stating that a "work plan for the . . . zoning classification process has been developed" and imposing a development moratorium "until the zoning classifications related to the 2007 Comprehensive Plan . . . are complete"), 259 (Planning Director statement that "the process to establish zoning classifications on all un-zoned land is scheduled to begin . . . in September 2007") (emphasis added), 261 ("Skamania County is currently in the process of updating zoning classification[s] for all land within unincorporated Skamania County *to be consistent with the adopted Comprehensive Plan . . .*") (emphasis added), 320 (same).

<sup>30</sup> This Court need not address this argument if it decides that SOSA timely filed "failure to act" claims under the PEA. See *supra* Part IV.A.

County's development regulations as inconsistent with its Plan may begin to run at the moment of inconsistency, regardless of how the inconsistency arises. *See Op.* at 8–9. SOSA disagrees that there is any such rule, but assuming *arguendo* it is correct, then the Court of Appeals correctly held that the County's moratorium ordinances must be considered in determining the starting point of any limitation period. *See Op.* at 8–9.

The moratorium ordinances are, themselves, development regulations, and they applied to the 9,600 acres of land involved in this case from July 10, 2007 (the same day the 2007 Comprehensive Plan was adopted) until August 21, 2012 (when the County modified the moratorium to revoke its protections from the 9,600 acres of land). CP 39, 189, 256–58, 322. During this five-year period, there were no consistency problems with the County's development regulations for these unmapped lands, because the moratoria *protected* these lands consistent with their designation as Conservancy lands in the 2007 Plan.<sup>31</sup>

In an attempt to evade the fact that the moratoria protected the unmapped lands, the County argues that the moratorium ordinances were not development regulations. *Pet. for Rev.* at 12–13. The County is wrong. The moratorium ordinances were “controls placed on development or land use activities by a county,” and therefore fit squarely within the applicable

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<sup>31</sup> *See* CP 13–15, 150–52; SOSA's *Op. Br.* at 27, 32–33.

statutory definition of “development regulations.”<sup>32</sup> In addition, the County adopted its moratorium ordinances pursuant to the statutory authority of the PEA.<sup>33</sup> Finally, this Court previously reviewed Skamania’s moratorium ordinances and concluded they were “directed . . . toward stopping residential expansion” during the five years they were in effect.<sup>34</sup>

In conclusion, the County’s moratorium ordinances were part of the County’s framework of development regulations that must be considered in evaluating consistency with the Comprehensive Plan. Accordingly, the Court of Appeals correctly held that the moratorium ordinances must be considered in determining if and when any limitation period began to run. This Court should affirm the Court of Appeals’ decision and should remand to the trial court to hear SOSA’s PEA claims.

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<sup>32</sup> RCW 36.70A.030(7). In the plurality opinion in *Biggers v. City of Bainbridge Island*, the Court reasoned that moratoria are development regulations, concluding that “local governments do not have implied power to adopt moratoria” under the Shoreline Management Act, which the Court noted is the “*exclusive source of shoreline development regulation.*” 162 Wn.2d 683, 699, 169 P.3d 14 (2007) (emphasis added). In addition, in *Master Builders Association of King and Snohomish Counties v. City of Sammamish*, the Central Puget Sound GMHB held that a series of moratorium ordinances that prohibited land divisions and development permits—just like Skamania’s moratorium ordinances at issue here—were “controls placed on development,” and therefore were development regulations under RCW 36.70A.030(7). *Master Builders*, No. 05-3-0030c, 2005 WL 2227925, at \*8–9 (Cent. Puget Sound GMHB Aug. 4, 2005).

<sup>33</sup> See, e.g., CP 257 (citing PEA at RCW 36.70.795 as authority for moratorium); see also RCW 36.70A.390 (same authority under GMA).

<sup>34</sup> *Friends of the Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council* (“*Friends v. EFSEC*”), 178 Wn.2d 320, 347, 310 P.3d 780 (2013). Contrary to the County’s arguments, see Pet. for Rev. at 12–13, this Court did not decide whether the moratoria were development regulations. Rather, this Court concluded that one particular aspect of the Skamania moratorium ordinances—the prohibition against County acceptance of SEPA checklists for forest practice conversions—was not a “zoning ordinance” under RCW 80.50.020(22) (which is defined differently than “development regulations” at RCW 36.70A.030(7)). *Friends v. EFSEC*, 178 Wn.2d at 346.

**D. Assuming an appeal period applies to SOSA’s claims, SOSA filed its claims within the appeal period following a final County legislative action.<sup>35</sup>**

The Court of Appeals did not, as the County suggests, decide that a moratorium “could suspend” an “appeal period.” Pet. for Rev. at 2. Rather, for the GMA claims, the court held that there was a genuine issue of fact as to whether the County has yet taken final action on its first round of periodic review. *See Op.* at 7. And for the PEA claims, the court held that there is a genuine issue of fact as to whether (and when) final action was taken to amend the County’s development regulations to render them inconsistent with the Comprehensive Plan, and therefore when any limitation period might have begun. *See id.* at 8–9. By raising whether a moratorium “could suspend” an appeal period, Pet. for Rev. at 2, the County is attempting to appeal a holding that was never made.

Moreover, with respect to the approximately 9,600 acres of land that are the focal point of this case, the County’s *final* action was the enactment of Ordinance No. 2012-08 on August 21, 2012. CP 322.<sup>36</sup> That was the date the County formally lifted the protections of its moratorium

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<sup>35</sup> This Court need not address this argument if it decides that SOSA timely filed failure to act claims under the GMA and PEA. *See supra* Part IV.A.

<sup>36</sup> *See Mellish v Frog Mountain Pet Care*, 172 Wn.2d 208, 219–20, 257 P.3d 641 (2011) (petitioner was entitled to challenge hearing examiner decision on reconsideration as a “final action” of the County, even though it was issued after the appeal period ran on the hearing examiner’s initial decision); *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 173–74, 256 P.3d 1193 (2011) (a development regulation may be appealed when it is modified).

from these lands, decided to revert to the County's zoning ordinance for these lands, and decided not to complete its obligations under the PEA and GMA for these lands. *See* CP 322. SOSA promptly filed its claims twenty-one days after this final action. CP 1.

This Court should hold that when a county adopts moratorium ordinances that promise future action to adopt new zoning and resource lands designations, and the county then revokes the protections of the moratorium from thousands of acres of land without zoning or designating these lands, that action is a final legislative action of the County. SOSA timely filed its GMA and PEA claims following the enactment of Ordinance No. 2012-08.

**E. This Court should disregard the County's threats to jettison all land use planning.**

The County threatens that if it does not obtain the result it wants in this Court, it will jettison all land use planning, which the County alleges is too costly to maintain. *See* Pet. for Rev. at 1, 17–20. This Court should disregard the County's threats.

First, although partial planning counties' responsibilities are minimal, they are not optional.<sup>37</sup> The County must designate critical areas

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<sup>37</sup> The County must fulfill its statutory obligations: "[A]n agency's allusion to fiscal considerations and prioritizing cannot be regarded as an unbeatable trump in the agency's hand." *Rios v. Wn. Dept. of Labor & Indus.*, 145 Wn.2d 483, 507, 39 P.3d 961 (2002).

and resource lands, and must periodically review its designations, even if it wishes not to.<sup>38</sup> And so long as the County has a Comprehensive Plan, it must maintain development regulations consistent with that Plan.<sup>39</sup>

Second, the County's arguments that zoning is too costly are completely unsupported in the record. The County has supplied no evidence about costs.<sup>40</sup> Nor does the County disclose that it is eligible to apply to the State for grants and technical assistance for completing its work, nor explain whether it ever pursued such aid.<sup>41</sup>

## VI. CONCLUSION

In 2012, Skamania County gave up its illusion of planning for the 9,600 acres of unmapped lands that are the primary focus of this action. SOSA then promptly filed claims against the County for its failures to take legislative actions required by the GMA and PEA. The Supreme Court should reject the County's arguments that SOSA's claims are time-barred, and should remand to the Superior Court for further proceedings.

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<sup>38</sup> RCW 36.70A.130(1)(b), .130(4)(b), .130(6)(b), .170.

<sup>39</sup> RCW 36.70.545.

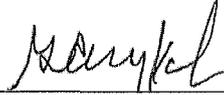
<sup>40</sup> In fact, the County concluded in its own Comprehensive Plan that it is *less* costly to protect resource lands: "[I]n the long term open land (farm, ranch and forest land) requires a lower level of public service than residential development, thus limiting the cost increases to governmental budgets." CP 208.

<sup>41</sup> See RCW 36.70A.130(6)(g), (7), 36.70A.190; RCW 43.17.250; see also *Ferry County v. Concerned Friends of Ferry County*, 155 Wn.2d 824, 838, 123 P.3d 102 (2005) ("The record does not indicate whether Ferry County ever applied for state financial assistance . . ."). Moreover, in 2008, Skamania County prepared (but did not adopt) amendments to its zoning ordinance, demonstrating that the County has already completed much of the necessary work. See *supra* note 10.

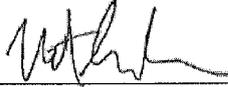
RESPECTFULLY SUBMITTED this 7th day of November, 2014.



J. Richard Aramburu, WSBA #466  
Aramburu & Eustis, LLP  
Attorney for Petitioner SOSA



Gary K. Kahn, WSBA #17928  
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Attorney for Petitioner Friends



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Attorney for Petitioner Friends

# APPENDIX

A.	Skamania County Ordinance 2007-10 (July 10, 2007) (CP 256–60) .....	A-1
B.	Skamania County Ordinance 2012-04 (June 12, 2012) (CP 314–19).....	B-1
C.	Skamania County Ordinance 2012-08 (Aug. 21, 2012) (CP 320–24) .....	C-1
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E.	Skamania County Code Provisions .....	E-1

# **APPENDIX A**

Skamania County Ordinance 2007-10  
(July 10, 2007)

(CP 256–60)

ORDINANCE 2007-10

(AN ORDINANCE TO ESTABLISH A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF ANY BUILDING, MECHANICAL, AND/OR PLUMBING PERMITS ON ANY PARCEL OF LAND THAT IS 20 ACRES OR LARGER THAT WAS CREATED BY DEED SINCE JANUARY 1, 2006, THE ACCEPTANCE AND PROCESSING OF LAND DIVISIONS (SUBDIVISION AND SHORT SUBDIVISION), THE ACCEPTANCE AND PROCESSING OF STATE ENVIRONMENTAL POLICY ACT (SEPA) CHECKLISTS RELATED TO FOREST PRACTICES CONVERSIONS FOR PARCELS 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 adopting the 2007 Comprehensive Plan and is beginning the process to adopt zoning classifications for all land within unincorporated Skamania County; and,

WHEREAS, there are over 15,000 acres of private land within unincorporated Skamania County that do not have zoning classifications; 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, since January 1, 2006, 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 and the draft Swift Subarea Plan expressed concern on the number of exempt parcels that have been created since the planning process began and that the exempt parcels do not have any level of review related to critical resource protection, design standards, road maintenance, stormwater or other checks and balances required for residential lots created through the subdivision or short subdivision (short plat) process; and,

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

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

**WHEREAS**, the development within many locations of unincorporated Skamania County, outside of the areas with zoning classifications is located on rugged mountainous terrain, is only accessed through United States Forest Service Roads and private roads, and does not currently have access to electrical power service, land-line telephone service and cellular 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**, many areas within the County are prime habitat area for many Federal and State listed endangered, threatened, sensitive, candidate and priority species of fish and wildlife; and,

**WHEREAS**, Skamania County is in the process of completing the Critical Areas Update Process for the entire County as required under the Washington State Growth Management Act; and,

**WHEREAS**, the Board of County Commissioners with a quorum present, conducted a public meeting to consider establishing 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, on 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; 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 Planning 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,

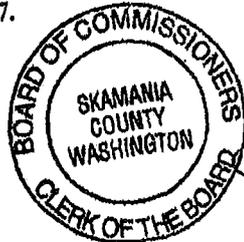
WHEREAS, a work plan for the Comprehensive Plan and related zoning classification process has been developed; and,

WHEREAS, the Board of County Commissioners finds a sufficient basis to establish 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 newly adopted 2007 Comprehensive Plan and completing the Critical Areas Update Process; and,

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

NOW, THEREFORE BE IT HEREBY ORDAINED AND ESTABLISHED BY THIS BOARD OF COUNTY COMMISSIONERS AS FOLLOWS: the Board of County Commissioners hereby adopts Ordinance 2007-10 to establish for six months 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 until the zoning classifications related to the 2007 Comprehensive Plan and the Critical Areas Update Process are complete.

ORDINANCE NO. 2007-07 is hereby DULY PASSED AND ADOPTED INTO LAW this 10<sup>th</sup> day of July 2007.



BOARD OF COMMISSIONERS  
SKAMANIA COUNTY, WASHINGTON

*James D. Richardson*  
Chairman

*Emi [Signature]*  
Commissioner

*Paul [Signature]*  
Commissioner

ATTEST:

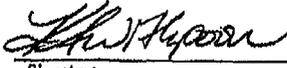
*Pamela [Signature]*  
Clerk of the Board

Approved as to Form Only:

*[Signature]*  
Prosecuting Attorney

AYE   3    
NAY \_\_\_\_\_  
ABSTAIN \_\_\_\_\_  
ABSENT \_\_\_\_\_

## COMMISSIONER'S AGENDA ITEM COMMENTARY

<b><u>SUBMITTED BY</u></b>	<u>Planning &amp; Community Development</u> Department	 Signature
<b><u>AGENDA DATE</u></b>	<u>July 3, 2007</u>	
<b><u>SUBJECT</u></b>	<u>Establish six month moratorium County wide un-zoned land</u>	
<b><u>ACTION REQUESTED</u></b>	<u>Action Item and ordinance adoption</u>	

**SUMMARY/BACKGROUND**

In January 2006, the County began the process to update the 1977 Comprehensive Plan by including all unincorporated land geographically located within Skamania County in the 2007 Comprehensive Plan. There are over 15,000 acres of private land that is located outside of the zoning classification areas but are included in the 2007 Comprehensive Plan.

Ordinance 2007-10 proposes to establish a moratorium for six months 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, on 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.

The 2007 Comprehensive Plan is nearly complete, and the process to establish zoning classifications on all un-zoned land is scheduled to begin workshops with the Planning Commission in September 2007. As these legislative planning processes are not yet complete and the legislative process should be protected from circumvention by developers the Board of County Commissioner should establish a 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, on 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.

**FISCAL IMPACT**

No Fiscal Impact

**RECOMMENDATION**

It is the recommendation of the Planning Department that the Board adopt proposed Ordinance 2007-10 establishing the moratorium for a period of six months.

**LIST ATTACHMENTS**

Ordinance 2007-10

# **APPENDIX B**

Skamania County Ordinance 2012-04  
(June 12, 2012)

(CP 314–19)

**ORDINANCE 2012-04**

**(AN ORDINANCE TO EXTEND A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF ANY BUILDING, MECHANICAL, AND/OR PLUMBING PERMITS ON ANY PARCEL OF LAND THAT IS 20 ACRES OR LARGER THAT WAS CREATED BY DEED SINCE JANUARY 1, 2006, 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 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**, 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 or adopted Subarea Plans; and,

**WHEREAS**, there are over 15,000 acres of private land within unincorporated Skamania County that do not have zoning classifications; 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**, since January 1, 2006, 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,

## EXHIBIT 2

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

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

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

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

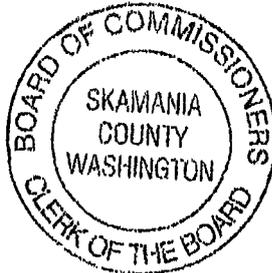
**WHEREAS**, the Board of County Commissioners finds a sufficient basis to extend the moratorium, believe that the above mentioned circumstances constitute an emergency, and that it is in the public's best interest (to protect the public's safety, health and general welfare) to maintain the

status quo of the area pending the County's consideration of developing zoning classifications for the areas covered by the newly adopted 2007 Comprehensive Plan; and,

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

**NOW, THEREFORE BE IT HEREBY ORDAINED AND ESTABLISHED BY THIS BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:** the Board of County Commissioners hereby adopts Ordinance 2012-04 to extend for six months 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.

**ADOPTED IN REGULAR SESSION** this 22th day of May 2012 and set for public hearing on the 12<sup>th</sup> day of June 2012 at 5:30 PM.



**BOARD OF COUNTY COMMISSIONERS  
SKAMANIA COUNTY, WASHINGTON**

*[Signature]*  
Chairman

*[Signature]*

Commissioner  
*[Signature]*

Commissioner

**ATTEST:**

*[Signature]*  
Clerk of the Board

ORDINANCE NO. 2012-04 IS HEREBY PASSED INTO LAW THIS 12<sup>th</sup> DAY OF JUNE 2012.

BOARD OF COUNTY COMMISSIONERS  
SKAMANIA COUNTY, WASHINGTON



Absent  
Chairman

[Signature]  
Commissioner

[Signature]  
Commissioner

ATTEST:

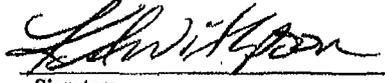
[Signature]  
Clerk of the Board

APPROVED AS TO FORM ONLY:

[Signature]  
Skamania County Prosecuting Attorney

AYE 2  
NAY \_\_\_\_\_  
ABSTAIN \_\_\_\_\_  
ABSENT 1

COMMISSIONER'S AGENDA ITEM COMMENTARY

<b><u>SUBMITTED BY</u></b>	Community Development Department	 Signature
<b><u>AGENDA DATE</u></b>	May 16, 2012	
<b><u>SUBJECT</u></b>	<u>Extend six month moratorium on County wide unzoned land.</u>	
<b><u>ACTION REQUESTED</u></b>	<u>Adopt ordinance and set for public hearing on June 12, 2012</u>	

**SUMMARY/BACKGROUND**

On July 10, 2007, the Board of County Commissioners adopted Ordinance 2007-10 establishing a moratorium for six months 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, on 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.

The moratorium was extended for six months by the adoption of Ordinance 2008-01 on January 8, 2008, Ordinance 2008-08 on July 3, 2008, Ordinance 2008-13 on December 30, 2008, Ordinance 2010-01 on January 26, 2010, Ordinance 2010-06 on July 7, 2010, Ordinance 2010-10 on December 28, 2010, Ordinance 2011-03 on June 14, 2011, and Ordinance 2011-08 on December 13, 2011.

The moratorium was re-established on June 14, 2011 by Ordinance 2011-03, extended for six months by Ordinance 2011-08 and is now proposed to be extended for an additional six months. The County is in the process of updating the zoning classifications to be consistent with the adopted 2007 Comprehensive Plan or the adopted Subarea Plans. There are over 15,000 acres of private land that are located outside of the existing zoning classification areas but are included in the 2007 Comprehensive Plan.

Since the legislative planning process to update the zoning classifications is not yet complete and the legislative process should be protected from circumvention by developers, the Board of County Commissioner should extend for six months 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, on 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.

**FISCAL IMPACT**

No Fiscal Impact

**RECOMMENDATION**

Adopt Ordinance 2012-04, extending the moratorium for a period of six months during regular session, May 22, 2012, and set for public hearing June 12, 2012.

**LIST ATTACHMENTS**

Ordinance 2012-04

# **APPENDIX C**

Skamania County Ordinance 2012-08  
(Aug. 21, 2012)

(CP 320–24)

**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

## EXHIBIT 2

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,

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

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

BOARD OF COUNTY COMMISSIONERS  
SKAMANIA COUNTY, WASHINGTON



[Signature]  
Chairman

[Signature]  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

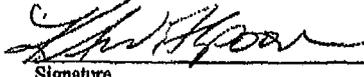
[Signature]  
Clerk of the Board

APPROVED AS TO FORM ONLY:

[Signature]  
Skamania County Prosecuting Attorney

AYE 3  
NAY \_\_\_\_\_  
ABSTAIN \_\_\_\_\_  
ABSENT 1

## COMMISSIONER'S AGENDA ITEM COMMENTARY

<u>SUBMITTED BY</u>	Community Development Department	 Signature
<u>AGENDA DATE</u>	August 8, 2012	
<u>SUBJECT</u>	<u>Modify and extend six month moratorium on unzoned land.</u>	
<u>ACTION REQUESTED</u>	<u>Adopt ordinance under consent agenda and set for public hearing</u>	

SUMMARY/BACKGROUND

On July 10, 2007, the Board of County Commissioners adopted Ordinance 2007-10 establishing a moratorium for six months 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, on 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.

The moratorium was extended for six months by the adoption of Ordinance 2008-01 on January 8, 2008, Ordinance 2008-08 on July 3, 2008, Ordinance 2008-13 on December 30, 2008, Ordinance 2010-01 on January 26, 2010, Ordinance 2010-06 on July 7, 2010, Ordinance 2010-10 on December 28, 2010, Ordinance 2011-03 on June 14, 2011, and Ordinance 2011-08 on December 13, 2011.

The moratorium was re-established on June 14, 2011 by Ordinance 2011-03, extended for six months by Ordinance 2011-08 and Ordinance 2012-04. It is now proposed to be modified and extended for an additional six months. The County is in the process of updating the zoning classifications to be consistent with the adopted 2007 Comprehensive Plan.

The subarea plan final zoning was adopted in May 2012 so the moratorium can be modified.

Since the legislative planning process to update the zoning classifications outside of the subarea plan is not yet complete and the legislative process should be protected from circumvention by development, the Board of County Commissioner should modify and extend for six months on any parcel located within Township 10 North, Range 5 East and/or Township 10 North, Range 6 East in unincorporated Skamania County: the moratorium on the acceptance and processing of building, mechanical and/or plumbing permits and/or Site Analysis Level II (SALII) applications on any parcel of land 20 acres or larger; the acceptance and processing of land divisions (subdivisions and short subdivisions), and the acceptance and processing of State Environmental Policy Act (SEPA) checklists related to forest practice conversions.

FISCAL IMPACT

No Fiscal Impact

RECOMMENDATION

Adopt Ordinance 2012-08, modifying and extending the moratorium for a period of six months during regular session, August 14, 2012, and set for public hearing.

LIST ATTACHMENTS

Ordinance 2012-08

# **APPENDIX D**

Statutory Provisions

## PLANNING ENABLING ACT

### **RCW 36.70.545      Development regulations — Consistency with comprehensive plan.**

Beginning 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. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030.

[1990 1st ex.s. c 17 § 24.]

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### **RCW 36.70.780      Classifying unmapped areas.**

After the adoption of the first map provided for in RCW 36.70.740, and pending the time that all property within a county can be precisely zoned through the medium of a zoning map, all properties not so precisely zoned by map shall be given a classification affording said properties such broad protective controls as may be deemed appropriate and necessary to serve public and private interests. Such controls shall be clearly set forth in the zoning ordinance in the form of a zone classification, and such classification shall apply to such areas until they shall have been included in the detailed zoning map in the manner provided for the adoption of a zoning map.

[1963 c 4 § 36.70.780. Prior: 1959 c 201 § 78.]

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### **RCW 36.70.795      Moratoria, interim zoning controls — Public hearing — Limitation on length.**

A board that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the board received a recommendation on the matter from the commission or department. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section 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 a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

[1992 c 207 § 4.]

## GROWTH MANAGEMENT ACT

### **RCW 36.70A.030 Definitions.**

\* \* \* \*

(7) “Development regulations” or “regulation” means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

\* \* \* \*

[2012 c 21 § 1. Prior: 2009 c 565 § 22; 2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9; prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

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### **RCW 36.70A.130 Comprehensive plans — Review procedures and schedules — Amendments.**

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) 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. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent 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 or city no more frequently than once every year, except that, until December 31, 2015, the program shall provide for consideration of amendments of an urban growth area in accordance with RCW 36.70A.1301 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. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under \*RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsection (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated

portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as provided in subsection (6) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before December 1, 2004, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before June 30, 2015, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

(b) On or before June 30, 2016, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(c) On or before June 30, 2017, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before June 30, 2018, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(d) A county or city that is subject to a deadline established in subsection (4)(d) of this section and that meets the criteria established in (b) or (c) of this subsection may comply with the requirements of subsection (4)(d) of this section at any time within the thirty-six months after the extension provided in (b) or (c) of this subsection.

(e) A county that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(f) A city that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(g) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered “requirements of this chapter” under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW:

(i) Complying with the deadlines in this section;

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or

(iii) Complying with the extension provisions of subsection (6)(b), (c), or (d) of this section.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.

(b) A county that has made the election under RCW 36.70A.710(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:

(i) A work plan has been approved for that watershed in accordance with RCW 36.70A.725;

(ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;

(iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;

(iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

(v) Three or more years have elapsed since the receipt of funding.

(c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW 36.70A.710(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in

subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW 36.70A.720(2)(c)(i) that the watershed's goals and benchmarks for protection have been met.

[2012 c 191 § 1. Prior: 2011 c 360 § 16; 2011 c 353 § 2; prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

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**RCW 36.70A.170 Natural resource lands and critical areas — Designations.**

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

[1990 1st ex.s. c 17 § 17.]

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**RCW 36.70A.390 Moratoria, interim zoning controls — Public hearing — Limitation on length — Exceptions.**

A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section 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 a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

This section does not apply to the designation of critical areas, agricultural lands, forest lands, and mineral resource lands, under RCW 36.70A.170, and the conservation of these lands and protection of these areas under RCW 36.70A.060, prior to such actions being taken in a comprehensive plan adopted under RCW 36.70A.070 and implementing development regulations adopted under RCW 36.70A.120, if a public hearing is held on such proposed actions.

[1992 c 207 § 6.]

LAND USE PETITION ACT

**RCW 36.70C.020 Definitions.**

\* \* \* \*

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

\* \* \* \*

[2010 c 59 § 1; 2009 c 419 § 1; 1995 c 347 § 703.]

# **APPENDIX E**

## Skamania County Code Provisions

## SKAMANIA COUNTY ZONING ORDINANCE

### **21.64.020 Allowable uses.**

In the areas classified as unmapped (UNM) all uses which have not been declared a nuisance by statute, resolution, ordinance, or court of jurisdiction are allowable. The standards, provisions, and conditions of this title shall not apply to unmapped areas.