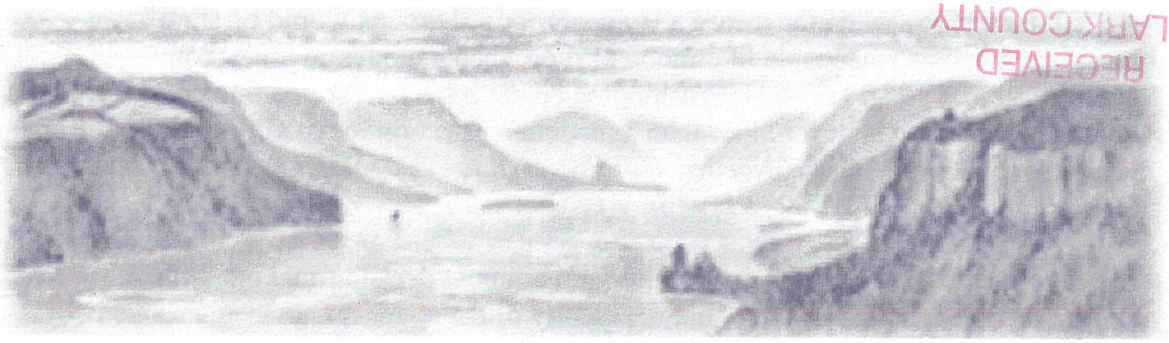

FRIENDS OF THE COLUMBIA GORGE

VIA FIRST CLASS MAIL

April 17, 2017

Oliver Orjianko, Director
RE: SEPA Comments
Clark County Community Planning
1300 Franklin St.; 3rd Floor
PO Box 9810
Vancouver, WA 98666-9810

Re: DNS for Shoreline Master Plan Update – CPZ 2017-0005.

Dear Mr. Orjianko:

Friends of the Columbia Gorge ("Friends") has reviewed and submits these comments on the above-referenced DNS. Thank you for the opportunity to comment. Friends is a non-profit organization with approximately 6,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area ("NSA").

Friends of the Columbia Gorge reviews and comments on all SEPA applications in the National Scenic Area. These comments are intended to identify application requirements and resource protection standards, provide recommendations to the permitting agency and the public regarding legal requirements, and establish standing.

Statutory Background

While Congress passed the Columbia River Gorge National Scenic Area Act to protect the Columbia River Gorge, the Washington SEPA was passed to more generally ensure that environmental values are taken into account when the state is making decisions. SEPA is also the mechanism in Washington for ensuring that all impacts of a project – whether on the project site or off of it – are considered. The importance of SEPA review cannot be underestimated, nor can the importance of preparing an EIS when it is warranted.

An EIS is required when the impacts from a proposed project would be significant – meaning there is a reasonable likelihood of more than a moderate impact on environmental quality. WAC § 197-11-794(1). Washington courts have interpreted this provision as requiring an EIS "whenever more than a moderate effect on the quality of the environment is a reasonable probability." *Norway Hill Preservation & Protection Ass'n v. King County Council*, 87 Wash. 2d 267, 273 (1976).

In keeping with SEPA's mission to infuse government decision-making with environmental consciousness so that the quality of the environment is determined "by deliberation, not default," agency decisions to forego EIS preparation are closely scrutinized by courts. *See, e.g. Norway Hill* at 272. The Washington Supreme Court has clarified that the goals of SEPA would be frustrated by erroneous threshold determinations where agencies set the bar for preparing an EIS too high. *Id.* at 273.

SEPA's general purpose is to require consideration of environmental factors at the earliest possible stage in order to allow decisions to be based on a complete disclosure of environmental consequences. *See Stempel v. Dept. of Water Resources v. City of Kirkland*, 82 Wash. 2d. 109, 118 (1973). This threshold consideration of environmental factors must be integrated into early planning in order to avoid thwarting SEPA's policies. *See* WAC § 197-11-300. The threshold determination is required so that actions do not improperly avoid environmental scrutiny at an early stage. *Juanita Bay Valley Community Ass'n v. City of Kirkland*, 9 Wash. App. 59, 73 (1973).

When a responsible official is making a threshold determination of whether to issue an EIS, SEPA requires that the evidence be viewed through the examination of two relevant factors: "(1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area, and (2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." *Norway Hill* at 277. Thus, a DNS must take direct, indirect, and cumulative impacts into account. *See also, Swift v. Island County*, 87 Wn.2d 348, 552 P.2d 175 (1976) (an EIS is required for development near historical and natural resources that are located offsite).

RCW 43.97.025(1) also applies to the Department of Ecology's review of this project: "all state agencies . . . are hereby directed and provided authority to carry out their respective functions and responsibilities in accordance with the [Columbia River Gorge Compact], the Columbia River Gorge National Scenic Area Act, and the provisions of" the state implementation of the Act. As such, the department is required to take into account all impacts to the National Scenic Area and to ensure that its decision is consistent with all National Scenic Area authorities. Any significant development that will potentially degrade scenic, cultural, recreational, or natural resources of the National Scenic Area creates a "reasonable probability" that the action will have "more than a moderate effect on the quality of the environment." *Norway Hill.* at 273.

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The legal trigger for preparing an EIS is that "more than a moderate effect on the quality of the environment is a reasonable probability." *Norway Hill*. The proposed amendments would change the composition of the Shoreline Management Committee, create an exception to allow retrofits for the Americans with Disabilities Act, and add new requirements mandated by the state for dock construction and floating dwellings. In addition to the immediate effects of the proposed action, the responsible official must consider the actions that could take place as a result of the relaxed ordinance. Anything short of that will not ensure that there is not "a reasonable probability" that the action will have "more than a moderate effect on the quality of the environment." *Norway Hill*.

Thank you for the opportunity to comment.

Sincerely,

Steven D. McCoy
Staff Attorney