State of Washington
DEPARTMENT OF FISH AND WILDLIFE
Southwest Region 5 • 5525 South 11th Street, Ridgefield, WA 98642
Telephone: (360) 696-6211 • Fax: (360) 906-6776

July 2, 2019

Matt Hermen
Clark County
1300 Franklin Street
Vancouver, WA 98660

RE: WDFW Comments for the Comprehensive Plan Urban Holding Overlays: Reference CPZ2018-00021, CPZ2019-00023, and CPZ2019-00024

Dear Mr. Hermen:

Thank you for the opportunity to provide comments on the proposed removal of the urban holding overlays on the above referenced actions. We appreciate the thoughtful process Clark County (hereafter 'the County') uses in managing these urbanizing areas and share your value of maintaining the functions of critical areas.

We have no objections of removing the overlay from the two proposed locations and providing safeguards necessary for protecting the function of the critical areas within and adjacent to those locations. As the land is further developed, we encourage you to use your land use authority to ensure adequate designation and protection of areas to provide for No Net Loss of Critical Area functions.

Thank you for the opportunity to participate in this process. Please feel free to contact me if you have any questions. (360) 906-6764.

Best Regards,

Chuck Stambaugh-Bowey, CWB
Assistant Regional Habitat Program Manager

Nisqually Indian Tribe
4820 She-Nah-Num Dr. S.E.
Olympia, WA 98513
(360) 456-5221

June 25, 2019

Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin St.; 3rd Floor
PO Box 8910
Vancouver, WA 98666

Dear Mr. Orjiako

The Nisqually Indian Tribe thanks you for the opportunity to comment on:

Re: CPZ2019-00023 – (Hinton) Urban Holding Overlay near the I-5/179th St Interchange, Phase III

The Nisqually Indian Tribe has reviewed the report you provided for the above-named project. The Nisqually Indian Tribe has no further comments or concerns at this time. Please keep us informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials.

Sincerely,

Brad Beach
THPO Department
360-456-5221 ext 1277
beach.brad@nisqually-nsn.gov

Annette "Nettsie" Bullchild
THPO Department
360-456-5221 ext 1106
bullchild.annette@nisqually-nsn.gov

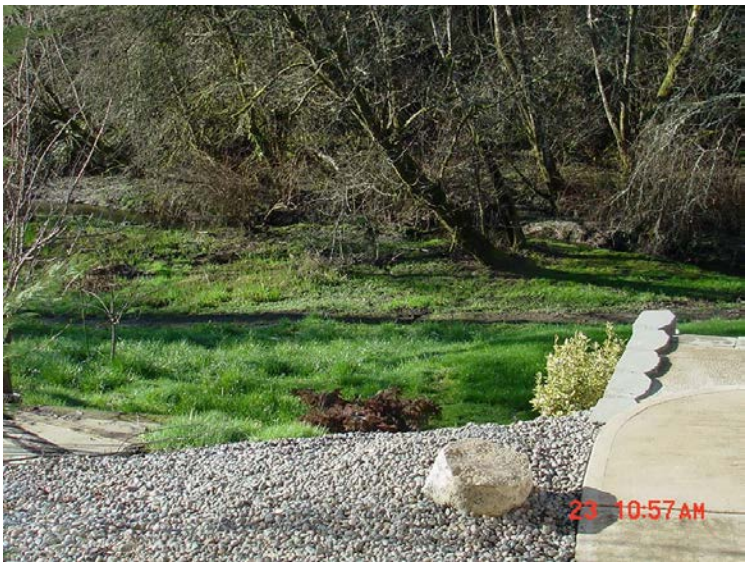
Jeremy "Badoldman" Perkuhn
THPO Department
360-456-5221 ext 1274
badoldman.jp@nisqually-nsn.gov

From: Greg Huggins
To: Hermen, Matt; David Gilroy; Greg Huggins
Subject: CPZ2019-00023
Date: Wednesday, July 03, 2019 1:41:45 PM
Attachments: Hinton.pptx

Matt attached is the presentation we talked about this one is why we oppose removing urban holding on just this parcel.

Greg Huggins
Cell 360 609 2431

Mill Creek Forest HOA is opposed to the lifting of the urban holding overlay proposed in CPZ20019-00023. We worked extensively with the county on the Mill Creek Sub Area plan in 2009. Our concerns ,at that time, were the hard surface increase around Mill Creek would increase flooding in our PUD and cause increased property damage to our homes. Since then the development up 29th street has added hundreds of houses on the other side of the creek that runs through our property. This has turned the creek into a raging river during rain storms



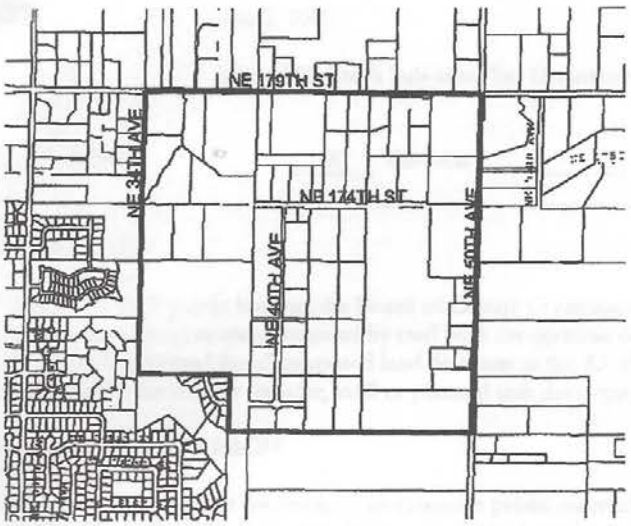
We received this from the planning department who said it came from Hinton development. Lifting urban holding this is one step closer.

This area is part of the Mill Creek Sub Area Plan covered by county code 40.250.060 which states the lot size shall be 9000 Sq. Ft. minimum. The lots on this drawing are only 7000 Sq. Ft. Another stipulation of the code is the adjacent lot to Mill Creek Forest must be either 200 feet from our HOA or the lots sizes must be at least the size of the adjacent lots from Mill Creek Forest 17550 Sq. Ft. This drawing shows 7000 Sq. Ft. and no setback from our HOA.

Figure 1 is from the county website. Most of the Hinton property is classified by the county as unstable slopes, Hydric soils, and **wetlands.** Hydric soil is soil which is permanently or seasonally saturated by water, resulting in anaerobic conditions, as found in wetlands. In the winter I have walked into the field in spring and the water was over 6" up on my boots. This is the ground water that keeps the water flowing for the salmon, various fish and eels found in the stream.

Since 2009 not much has happened on this side of the creek that would make it more desirable for development. The road system has gotten much more congested. Most of the properties are still on wells and septic's. The sewer line that was supposed to service this property has been compromised by a land slide. We still have only one way in and one way out, 50th Ave. which has large dips in both directions that can be very dangerous if you are not paying attention. The closest retail business is the John Deere dealer on 72nd Ave.

Figure 40.250.060-1

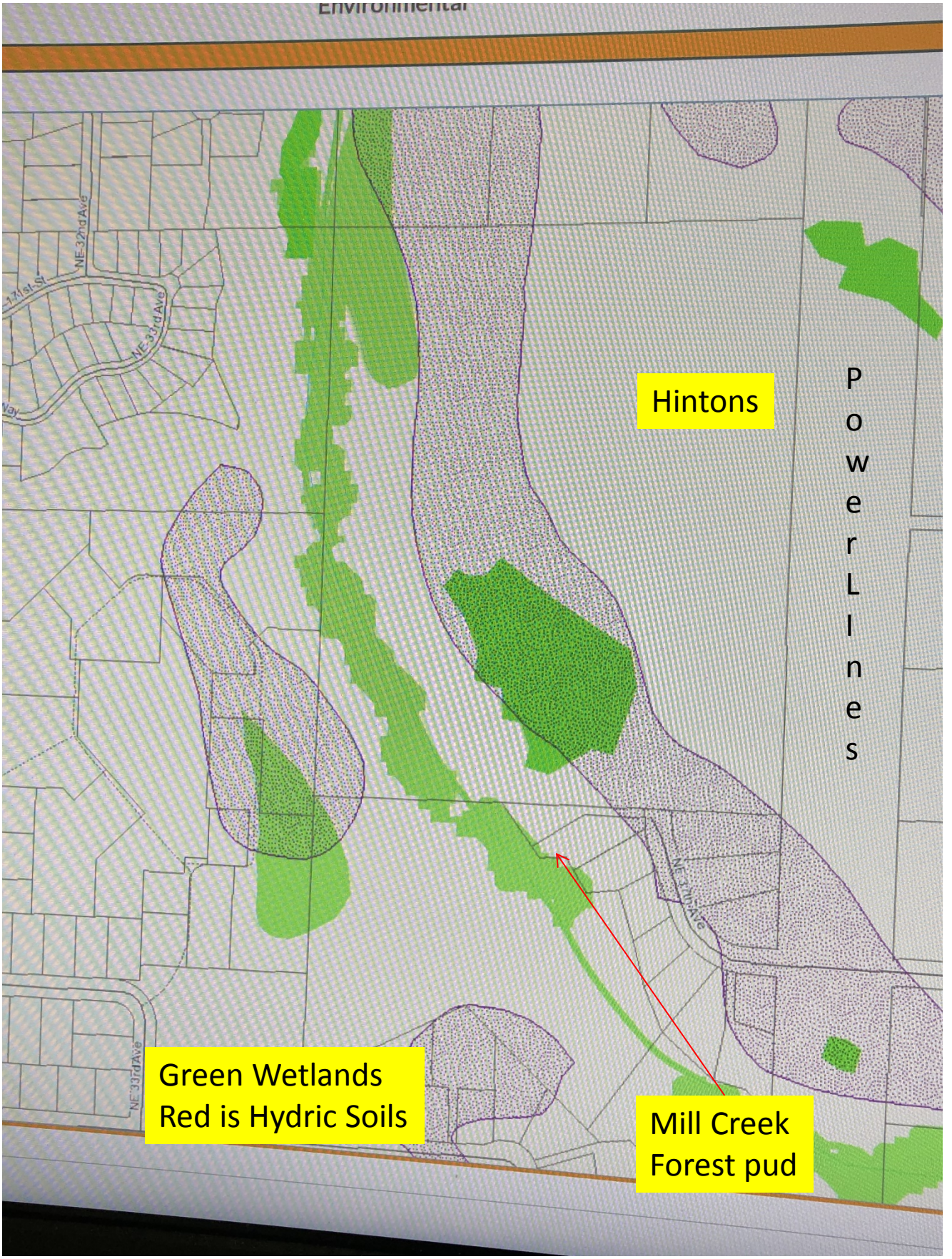


C. Standards.

The following additional standards apply in the overlay district:

1. New lots created adjacent to urban subdivision lots existing at the time of the adoption of the Mill Creek Overlay District shall meet or exceed the average lot size of the abutting subdivision lots unless there is at least two hundred (200) feet of open space between the existing and proposed lots.
2. Prior to approval of any development that would add traffic to NE 37th Avenue, additional access via a public road connection to NE 40th Avenue or NE 174th Street must be assured.
3. A minimum lot size of nine thousand (9,000) square feet is required for all land divisions in the R1-10 and R1-20 districts proposing to develop under the density transfer provisions of 40.220.110(C)(5), the infill provisions of 40.260.110 or the Planned Unit Development provisions of 40.520.080. The exceptions to lot sizes in 40.200.050 shall still apply.

Figure 1



From county website

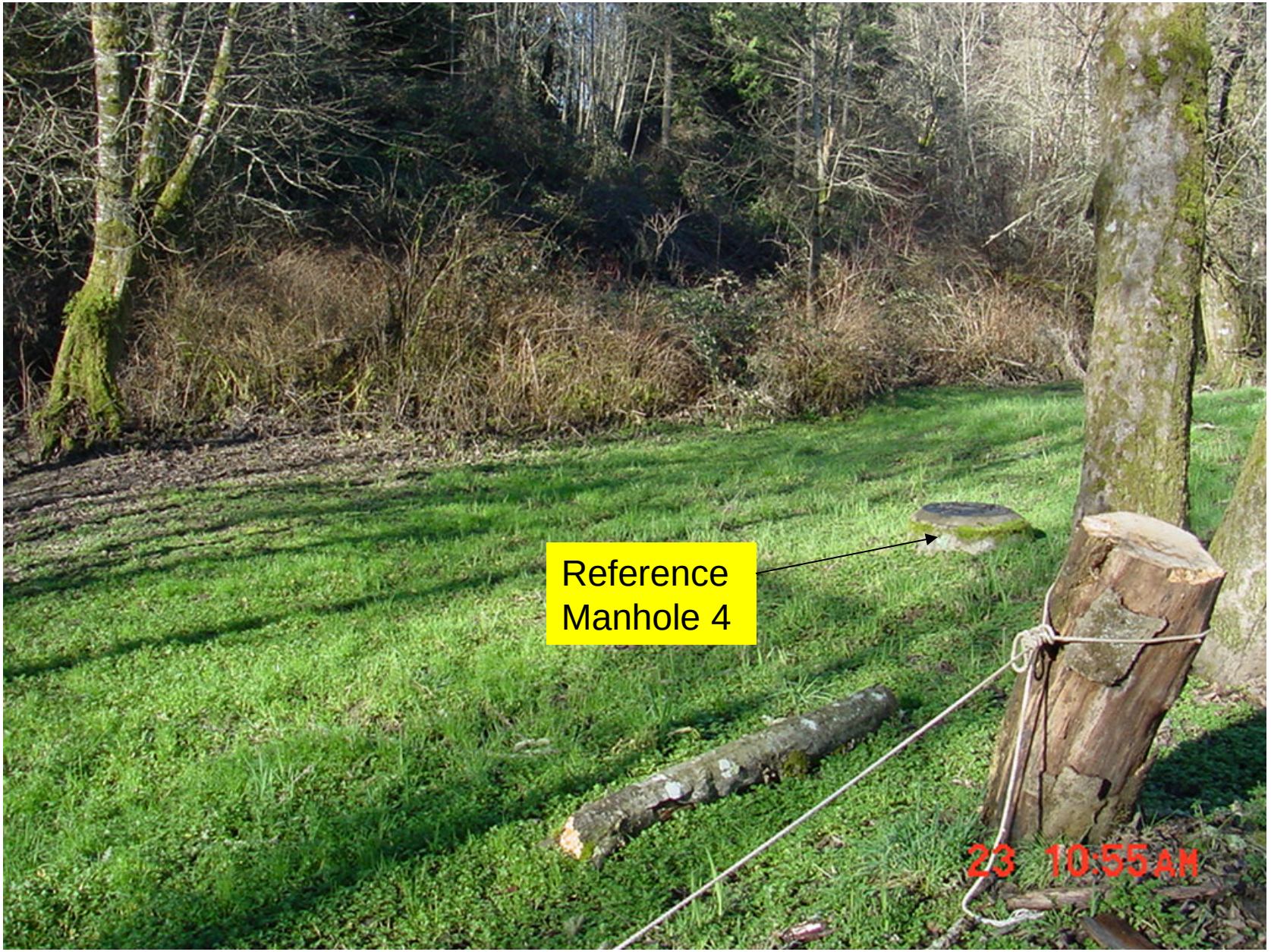
Our HOA is not opposed to lifting the urban holding where needed but lifting it on this particular property will be the first step for them starting the development process with very bad consequence for us.

We are also including portions of the power point presentation we use to document the flooding, Sink holes, and the slope of Hinton's property in 2009.

Flooding

Normal creek flow below Mill Creek Forest HOA.

This is the same picture during heavy rains. From 5 ft across to 50 FT.



The creek is normally on the other side of the bushes.

This kind of flooding will only increase if proper planning is not undertaken.

Normal flow.

Estimated 50 times normal flow. Usually 5’ wide now 50’ wide

Flood Jan. 31, 2003. Our HOA has spent a considerable amount of time anchoring trees to eroding banks and planting trees to prevent further damage.


Property line
31 9:41AM


EROSION FROM ONE
FLOOD JAN, 2003

This run-off from the Hinton parcel flowed through Mill Creek Forest for 4 weeks without further rain.

Water caused red landscape rocks to be washed down the hill with considerable erosion.

Red landscaping rock washed down hill to path and into creek

In places the erosion is 18” deep from water the drain pipe could not handle.


31 9:48AM

Here the runoff goes under the ground

Regulation of Wetlands in Western Washington Under the Growth Management Act

*Alison Moss**
*Beverlee E. Silva***

I. INTRODUCTION

Wetlands, simply defined, are lands such as marshes, bogs, or swamps that are seasonally or periodically wet.[1] Wetlands serve numerous significant biological and environmentally valuable functions. They provide not only fish and wildlife habitat, but they also aid in water purification, maintenance of groundwater supplies, sediment entrapment, floodwater retention, shoreline stabilization, and maintenance of streamflows.

Wetlands protection has long been an important issue in the central Puget Sound. With the passage of the Growth Management Act (GMA),[2] all counties and cities within the state are now required to adopt regulations "protecting" critical areas, including wetlands. This requirement furthers the GMA's environmental goal to "[p]rotect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water."[3]

This environmental goal is, however, only one of the

* Alison Moss is a partner at Bogle and Gates, Seattle, Washington, where she focuses her practice on land use law. Ms. Moss is the chair of the Seattle/King County Economic Development Council Wetlands Task Force, and she is a member of the Department of Ecology's State Wetlands Integration Strategy Regulatory Reform Work Group. Ms. Moss received her B.A. from Radcliffe College and her J.D. from the University of Chicago Law School.

** Beverlee E. Silva is an associate at Bogle & Gates in Seattle, Washington. Her practice focuses on land use and environmental law. Ms. Silva earned her A.B. and A.M. from the University of Chicago and her J.D. from Northwestern University School of Law in Chicago.

1. A precise definition of "wetland" has become a highly controversial and politically charged issue, perhaps because of the complexity of the regulatory process. *See infra* part III.A.

2. 1990 Wash. Laws 1972, 1st Ex. Sess., ch. 17 (amended by 1991 Wash. Laws 2903, 1st Sp. Sess., ch. 32 and 1992 Wash. Laws 1050, ch. 227) (codified at WASH. REV. CODE ANN. ch. 36.70A (West 1991 & Supp. 1993), WASH. REV. CODE ANN. ch. 47.80 (West Supp. 1993), and WASH. REV. CODE ANN. ch. 82.02 (West 1991 & Supp. 1993)).

3. WASH. REV. CODE ANN. § 36.70A.020(10) (West 1991).

GMA's thirteen goals.[4] All of these goals are intended to guide the creation not only of the comprehensive plans, but also of the development regulations that implement the comprehensive plans. Wetlands regulations are "development regulations," as that term is used in the GMA. Thus, all thirteen goals should be considered in developing local wetlands regulations.[5]

The GMA expressly provides that these thirteen goals are not listed in order of priority.[6] It does not, however, explain how the goal of environmental protection should be balanced with the GMA's other twelve planning goals. This lack of guidance is problematic because the adoption of critical areas regulations is the first task local governments must complete under the GMA, preceding adoption even of the comprehensive plans in those jurisdictions required to adopt comprehensive plans. Consequently, jurisdictions are developing these regulations with little understanding of how they will mesh with such competing goals as the reduction of sprawl, the encouragement of economic development and affordable housing, and the protection of property rights. Predictably, many local governments are encountering problems.

A task force of the Economic Development Council of Seattle and King County recently examined the regulatory treatment of wetlands following the adoption of the GMA.[7]

---

4. The planning goals include the following: encourage development in urban areas where adequate public facilities and services already exist or can be efficiently provided; reduce sprawl; encourage affordable housing for all economic segments of the population; encourage economic development; protect property rights; process permits in a timely manner to ensure predictability; maintain natural resource-based industries including timber, agricultural and fisheries industries; retain open space and develop recreational opportunities; encourage citizen involvement in the planning process and interjurisdictional coordination; ensure adequate public services and facilities; and encourage historic preservation. *Id.* § 36.70A.020(1)-(13).

5. *See* Clark County Natural Resources Council v. Clark County, Western Washington Growth Planning Hearings Board, No. 92-02-0001, at 2-3 (1992) (*CCNRC*). *CCNRC* was the first case to come before any of the three Growth Planning Hearings Boards established to hear appeals of comprehensive plans, development regulations, and population projections. The Western Washington Growth Planning Hearings Board hears appeals from all of Western Washington except King, Kitsap, Pierce, and Snohomish Counties and the cities within those counties. These four counties and the cities within them collectively comprise the central Puget Sound. *See* WASH. REV. CODE ANN. §§ 36.70A.250-.300 (West Supp. 1993). The Hearing Board's decision in *CCNRC* was appealed to the Thurston County Superior Court, which dismissed the case with prejudice on September 27, 1993, for failure to serve the Board within 30 days as required by the Administrative Procedure Act.

6. WASH. REV. CODE ANN. § 36.70A.020 (West 1991).

7. The task force consisted of a wide variety of interested professionals, including

The task force looked at the permit process at the local, state, and federal level and examined key issues related to the protection and management of wetlands. Describing the current process as a "quagmire," the task force summarized the principal issues as follows: (1) the current regulatory system requires too much money to be spent on the permit process, rather than on resource management and protection; (2) the current regulatory system's focus on individual properties fragments the resource and is, therefore, often counter-productive to wetlands management and protection; (3) the permit process does not offer equal access to all applicants; and (4) the permit process involves duplicate review of projects by the federal and local government without offering consistent criteria for review.[8] In cases where the state also has jurisdiction, triplicate review compounds the problem.

This Article will explore these and related issues arising under the wetlands regulatory scheme in Washington following the adoption of the GMA. It will show how this complex, multi-layered regulation scheme is sometimes duplicative and inconsistent and, ironically, may not always result in the most effective protection of wetlands.

Accordingly, Section II will discuss the GMA's requirements regarding wetland regulations. Section III will address the Department of Ecology (DOE) Model Wetlands Protection Ordinance (Model Ordinance)[9] and the problems the Model Ordinance presents for wetlands regulation under the GMA. And finally, Section IV will suggest a framework for local governments to consider in reevaluating their wetlands regulations for consistency with their comprehensive plans.

II. GMA Requirements for Wetland Regulations

A. Regulatory Background

In response to heightened state and federal concern regarding wetlands protection, the Washington State Legislature considered, but failed to adopt, state-wide wetlands man-

---

wetlands biologists, engineering and architectural consultants, a representative of the environmental community, a county resource planner, a city zoning administrator, and members of the business and legal community.

8. The Economic Development Council of Seattle & King County, The Wetlands Quagmire: A Report and Recommendations 26-27 (1992) [hereinafter EDC Report].

9. Washington State Dep't of Ecology, Model Wetlands Protection Ordinance (Sept. 1990) [hereinafter Model Ordinance].

agement bills in both 1989 and 1990.[10] As a result of the failures in 1989, Governor Booth Gardener issued Executive Order 89-10, establishing a goal of no-net loss of wetlands acreage and function.[11] Against this backdrop, although it did not adopt a comprehensive wetlands bill in 1990, the legislature adopted the GMA, directing all local governments to designate critical areas and all local governments planning under the GMA to adopt development regulations[12] "precluding land uses which are incompatible with" wetlands. Governor Gardner then issued Executive Order 90-04, which directed various state agencies "to the extent legally permissible" to take various actions to protect wetlands.[13] Among other things, Executive Order 90-04 expressly directed DOE to assist the Department of Community Development (DCD) in developing "wetlands protection policies and standards for the implementation of grants programs and to guide the development of local government comprehensive plans and development regulations under the growth management bill passed by the 1990 legislature."[14] In response, DOE prepared, with virtually no public participation, the Model Ordinance.[15] In 1991, the legislature amended the GMA to require that *all* cities and counties in the State of Washington, including those required to or choosing to plan under the GMA, adopt development regulations that "protect" those critical areas.[16]

B. Adoption of Wetlands Regulations

The GMA defines "critical areas" as including (a) wetlands, (b) areas with a critical recharging effect on aquifers used for potable water, (c) fish and wildlife habitat conservation areas, (d) frequently flooded areas, and (e) geologically

10. *See* S.H.B. 1392, S.B. 5378 (1989); H.B. 2729, S.S.B. 6799 (1990).

11. Exec. Order No. 89-10, Wash. St. Reg. 90-01-050 (1990).

12. Exec. Order No. 90-04, Wash. St. Reg. 90-10-027 (1990).

13. *Id.* § 16.

14. MODEL ORDINANCE, *supra* note 9. The Model Ordinance has had a significant influence on the development of local wetlands regulation under the GMA. The majority of Washington jurisdictions have based their wetlands ordinances, at least in part, on the Model Ordinance.

15. "Development regulations" are defined as "any controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances." WASH. REV. CODE ANN. § 36.70A.030(7) (West 1991).

16. *Id.* § 36.70A.060(2) (West Supp. 1993).

hazardous areas.[17] For purposes of this Article, we will concentrate on wetlands. Counties and cities planning under the GMA were to have adopted wetlands regulations by September 1, 1991. The deadline for all other counties and cities was March 1, 1992.[18] If counties and cities were unable to meet their deadlines, DCD was permitted to grant a one hundred eighty day extension.[19]

Following the adoption of comprehensive plans, each jurisdiction must review its critical areas designations and regulations for consistency with the new comprehensive plan. At that time, the designations and regulations may be altered to ensure such consistency.[20] Thus, the initial critical areas regulations are commonly referred to as "interim regulations." The requirement that local governments revisit their wetlands regulations affords them an opportunity to address many of the problems that local governments elsewhere are encountering.[21]

C. Scope of Wetlands Regulations

The GMA provides little guidance as to the proper scope of wetlands regulations. The major "scope" issues involve determining which wetlands should be protected and to what extent. These issues arise because not all wetlands perform equal functions and not all activities are equally harmful to those functions. In determining which wetlands deserve protection and what degree of protection is appropriate, each jurisdiction, either implicitly or explicitly, weighs economic needs and environmental interests.[22]

In *Clark County Natural Resources Council (CCNRC) v. Clark County*,[23] the petitioners, challenging the Clark County Wetlands Protection Ordinance, argued that the GMA requires

17. *Id.* § 36.70A.030(5) (West 1991).

18. *Id.* § 36.70A.060(2) (West Supp. 1993). Appendix A shows the status of adoption of wetlands regulations for most jurisdictions in western Washington as of October 1, 1993. It is clear from Appendix A that many regulations are not yet finalized. The Department of Community Development (DCD) has indicated that it views the deadline as flexible provided that a jurisdiction is making a good faith effort to develop its critical areas regulations.

19. *Id.* § 36.70A.380.

20. *Id.* § 36.70A.060(3).

21. *See* discussion *infra* part IV.

22. In an attempt to create a rational hierarchy of wetland "values," some jurisdictions have adopted a rating system by which to differentiate between dissimilar wetlands. *See, e.g.*, the Clallam County, Clark County, Jefferson County, and King County Wetlands Ordinances.

23. Western Washington Growth Planning Hearings Board, No. 92-02-0001 (1992).

local governments to adopt development regulations governing all wetlands and virtually any activity that could have an adverse impact on wetlands, including activities that may alter the wetlands' water chemistry.[24] The petitioners challenged the exemption of small wetlands, prior converted croplands, and riparian wetlands less than five feet wide that are otherwise regulated under the county's Shoreline Master Program.[25] The petitioners also challenged the exemption for "marginal" wetlands, which were defined by the ordinance as either isolated wetlands having only one wetland class and a predominance of exotic species or wetlands that had been legally altered and that would not revert to wetlands.[26]

In rejecting petitioners' argument regarding wetlands regulation, the Hearings Board looked to the GMA's legislative history, stating:

> Because of [the] language change [from "precluding land uses that are incompatible with the critical areas" to "protect"] and the overall scheme of the [GMA] which authorizes discretion by local government in formulating policy decisions, we hold that [the GMA] does not require regulation of each and every wetland.[27]

The Board then specifically held that each of these activities, with regard to the challenged activities exempted from regulation, was within the reasonable range of discretion afforded to the county.[28]

After *CCNRC*, therefore, it appears that the GMA allows local governments to differentiate between wetlands, to make value judgments as to which wetlands deserve protection, and to determine the appropriate level of protection.

D. GMA Minimum Guidelines for Regulation of Wetlands

The GMA directs DCD to issue guidelines for the classifi-

---

24. *Id.* at 2.

25. The Clark County Shoreline Master Program was adopted pursuant to the Washington State Shoreline Management Act of 1971. WASH. REV. CODE ANN. ch. 90.58 (West 1992). The Shoreline Management Act regulates development on shorelines of the state, including marine waters, lakes, rivers and streams and their associated wetlands. Most development within a "shoreline of the state" requires either a substantial development permit, a conditional use permit, or a variance. *Id.* § 90.58.140.

26. *CCNRC*, WWGPHB No. 92-02-0001, at 10-11.

27. *Id.* at 4-5.

28. *Id.* at 4-5, 10.

cation of resource lands and critical areas (Minimum Guidelines).[29] The Minimum Guidelines were meant to allow for regional differences.[30] For critical areas classification guidelines, the GMA mandates that DCD consult with DOE.[31]

Despite the fact that the Minimum Guidelines were only intended to assist counties and cities in classifying critical areas, they contain significant direction on the substantive content of wetlands regulations. They also stray from the ambit of guidelines to directive.

1. Rating

The Minimum Guidelines state that jurisdictions should consider the following when developing a rating system for wetlands: (1) the Washington State Four-tier Wetlands Rating System (Four-tier System); (2) the wetlands' functions and values; (3) the rarity of the wetlands; and (4) the ability to compensate for destruction or degradation of the wetlands.[32] This guidance, which arguably relates to classification, strays into directive: if the Four-tier System is not used, the individual jurisdiction must justify the rationale for its decision in its next annual report to DCD.[33] The consequences of a failure to adequately justify an alternate classification scheme are unclear.

2. Delineation

For the delineation of wetlands,[34] the Minimum Guidelines suggest the use of the Federal Manual for Identifying and

29. WASH. REV. CODE ANN. § 36.70A.050 (West 1991). *See* Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas, WASH. ADMIN. CODE ch. 365-190 (1991).

30. WASH. REV. CODE ANN. § 36.70A.050(3) (West 1991). The GMA directs the Minimum Guidelines to take into account regional differences. *Id.* § 36.70A.050(3). However, neither the Minimum Guidelines nor the Model Ordinance provide guidance as to what regional differences exist and how they might be taken into account. It is our understanding that the Association of Counties has suggested that DOE develop Model Ordinances to address both eastern and western Washington, as well as rural and urban areas.

31. *Id.* § 36.70A.050(1).

32. WASH. ADMIN. CODE § 365-190-080(1)(a) (1991).

33. *Id.*

34. Delineation is the process by which a determination is made as to the boundaries of a wetland. In order to delineate a wetland, an expert uses the presence of indicators such as hydric soils, hydrophytic plants, and hydrology. *See* UNITED STATES ARMY CORPS OF ENGINEERS ET AL., FEDERAL MANUAL FOR IDENTIFYING AND DELINEATING JURISDICTIONAL WETLANDS (1989) [hereinafter 1989 MANUAL].

Delineating Jurisdictional Wetlands (1989 Manual),[35] which was developed in January 1989 by the U.S. Army Corps of Engineers (the Corps), the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service, and the U.S. Soil Conservation Service.[36] Use of the 1989 Manual creates a different delineation scheme than that currently used by the Corps.[37]

3. Consideration of DOE's Model Ordinance

The Minimum Guidelines "request" that counties and cities make their actions consistent with Executive Orders 89-10 and 90-04 and "suggest" that "counties and cities should consider wetlands protection guidance provided by the department of ecology including the model wetlands protection ordinance. . . ."[38]

In issuing this request, the Minimum Guidelines actually appear to recommend the specific content of wetlands regulation. This is the most significant way in which the Minimum Guidelines deviate from guiding the designation or classification of critical areas to the substantive regulation of these areas. In so doing, the Minimum Guidelines also elevate the Model Ordinance to a position of great importance.

---

35. *Id.*

36. WASH. ADMIN. CODE 365-190-080(1)(c) (1991).

37. This becomes problematic when a local ordinance calls for use of the 1989 manual and a project requires review by both the Corps and a local government. Some local wetlands regulations specifically address this problem. For instance, the Whatcom County Critical Areas Ordinance provides as follows in the event of dual regulation:

> In cases where the United States Army Corps of Engineers requires an individual permit in accordance with the Clean Water Act, and it is determined by the Administrator that the permit conditions satisfy the requirements of this Ordinance, the Administrator may allow requirements imposed by the Army Corps to substitute for the requirements of this Ordinance.

Whatcom County, Wash., Critical Areas Temporary Ordinance § 10.7.1 (July 1992).

The Tacoma City Code also deals with dual regulation. It allows for an "alternative review process" where the Corps review process will substitute for the Tacoma review process. TACOMA, WASH., CITY CODE § 13.11.160 (1992). Tacoma reserves the right to deny an applicant's project, but will consider the Corps' mitigation requirements in deciding what mitigation of wetland impacts is necessary. *Id. See infra* part III.C.

38. WASH. ADMIN. CODE 365-190-080(1) (1991).

III. THE MODEL ORDINANCE AS A PARADIGM FOR LOCAL GMA INTERIM REGULATIONS

In reviewing the Model Ordinance, it is important to remember that it was not prepared pursuant to the GMA. Rather, it was developed in response to Executive Order 90-04, which directs DOE to take steps to protect wetlands "to the extent legally permissible."[39] Consequently, the Model Ordinance does not seek to balance wetlands protection with other GMA goals.[40]

Despite this fact, the Model Ordinance has played a vital role in the development of many local jurisdictions' interim wetlands regulations. In fact, the majority of jurisdictions developing interim wetlands regulations have, in significant part, patterned their ordinances on the Model Ordinance.[41] The Model Ordinance has attained this level of importance for two reasons. First, as previously discussed, the Minimum Guidelines specifically direct local governments to "consider" the Model Ordinance.[42] Second, eligibility for grant funds from the Wetlands Protection Grant Fund was contingent on the local government basing its regulation on the Model Ordinance.[43]

---

39. Exec. Order No. 90-04, Wash. St. Reg. 90-10-027 (1990). The Attorney General, in construing Executive Order 90-04, determined that the governor does not have the ability, absent statutory authority, to create obligations and responsibilities having the force and effect of law by issuing an executive order for the protection of wetlands. 1991 Op. Att'y Gen. Wash. No. 21. *See also* 1989 Op. Att'y Gen. Wash. No. 21, in which the Attorney General concluded that state law did not, at that time, empower the DOE to promulgate wetlands protection rules.

40. Even though the Model Ordinance does not require an evaluation of those other goals, the Western Washington Growth Planning Hearings Board, in construing the Clark County Ordinance, decided that these other goals must be considered. CCNRC v. Clark County, Western Washington Growth Planning Hearings Board, No. 92-02-0001, at 2-3 (1992).

41. Examples of just a few of these jurisdictions are Clark County, Jefferson County, Pierce County, Mason County, San Juan County, Thurston County, Whatcom County, the City of Bothell, the City of Enumclaw, the City of Bainbridge Island, the City of Bremerton, the City of Bonney Lake, the City of Gig Harbor, the City of Everett, and the City of Tacoma.

42. WASH. ADMIN. CODE § 365-190-080(1) (1991).

43. *See* Washington State Dep't of Ecology, Wetland Protection Grant Program Application for State Fiscal Year 1991. The DOE administered a $600,000 Wetlands Protection Grant Program as mandated by E.O. 90-04. $373,500 of this amount came from funds appropriated to the DCD to implement the GMA and was, therefore, required to be distributed to local governments planning under the GMA.

In order to qualify for funds, the local jurisdiction was required to develop an ordinance for wetland protection based on DOE's model. The ordinance could "be tailored to meet identified regional characteristics and objectives," but the jurisdictions

Given the importance of the Model Ordinance as a guide for much of local wetlands regulation, it is important to examine certain key provisions and the impact of those provisions on actual wetlands regulation. This Section will discuss the following aspects of the Model Ordinance: the definition of wetlands, the rating system, the recommendation for delineation manual use, the scope of regulated activities, the buffer requirements, and the requirements for wetlands alteration and mitigation when alteration is permitted. This discussion will include a commentary on the practical results of using these regulations and an examination of their use or modification by various local jurisdictions.

A. Wetlands Definition

The Clean Water Act[44] defines "wetlands" as follows: "areas that are inundated or saturated by surface water or ground at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."[45]

The GMA and the Model Ordinance both adopt the Clean Water Act definition, but they add the following qualifying language:

> Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city.[46]

While the GMA and the Model Ordinance appear to have somewhat liberalized the wetlands definition, this has not proved to be true in practice. Most local governments have placed the burden on the property owner to demonstrate that

---

were required to view the Model Ordinance as a *minimum* standard. *Id.* at 4-5. As a further condition of funding, DOE was given the right to review and approve the local government's final draft.

44. The principle regulatory tool for Federal protection of wetlands is the Clean Water Act of 1977, Pub. L. No. 95-217, 91 Stat. 26 (1977).

45. 33 C.F.R. § 328.3(b) (1992).

46. WASH. REV. CODE ANN. § 36.70A.030(17) (West 1991); MODEL ORDINANCE, *supra* note 9, § 2(bb).

an allegedly artificial wetland was intentionally created from a non-wetland area. Arguably, placing this burden on property owners makes the exemption unavailable where the wetland was not intentionally created, such as wetlands resulting from improperly placed culverts or leaking irrigation systems.

The Model Ordinance definition also excludes Category II and III wetlands that are less than 2,500 square feet and Category IV wetlands that are less than 10,000 square feet.[47] Most local governments have adopted these exemptions for small, lower value wetlands.[48] It has been generally accepted that the burden on both the individual jurisdiction and the property owner to regulate and preserve these wetlands is greater than the possible environmental harm resulting from their exemption.

B. Wetlands Rating System

As stated above, not all wetlands are created equal. The Model Ordinance recognizes these differences by providing two rating systems: the Four-tier System and the Puget Sound Region Wetlands Rating System (Puget Sound System).[49] Both divide wetlands into four categories, ranging from most valuable (Category I) to least valuable (Category IV).[50] Buffer

47. MODEL ORDINANCE, *supra* note 9, § 2(bb).

48. *See* CCNRC v. Clark County, Western Washington Growth Planning Hearings Board, No. 92-02-0001, at 4-5 (1992) (upholding exemption for small, lower value wetlands).

49. The Puget Sound System is set forth in the MODEL ORDINANCE, *supra* note 9, § 4.4(a)-(b).

50. Under DOE's Four-tier System, Category I wetlands include those areas that contain any of the following criteria: habitat for endangered or threatened species or potentially extirpated plant species; high quality native wetland communities; high quality regionally rare wetland communities with irreplaceable ecological functions; or wetlands of exceptional local significance. *Id.* § 4.4(a)(1). The latter type of Category I wetlands is to be determined at a local level after appropriate public review. *Id.* § 4.4(a)(1)(D).

Category II wetlands are those that do not contain features of a Category I wetland but do include any of the following features: habitat for sensitive species; rare, quality wetland communities; or significant functions that may not be adequately replicated. Wetlands that have significant habitat value based on their diversity and size are also Category II wetlands, as are those contiguous with salmonid fish-bearing waters (including intermittent streams) or with significant use by fish and wildlife. *Id.* § 4.4(a)(2).

Category III wetlands are defined as those that do not contain features of Category I, II, or IV wetlands. *Id.* at § 4.4(a)(3).

Category IV wetlands are those regulated wetlands that do not meet the criteria of a Category I or II wetland, and those isolated wetlands one acre in size or less, which have only one class and monotypic vegetation, or those isolated wetlands that are two

widths and replacement ratios are determined by the placement of the wetland within one of the two systems. Since issuing the Model Ordinance, the DOE has updated both the criteria for altering wetlands and its rating system and urges local governments to use this revised wetlands tiering system.[51]

C. Delineation Manual Use

Perhaps the area of wetlands regulation inspiring the most heated debate is "delineation methodology"; that is, the specific criteria to be examined in determining whether an area fits the definition of a wetland. In particular, it is unclear which Federal Manual should be used in delineating wetlands. This debate has spilled over to affect local Washington jurisdictions in their consideration of regulations.

The first formal methodology for the delineation of wetland boundaries was developed in 1987 by the Corps in the Corps of Engineers Wetland Delineation Manual (1987 Manual).[52] A second methodology was developed in the 1989 Manual.[53]

In July 1991, Congress enacted the Energy and Water Development Appropriations Act of 1992 (Energy Act).[54] One of the Energy Act's provisions prohibits the Corps from using federal funds to make any permit or enforcement decision based on a wetlands delineation performed pursuant to the 1989 Manual.[55] This prohibition on the use of the 1989 Manual

---

acres in size or less, have only one wetland class, and a predominance of exotic species. *Id.* § 4.4(a)(4).

In the Puget Sound System, the criteria for Category I, III, and IV wetlands are the same as in the DOE's Four-tier System. Under the Puget Sound System, however, Category II is more specific and "tailored" to the Puget Sound region. *Id.* § 4.4(b)(2). For example, significant peat systems or forested swamps with three canopy layers (excluding monotypic stands of red alder greater than eight inches in diameter or significant spring fed systems) are included as examples of wetlands with significant value to the Puget Sound region and functions that may not be adequately replicated through creation or restoration of wetlands. *Id.* There are also specific guidelines for identifying wetlands with significant habitat value based on diversity and size.

51. In October 1991, DOE issued a revised rating system. WASHINGTON STATE DEP'T OF ECOLOGY, WASHINGTON STATE WETLANDS RATING SYSTEM FOR WESTERN WASHINGTON (Oct. 1991) [hereinafter WETLANDS RATING SYSTEM]. This system still uses ratings of I through IV, but it is intended to "introduce rating criteria that are more specific and less qualitative." *Id.* at iii.

52. UNITED STATES ARMY CORPS OF ENGINEERS, CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL (1987) [hereinafter 1987 MANUAL].

53. 1989 MANUAL, *supra* note 34.

54. Pub. L. No. 102-104, 105 Stat. 510 (1991).

55. *Id.*

arose because of concern over both the criteria established in the manual and the way in which it was being applied in the field.[56]

As a consequence, the Corps and the EPA have since used the 1987 Manual for wetlands delineations under the Clean Water Act. DOE also uses the 1987 Manual to perform its water quality certification under the Clean Water Act. The Model Ordinance, however, requires use of the 1989 Manual,[57] and DOE continues to strongly urge local governments to use the 1989 Manual in their local wetlands regulations.[58]

Under both the 1987 and 1989 Manuals, areas are designated as wetlands when they possess all of the following characteristics: hydrophytic vegetation (i.e., plants adapted to saturated soil conditions), hydric soils (i.e., soils that are saturated, flooded, or ponded), and wetland hydrology (i.e., surface saturation or inundation at some point).[59] Use of these three characteristics has come to be known as the "triple parameter test." Although the 1987 and 1989 Manuals both use this test, the two manuals mandate different technical criteria to be used in identifying which of the parameters are present. Some of the differences are explained below.

The 1987 Manual was not specific about the precise saturation depth that would satisfy the "wetland hydrology" criterion. In the Authors' experience, the most commonly used depth in the Corps' Seattle District was twelve inches. The 1989 Manual, however, provides specific saturation depths of

---

56. Dissatisfaction with the 1989 Manual led to proposed amendments because it was

> concluded that while the [1989 Manual] represented a substantial improvement over pre-existing approaches, several key issues needed to be re-examined and clarified. Some of the key technical issues needing re-examination were: (1) the wetlands hydrology criterion, (2) the use of hydric soil for delineating the wetland boundary, (3) the assumption that facultative vegetation indicated wetland hydrology, and (4) the open-ended nature of the determination process which created opportunities for misuse.

56 Fed. Reg. 40,446, 40,449 (1991).

57. MODEL ORDINANCE, *supra* note 9, § 4.3.

58. This inconsistency in manual endorsement stems from a perception that the 1987 Manual is not as scientifically sound as the 1989 Manual. The Corps, however, has determined that both manuals are scientifically sound.

Out of 80 western Washington jurisdictions surveyed, 62 have followed DOE's recommendation that the 1989 Manual be used. The result is that property owners subject to the jurisdiction of the Clean Water Act, as well as to the jurisdiction of a local wetlands ordinance, will have to conduct two separate delineations with potentially inconsistent results.

59. 1989 MANUAL, *supra* note 34, at 18; 1987 MANUAL, *supra* note 52, at part III.

six, twelve, and eighteen inches, depending on the soil type.[60] Therefore, in some situations, the discovery of water within eighteen inches of the surface satisfies the hydrology requirement.

Also newly included in the 1989 Manual were definitions of "problem areas" and "disturbed areas."[61] A problem area is one in which only two of the three parameters are present during certain times of the year.[62] For example, if the delineation is not performed in the growing season, vegetation might not be present. In the 1987 Manual, problem areas were limited to specific types of wetland areas, such as farmland with a cropping history.[63] The 1989 Manual expands the problem area definition to include all areas. A disturbed area is one that has been previously altered in a way that makes wetland identification more difficult than it would be in the absence of such changes.[64] Farmland that has been plowed for planting crops is an example of a disturbed area.

To satisfy the "hydrophytic vegetation" criterion under the delineation scheme of the 1987 Manual, an area must be vegetated by at least fifty-percent obligate wetland, facultative wetland, and/or facultative species plants.[65] If the area is predominately vegetated by facultative upland plants, it does not satisfy the vegetation criterion and, therefore, is not considered a wetland.[66] Under the 1989 Manual, for problem and disturbed areas, the hydrophytic vegetation criterion is presumed to be met if both the "hydric soil" and "wetland hydrology" criteria are satisfied.[67] In the dry season, however, when water may not be present, the presence of hydric soil alone is

60. 1989 MANUAL, *supra* note 34, at Part 2.7, p. 6.

61. *Id.* at Parts 4.21-4.26, pp. 50-59.

62. *Id.* at Part 4.24, p. 55.

63. 1987 MANUAL, *supra* note 52, at 93-94.

64. 1989 MANUAL, *supra* note 34, at Part 4.21, p. 50.

65. 1987 MANUAL, *supra* note 52, at 19. "Obligate wetland" plants always occur (estimated probability 99 percent) in wetlands under natural conditions, but they also occur, though rarely (estimated probability 1 percent), in non-wetlands. "Facultative wetland" plants occur usually (estimated probability 67-99 percent) in wetlands, but may also occur (estimated probability 1-33 percent) in non-wetlands. "Facultative" plants have a similar likelihood of occurring both in wetlands and non-wetlands. *Id.* at 18 (Table 1).

66. "Facultative Upland Plants" are those that occur approximately 1 percent to 33 percent of the time in wetlands, but 67 percent to 99 percent of the time in non-wetlands. Ronald D. Kranz, *Increasing Jurisdictional Wetland Boundaries Using the New Federal Interagency Method, in* KEY ISSUES IN WETLANDS REGULATIONS IN WASHINGTON 40 (William H. Chapman et al., eds., 1992).

67. 1989 MANUAL, *supra* note 34, at Parts 4.23 (step 3) & 4.25 (step 3), pp. 51 & 56.

sufficient.[68] Therefore, a problem or disturbed area can be a wetland even if it is dominated by facultative upland plants. Consequently, use of the 1989 Manual methodology may result in the regulation of areas considerably drier than the "swamps, marshes, bogs, and similar areas," all of which are defined as wetlands under the Clean Water Act regulations.[69]

The differences resulting from the use of the 1987 and 1989 Manuals can be significant.[70] Accordingly, Congress is currently seeking a solution to the manual controversy. In 1991, the EPA revised the 1989 Manual.[71] The revision was badly received by wetlands scientists and environmentalists. The EPA received over one hundred thousand comments on the revision. Consequently, in early 1992, the Bush Administration ordered an independent study, currently in progress, by the National Academy of Sciences (NAS). The recommendations of this study will hopefully resolve the manual controversy. In light of the pending study, it may be judicious for local jurisdictions to recommend use of either the Manual currently used under the Clean Water Act or the Manual as amended by result of the NAS review.

D. Regulated Activities

Regulated activities are those activities governed by a regulation and which typically require a permit. The effectiveness of any wetlands regulation scheme lies in the ability of the property owner to identify these activities and in the ability of the local jurisdiction to administer and enforce regulation of them. The Model Ordinance's definition of regulated activity presents some difficulties for both parties.

The Model Ordinance defines regulated activities very broadly. It states:

> A permit shall be obtained from local government prior to

---

68. *Id.*

69. 33 C.F.R. § 328(3)(b) (1992).

70. As an example, it is helpful to look at three projects located in the Kent Valley of western Washington: East/West Brook Business Center, Kent Industrial, and Riverbend Estates. The Wetlands in these developments were first delineated using the 1987 Manual and then re-delineated using the 1989 Manual. Both delineations were confirmed by the Corps. Identified wetlands increased 42 percent for the East/West Brook Business Center, 66 percent for the Kent Industrial project, and 908 percent for Riverbend Estates. Kranz, *supra* note 66, at 54.

71. 56 Fed. Reg. 40,446 (1991) (proposed amendments).

> undertaking the following activities in a regulated wetland or its buffer unless authorized by Section 5.2 below:
> a. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
> b. The dumping, discharging, or filling with any material;
> c. The draining, flooding, or disturbing of the water level or water table;
> d. The driving of pilings;
> e. The placing of obstructions;
> f. The construction, reconstruction, demolition, or expansion of any structure;
> g. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules; or
> h. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.[72]

In practice it is difficult to determine which project applications will adversely impact wetlands, triggering application of the regulations. For example, what kinds of development projects in which geographic locations alter a wetland's water chemistry? Does stormwater run-off from a shopping center five blocks from a wetland alter that wetland's water chemistry? It is difficult for a local jurisdiction to administer a wetlands regulatory scheme that adequately addresses all such activities.

The City of North Bend's Ordinance provides an example of potential administration problems.[73] That ordinance has adopted, with some additions, the Model Ordinance list of regulated activities. In North Bend, no regulated activity is allowed in a wetland absent a showing, after a public hearing, that all reasonable use of the property is denied.[74] As a result, if the regulated activities definition were literally applied, pruning or weeding of vegetation or weed removal might not be allowed on any wetland without proof by the property

72. MODEL ORDINANCE, *supra* note 9, § 5.1.

73. NORTH BEND, WASH., DRAFT WETLAND PROTECTION ORDINANCE (Dec. 19, 1991).

74. *Id.* § 3.4.0.

owner that, absent such pruning, he would be denied all reasonable use of the property. Clearly, this is impracticable and unenforceable.

Because of such enforceability problems, many local governments have tailored the regulated activity definition to meet their ability to administer it. The Clark County ordinance provides one such example. One of the "regulated activities" in this ordinance is as follows:

> (d) The destruction or alteration of wetlands vegetation through clearing, harvesting, intentional burning, or planting of vegetation that would alter the character of a wetland or buffer: Provided, that this subsection shall not apply to . . .:
>
> (i) the harvesting or normal maintenance of vegetation in a manner that is not injurious to the natural reproduction of such vegetation,
>
> (ii) the removal or eradication of noxious weeds. . . .[75]

This simple modification of the regulated activities definition means that Clark County, unlike North Bend, will be better able to administer its wetlands regulations. Specifically, the Clark County Ordinance is more reflective of the realities of day-to-day property maintenance.

E. Buffers

1. Standard Buffer Widths

A buffer is an area that surrounds a wetland and is intended to protect the wetland's functions from human and animal activity and runoff. The buffers required by the Model Ordinance vary depending on the intensity of the use adjacent to the wetland[76] and the category of the wetland:

75. CLARK COUNTY, WASH., CODE § 13.36.120(25) (1992) (enacted by CLARK COUNTY, WASH., ORDINANCE No. 1992-02-03 (Feb. 10, 1992)).

76. The Model Ordinance defines low-intensity land uses as those associated with low levels of human disturbance or low wetland habitat impacts. MODEL ORDINANCE, *supra* note 9, § 2(t). Examples include land uses associated with passive recreation, open space, or agricultural or forest management. *Id.*

TABLE A

Wetland Category	Intensity of Adjacent Use	Buffer
I	Low	200'
	High	300'
II	Low	200'
	High	100'
III	Low	100'
	High	50'
IV	Low	50'
	High	50'

These buffer widths have been adopted by some jurisdictions and modified by others. In western Washington, the buffer requirements range from zero to three hundred feet.[77]

In addition to the buffer, a fifteen-foot building setback from the buffer is required.[78] This setback is meant to protect the buffer during building construction. Most local governments that require the additional building setbacks have followed the fifteen-foot example. Pierce County, however, uses an eight-foot building setback.[79] Clallam County, on the other hand, does not require a building setback, but, instead, seeks to protect the buffer by requiring fencing during construction.

2. DOE Buffer Study

Following its release of the Model Ordinance, DOE undertook a study of appropriate buffer widths. Its June 1991 draft report concluded that "buffers widths of greater than [fifty] feet are necessary to protect wetlands from an influx of sediment and nutrients, to protect sensitive wildlife species from adverse impacts, and to protect wetlands from the adverse effects of changes in quantity of water entering the wetland."[80] In its final report, dated February 1992, DOE refined this statement. After conducting a field study, it concluded that ninety-five percent of buffers smaller than fifty feet suffered direct human impact *within* the buffer, while only thirty-five percent

77. Appendix B shows the wide variety of buffer requirements among Washington jurisdictions.

78. MODEL ORDINANCE, *supra* note 9, § 7.1(g).

79. PIERCE COUNTY, WASH., CODE § 17.12.070E (1992).

80. ANDREW J. CASTELLE ET AL., WASHINGTON STATE DEP'T OF ECOLOGY, WETLANDS BUFFERS: USE AND EFFECTIVENESS (June 1991) Draft Report, at 76.

of buffers wider than fifty feet suffered direct human impact.[81] DOE also concluded that, in determining the appropriate buffer width, it is important to take into account current and anticipated land uses.[82] The minimum buffer width, regardless of wetland category, should be fifty feet.[83] Despite the fact that these conclusions suggest value in determining appropriate buffer width on a case by case basis, the Model Ordinance calls for absolute buffers of greater width.[84] Problems encountered with rigid buffer requirements are discussed below.

3. Increased Buffer Width

Under the Model Ordinance, a jurisdiction maintains the right to increase buffer widths when: the increased width is necessary to maintain viable populations of existing species; the wetland either is used by or provides outstanding potential habitat for proposed or listed endangered, threatened, rare, sensitive, or monitored species; the wetland is an unusual nesting or resting site, such as a heron rookery or raptor nesting area; the adjacent land is susceptible to severe erosion; or the wetland has minimal vegetative cover or slopes greater than fifteen percent.[85]

The ability to increase buffer width based on endangered, proposed, or listed species is somewhat problematic because the wetland ranking system has already taken the presence of such species into account by ranking any wetland containing documented habitat for such species as a Category I wetland.[86] Nevertheless, many local governments have incorporated this provision.

4. Reduction of Buffer Width

The Model Ordinance retains the flexibility to reduce buffers on a case-by-case basis if the adjacent land is extensively vegetated with slopes of less than fifteen percent and if no direct or indirect, short-term or long-term adverse impacts

81. ANDREW J. CASTELLE ET AL., WASHINGTON STATE DEP'T OF ECOLOGY, WETLAND BUFFERS: USE AND EFFECTIVENESS (Feb. 1992) Publication #92-10, at iv. Ironically, the DOE field studies dealt with degradation of the buffer, not the wetland itself.

82. *Id.* at 48.

83. *Id.*

84. MODEL ORDINANCE, *supra* note 9, § 7.1(a).

85. *Id.* § 7.1(b).

86. *Id.* § 4.4(a)(1)(A).

will result.[87] A buffer width reduction is also allowed if the project includes a buffer enhancement plan using native vegetation.[88] A buffer cannot be reduced by more than twenty-five percent or to a width of less than twenty-five feet under any circumstances.[89]

5. Buffer Averaging

Averaging of the buffer width (i.e., allowing reduction of buffer width in one area and increasing buffer width in another) is also allowed, provided that the applicant can satisfy several criteria.[90] First, it must be shown that averaging is necessary to avoid an "extraordinary hardship." This is defined in the ordinance as a regulatory takings test.[91] Second, the wetland must contain "variations in sensitivity due to existing physical characteristics."[92] Third, low-intensity land uses, guaranteed in perpetuity by covenant or another binding mechanism, must be located adjacent to areas where buffer width is reduced.[93] Fourth, the width averaging must not adversely impact the wetland functional values.[94] Fifth, the width may not be reduced by more than fifty-percent or be less than twenty-five feet, and the total area of the buffer after averaging cannot be less than the area prior to averaging.[95]

The requirement of meeting all of these criteria is overkill. The fourth criterion—that width averaging must not adversely impact the wetland functional values—appears sufficient. If the applicant can demonstrate that the buffer width averaging will not adversely affect the wetland, then why should the local government prohibit buffer width averaging? What nexus can be shown between the impact to be avoided—degradation of wetland functions—and the three remaining criteria?

Similarly, if the standard buffers would result in denial of

87. *Id.* § 7.1(c).

88. *Id.* § 7.1(c)(2).

89. *Id.* § 7.1(c).

90. *Id.* § 7.1(d). It should be noted that while this process may allow the width to be reduced in one area, it does not result in an overall reduction of the square footage contained in the buffer.

91. *Id.* at §§ 7.1(d), 2(k). *See* Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992) (setting standard for denial of all economically viable use takings test).

92. MODEL ORDINANCE, *supra* note 9, § 7.1(d).

93. *Id.*

94. *Id.*

95. *Id.*

all reasonable economic use, then requiring the applicant to satsify all four criteria is difficult to defend. Once it is demonstrated that requiring the standard buffer width would cause a taking, the local government should decide whether to compensate the affected party or approve a reasonable use of the property. Moreover, as discussed below, by requiring that all four criteria be met, the local government loses much of the flexibility needed to deal with unanticipated circumstances as they arise.

6. Uses Permitted in the Buffer

The Model Ordinance allows only very limited activities in the wetland buffer. The only uses allowed in Category I and II wetland buffers are low-intensity, passive recreational activities, such as pervious trails, nonpermanent wildlife watching blinds, short-term scientific or educational activities, and sports fishing or hunting.[96] In the buffers of Category III and IV wetlands, permitted uses include stormwater management facilities having no reasonable on-site alternative location and development having no feasible alternative location.[97] The use of the modifier, "on-site," in reference to the alternative locations for stormwater management facilities, but not for other "development," suggests that the DOE would only allow "development" in the Class III and IV buffers if there is no practicable off-site alternative.

7. Problems Encountered

A jurisdiction's lack of flexibility in determining proper buffer width can occasionally lead to harsh results for property owners without necessarily achieving a corresponding benefit to the environment. This is particularly true in two types of situations: when buffer size is substantially greater than the wetland it protects and when a buffer is interrupted by existing improvements.

The first situation is especially prevalent with smaller wetlands where the area contained in the buffer is often significantly larger than the wetland itself. For example, a two hundred foot buffer on a one acre, roughly circular wetland, would consume 6.3 acres, more than six times the size of the wetland itself. Clark County has attempted to deal with this

96. *Id.* § 7.1(f)(1).
97. *Id.* § 7.1(f)(2)-(3).

result by limiting the buffer area to two times the total wetland area, provided that this limitation does not reduce the buffer by more than fifty percent of the base buffers.[98] Base buffers range from fifty feet for a Category IV wetland to three hundred feet for a Category I wetland.[99] Pierce County, on the other hand, provides for a reduction of no more than twenty-five percent if the acreage of the buffer would "substantially exceed the size of the wetland and the reduction will not result in adverse impacts to the wetland. . . ."[100]

The resource benefit is particularly questionable when the second situation is present; that is, where the buffer is interrupted by an existing public or private improvement such as a road. Here, the portion of the buffer on the far side of the improvement performs little "buffering" function. The Model Ordinance provides inadequate flexibility for such circumstances. It provides for a right to reduce or average buffers, but this right may only be exercised in a limited number of situations.[101] A more logical approach is taken by Clark County. Clark County's Ordinance provides that: "Areas which are functionally separated from a wetland and do not protect the wetland from adverse impacts due to pre-existing roads, structures, or vertical separation, shall be excluded from buffers otherwise required by this chapter."[102]

F. Substantive Standards for Wetland Alteration

Section 7.2 of the Model Ordinance sets forth the substantive standard for altering wetlands (i.e., engaging in a regulated activity within a wetland). The Model Ordinance states that "[r]egulated activities shall not be authorized in a regulated wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied."[103] Subsequent provisions refine this standard for the four wetland categories and, in doing so, draw on the "mitigation sequencing" and "practicable alterna-

98. CLARK COUNTY, WASH., CODE § 13.36.340(4) (1992) (enacted by CLARK COUNTY, WASH. ORDINANCE No. 1992-02-03 (Feb. 10, 1992)).

99. *Id.* § 13.36.320.

100. PIERCE COUNTY, WASH., CODE § 17.120.070(B)(2)(c) (1991).

101. MODEL ORDINANCE, *supra* note 9, § 7.1(c)-(d).

102. CLARK COUNTY, WASH., CODE § 13.36.340(3) (1992) (enacted by CLARK COUNTY, WASH. ORDINANCE No. 1992-02-03 (Feb. 10, 1992)).

103. MODEL ORDINANCE, *supra* note 9, § 7.2(a).

tives" tests formulated under the Clean Water Act[104] and the concept of regulatory takings.

The standard for alteration of a Category I wetland mixes takings and variance tests. The "applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property."[105]

In practice, there is fairly wide-spread and growing consensus that Category I wetlands should be preserved if at all possible. This consensus is due, in part, to the fact that Category I wetlands are generally more easily recognized as wetlands by the layperson. The real controversy focuses on the frequently more difficult to recognize Category III and IV wetlands.

1. Practicable Alternatives

For the alteration of Category II and III wetlands and the placement of most uses in the buffer of a Category III or IV wetland, the Model Ordinance adopts the "practicable alternatives" test.[106] This test is both time-consuming and expensive for the applicant and for the reviewing authority. Furthermore, it results in more data on what is not permissible on the site than on what is permissible. For these reasons, it is time to rethink the use of this test for Category II, III, and IV wetlands.

The practicable alternatives test is borrowed from the implementing regulations to the Clean Water Act, which state that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences."[107]

To be "practicable," an alternative must be available and feasible after taking into consideration the "cost, existing technology, and logistics in light of overall project purposes."[108]

---

104. *See infra* parts III.F.1-.2.

105. MODEL ORDINANCE, *supra* note 9, § 7.2(b). *See also id.* at § 2(k).

106. *See id.* §§ 7.1(f), 7.2(c).

107. 40 C.F.R. § 230.10(a) (1992).

108. *Id.* § 230.10(a)(2). Virtually every word of this test has been litigated. As to the "overall project purpose" aspect of the practicable alternatives test, *see* Sylvester v. U.S. Army Corps of Engineers, 882 F.2d 407 (9th Cir. 1989); Louisiana Wildlife Fed'n v. York, 603 F. Supp. 518 (W.D. La. 1984), *aff'd in part, vacated in part and remanded,*

The applicant does not have to own the alternative site for it to be considered practicable.[109] For projects that are not "water dependent," both the Clean Water Act regulations and the Model Ordinance presume that an alternative is available.[110]

The Model Ordinance codifies the steps necessary to rebut this presumption as follows:

> A. the basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and
> B. a reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and
> C. in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.[111]

The majority of western Washington jurisdictions have adopted this version of the practicable alternatives test. Unfortunately, the practicable alternatives test may not be appropriate for Category II, III, and IV wetlands. First, the cost of

---

761 F.2d 1044 (5th Cir. 1985); Shoreline Assocs. v. Marsh, 555 F. Supp. 169 (D. Md. 1983); National Audubon Soc'y v. Hartz Mountain Dev. Corp., [1984] ENVT'L L. REP. 20, 724 (D.N.J. 1983). As to "marketability," *see* Mall Properties, Inc. v. Marsh, 672 F. Supp. 561 (D. Mass. 1987), *appeal dismissed*, 841 F.2d 440 (1st Cir. 1988); Nat'l Audubon Soc'y v. Hartz Mountain Dev. Corp., [1984] 14 ENVTL. L. REP. 20, 724 (D.N.J. 1983).

109. 40 C.F.R. § 230.10(a)(2) (1992). As to the "availability" of a practicable alternative, *see* James City County v. EPA, 995 F.2d 254 (4th Cir. 1992); Hough v. Marsh, 557 F. Supp. 74 (D. Mass. 1982); Nat'l Audubon Soc'y v. Hartz Mountain Dev. Corp., [1984] 14 ENVT'L L. REP. 20, 724 (D.N.J. 1983).

110. 40 C.F.R. § 230.10(a)(3) (1992). *See* MODEL ORDINANCE, *supra* note 9, § 7.2(c)(2).

111. MODEL ORDINANCE, *supra* note 9, § 7.2(c)(2). As it relates to zoning, the requirement of making reasonable attempts to remove or accommodate deficiencies is difficult to reconcile with the GMA planning process. Under the GMA, process comprehensive plans are made and zoning is determined only after considerable public input and long-range planning. Thus, changing a land use designation is, at best, difficult and, at worst, impossible. Furthermore, critical areas regulations are to be developed and reviewed for consistency with the comprehensive plans. Theoretically, therefore, zoning of property containing wetlands should have been considered in comprehensive plan adoption. A further complication will arise for those attempting to demonstrate that zoning constraints cannot be removed because following adoption of a jurisdiction, comprehensive plan zone changes will be allowed only once a year.

satisfying the practicable alternatives test can be prohibitive. The applicant must compare the on-site wetlands impacts with the wetlands impacts that would occur if the project in question was relocated to another site. This process is extremely expensive and takes substantial time. Moreover, even after its completion, nothing has been accomplished toward the resolution of the primary question of what is permissible on the site.

Second, the practicable alternatives test was originally developed for navigable waters and their adjacent wetlands, locations where alternative water dependent uses are feasible. Many inland Category II, III, and IV wetlands, on the other hand, cannot feasibly support a truly water dependent use. Thus, the practicable alternatives test may not be the appropriate decision-making tool for Category II, III, and IV wetlands.

2. Mitigation Sequencing

Mitigation sequencing establishes a strict sequence to be followed when considering potential impacts on wetlands: mitigation becomes a viable option only after an attempt has been made, first, to avoid the impact altogether and, second, to minimize the impact.[112] In the mitigation sequencing process, wetlands are analyzed on a property-by-property basis rather than as part of the larger ecological system. Avoidance, as that term is used both under the Clean Water Act and the Model Ordinance,[113] does not necessarily mean that all adverse impacts to the wetland have been avoided or that the wetland's valuable functions will be protected in the long-term. Rather, it means that construction has physically avoided the wetland and, where relevant, its buffer.[114]

---

112. The mitigation sequencing concept originated in the joint ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF THE ARMY, *Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1)* Guidelines (Feb. 6, 1990) [hereinafter MEMORANDUM OF AGREEMENT]. *See also* MODEL ORDINANCE *supra* note 9, § 2(u).

113. *See* 40 C.F.R. 230.10(a) (1992); MODEL ORDINANCE, *supra* note 9, § 7.2.

114. The Cordata Retail Centre in Bellingham, Washington, and Reflections by the Lake, a multi-family project in Everett, Washington, provide excellent examples of the fragmentation that can result from mitigation sequencing. The applicant for the Cordata Retail Centre was able to develop a site plan that technically would have avoided the on-site wetlands. However, the wetlands would still have been surrounded by parking lots rockeries and, in several scenarios, would have been crossed in multiple locations by bridges to allow interior, upland areas to be used for parking. All of the federal and state resource agencies concurred that off-site mitigation would be preferable to this avoidance scenario. Yet, the mitigation sequencing rule would not

There are cases in which restoration, expansion or enhancement of other resources, such as higher value wetlands or riparian systems, may provide greater resource value than preservation of lower value, on-site wetlands. If a local ordinance has a rigid sequencing requirement with no flexibility to consider the individual circumstances, these opportunities will be lost. It is for this reason that we advocate an approach that allows the decision-maker to consider whether alternatives to avoidance, under the particular circumstances, yield a result that is more protective of the resource.

Several local governments have provided such flexibility. For example, Whatcom County has determined that a balancing of GMA goals should allow the mitigation sequencing to be disregarded within urban growth areas or high-intensity land use areas.[115] Pierce County also recognizes that strict mitigation sequencing may not always be preferable and allows for "circumstances" when an alternative mitigation strategy is preferable.[116]

G. Mitigation

The Model Ordinance requires that altered wetlands be recreated as nearly as possible. Such recreation should replicate the original wetland in terms of function, geographic location, and setting.[117] Therefore, "on-site, in-kind" mitigation is required when possible.[118]

1. Replacement Ratios

Based on the theory that there must be an adequate margin of safety to compensate for the inexact science of wetlands creation, restoration, or enhancement, the Model Ordinance requires that the mitigation wetland be considerably larger

---

have allowed them to approve off-site mitigation had any on-site avoidance scenario proven financially feasible. In the Everett case, the project was built, and the wetland "avoided," but the wetland was surrounded by parking lots, fragmented from the larger ecosystem.

115. WHATCOM COUNTY, WASH., CRITICAL AREAS TEMPORARY ORDINANCE § 10.9.1B (July 1992).

116. PIERCE COUNTY, WASH., CODE § 17.12.090 (1991).

117. MODEL ORDINANCE, *supra* note 9, § 7.5(f).

118. MEMORANDUM OF AGREEMENT, *supra* note 112, at Appendix 16-3. Although in-kind mitigation is required under the Model Ordinance, Section 7.5(F)(2)(B) seems to contradict that requirement by stating that "[w]here feasible, restored or created wetlands shall be a higher category than the altered wetland." MODEL ORDINANCE, *supra* note 9, § 7.5(F)(2)(B).

than the original wetland.[119] When mitigation is accomplished prior to or concurrent with alteration, is on-site, is of the same category as the altered wetland, and has a high probability of success, the required ratio of replacement to alteration is indicated under Table B:

TABLE B

Category I	6.00:1*
Categories II or III	
Forested wetland	3.00:1
Scrub-shrub wetland	2.00:1
Emergent wetland	1.50:1
Category IV	1.25:1

* Six acres of wetland must be created from non-wetlands, or degraded wetland restored, for each one acre of wetland destroyed.

Under the Model Ordinance, a jurisdiction retains the right to both increase and decrease these ratios.[120] An increase would be justified in the event that success of the proposed restoration or creation was uncertain or that there was a projected loss in functional value.[121] Ratios could also be increased if a significant period of time between wetland alteration and mitigation was anticipated.[122] In addition, the jurisdiction could decrease the mitigation ratio if it could be demonstrated that no let loss of wetland function or value would occur.[123] The replacement ratio may never be less than 1:1.[124]

2. Location of Mitigation

Under the Model Ordinance, mitigation must be conducted on the same site as the altered wetland, except where the applicant can demonstrate that the "hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the on-site loss."[125] The applicant must also satisfy one of the follow-

119. MODEL ORDINANCE, *supra* note 9, § 7.5(f).
120. *Id.* § 7.5(f)(2)(D)(i).
121. *Id.*
122. *Id.*
123. *Id.* § 7.5(f)(2)(D)(ii).
124. *Id.* § 7.5.(f)(2)(D)(iii).
125. *Id.* § 7.5(f)(5)(A).

ing requirements: (1) on-site mitigation is not scientifically feasible; (2) compensation (i.e., mitigation) is not practical due to potentially adverse impacts from surrounding land uses; (3) existing functional values at the mitigation site are significantly greater than the lost wetland functional values; or (4) regional goals for flood storage, flood conveyance, habitat, or other wetland functions have been established that strongly justify the location of compensatory measures at another site.[126]

In the event that off-site compensation is permitted, the Model Ordinance requires that such compensation for Category I, II, and III wetlands take place within the same watershed as the wetland loss.[127] Compensation for a Category IV wetland may occur outside of the watershed if there is no reasonable alternative.[128] The question arises, however, as to what happens if there is no reasonable alternative within the watershed for Category I, II, and III wetlands.

The Model Ordinance establishes an order of preference for mitigation sites.[129] Preference is given in the following order: "upland sites which were formerly wetlands," "upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds, or emergent vegetation," and other disturbed uplands.[130]

Mitigation affords an opportunity to encourage the restoration or creation of wetlands with greater functions or values than the altered wetland or wetlands that have historically been subject to the greatest loss. However, as with many other features of the Model Ordinance, while they may technically allow these activities, the provisions governing the location and type of mitigation discourage rather than foster them.

At least one local government has recognized this problem and has provided incentives to replace lower value wetlands with higher value ones when wetland alteration is allowed. Again, we look to Clark County for a creative, flexible approach to wetlands mitigation. There are many provisions in Clark County's ordinance that encourage restoration of higher value wetlands.[131] For example, when an applicant enhances a

126. *Id.*
127. *Id.* § 7.5(f)(5)(B).
128. *Id.*
129. *Id.* § 7.5(f)(5)(C).
130. *Id.*
131. *See* CLARK COUNTY, WASH., CODE (1992).

Category III or IV wetland as a condition of a wetland permit, the applicant may obtain a reduction in the replacement ratio by replacing the Category III or IV wetland with a higher category wetland (i.e., a Category II wetland). In these cases, the replacement ratio "is based on a 1:1 ratio which is reduced by 20% for each increase in wetland category."[132]

The Clark County Ordinance also seeks to foster voluntary restoration or enhancement. Thus, when voluntary enhancement results in the wetland meeting the criteria for a higher category, Section 13.36.300(4) states that the wetland will continue to be classified according to the characteristics of the original wetland.[133] This provision was included to ensure that the larger buffer requirement for higher value wetlands would not discourage enhancement or "penalize" the property owner.

3. Mitigation Banking

A "mitigation bank" is typically a large, consolidated wetland replacement, restoration, or enhancement project. It is either funded initially by applicants who have been permitted to alter wetlands on individual sites or by a public or private entity or some combination thereof which subsequently recoups planning, development, and monitoring costs through the sale of mitigation credits to applicants who are unable to provide on-site mitigation. A mitigation bank is usually created before, rather than concurrently or after, the wetland impact. It provides developers with credits that can be used to compensate for future wetland impacts.

Mitigation banking can benefit both developers and wetlands. Because the mitigation banking project is designed and built in advance, a "late-comer" applicant does not have to bear all of the expense of designing, permitting, and monitoring an individual mitigation project. Particularly in urban or urbanizing areas, mitigation banking can also provide more valuable mitigation than a number of smaller, individual mitigation projects. Economy of scale allows for the restoration, enhancement, and creation of larger wetlands, which generally have more diverse and valuable functions than smaller, individual mitigation efforts.

The Model Ordinance does not provide for mitigation

132. *Id.* § 13.36.420(2)(d).
133. *Id.* § 13.36.300(4).

banking per se. It does, however, allow for "cooperative restoration, creation or enhancement projects."[134] Such projects involve two or more private applicants joining together to fund a single, large, off-site compensatory project. This kind of cooperation is allowed when "restoration, creation or enhancement at a particular site may be scientifically difficult or impossible; or . . . creation of one or several larger wetlands may be preferable to many small wetlands."[135]

While these projects also allow for the creation of larger wetlands, they do not offer all of the same benefits of classic mitigation banking projects. With traditional mitigation banking, a small property owner who needs to compensate for altering a wetland on his property may be able to pay into a mitigation bank, thereby contributing to the creation of a large, high value wetland. He may not, however, be able to organize the type of cooperative mitigation project provided for in the Model Ordinance.

A number of western Washington jurisdictions, such as Jefferson, San Juan, Mason, Thurston, and Whatcom Counties, allow for this cooperative mitigation. Very few, however, provide for classic mitigation banking.[136] Snohomish County provides one example. The County permitted a mitigation banking program in which a three hundred sixty-three acre strawberry farm was converted into a saltwater marsh.[137] The restored wetland is now made available, at twenty thousand dollars per acre, to developers who alter wetlands elsewhere in Snohomish County.[138]

IV. RECOMMENDATIONS

In the year following adoption of their comprehensive plans, local governments planning under the GMA must revisit their wetlands regulations to ensure consistency with the plan.[139] The appropriate content of wetlands regulations is, in the end, a balance of science, policy, and values. In reviewing

134. MODEL ORDINANCE, *supra* note 9, § 7.5(f)(7).

135. *Id.* § 7.5(f)(7)(A).

136. Whatcom County anticipates the development of a mitigation banking system in the future.

137. *From Strawberries to Salt Marsh—Wetlands-bank idea worth serious study*, SEATTLE TIMES, July 19, 1991, at A-10.

138. *Id.*

139. WASH. REV. CODE ANN. § 36.70A.060(3) (West 1991 & Supp. 1993). *See also id.* § 36.70A.120 (West 1991).

their interim regulations, local governments have an opportunity to address more thoughtfully the issues discussed in this article: the practicable alternatives test, in-kind wetland replacement, non-regulatory tools, delineation manual use, and viewing wetlands as part of an ecosystem rather than part of an individual property. To facilicate their review of these issues, we offer the following recommendations for consideration:

(1) Use mitigation sequencing for Class I and II wetlands and a "no-net loss" standard for Category III and IV wetlands, as opposed to the practicable alternatives test. This would substantially reduce cost to both the applicant and the jurisdiction, would shorten the permitting process, and, most importantly, would focus resources on determining what is permissible on a site rather than what is impermissible.

(2) If the practicable alternatives test is used, limit alternative sites to those with an appropriate comprehensive plan and zoning designation.

(3) Encourage the replacement of lower value wetlands with higher value wetlands by offering incentives, such as reducing the replacement ratio if a lower category wetland is replaced with a higher category wetland. This is achievable at no cost to the government and may result in valuable wetland enhancement.

(4) Allow the area within the wetland and its buffer to count toward permitted density and/or open space or landscaping requirements. This would effectively reduce the "penalty" for having wetlands on one's property and would provide an incentive for wetlands preservation at no cost to the local government.

(5) Use the delineation manual currently being used under the Clean Water Act. This would foster consistency and create a more rational regulatory process.[140]

(6) Focus mitigation efforts on systems rather than on individual properties. This will ultimately provide more effective wetlands protection because watersheds, rather than smaller, individual wetlands, will be enhanced and protected.

(7) Give a more prominent role to non-regulatory tools. To date, most local governments have approached their wet-

140. By the time local governments revisit their wetlands regulations, the National Academy of Sciences should have completed its evaluation and generated a manual based on consensus, hopefully making this particular recommendation moot.

lands regulations as if the regulations standing alone must accomplish the mandate of wetlands protection. However, both the GMA and the Minimum Guidelines make clear that the regulations are only "one tool in the tool box" and are intended to be complemented by non-regulatory approaches.

If these recommendations are embodied in local wetlands regulations, local governments will be better able to divert monetary resources currently expended on process to the protection of wetlands and to diffuse much of the controversy over wetlands regulation that has been building in western Washington.

APPENDIX A*
STATUS OF WETLAND/CRITICAL AREA ORDINANCE

COUNTIES
Cities

BENTON (Draft Critical Resources Protection Ordinance 9/93)

CHELAN (Draft Wetlands Ordinance (9/14/93).
Chelan (Adopted 6/92)
Sequim (Adopted /92)
Wenatchee (Adopted 7/2/92)

CLALLAM (Adopted CAO 6/16/92)
Forks (Adopted 2/24/92)
Port Angeles (Adopted 11/19/91)

CLARK (Adopted wetlands ordinance 2/92)
Battle Ground (Adopted 6/1/92)
Camas (Adopted 12/8/91)
Vancouver (Adopted 2/24/92)

DOUGLAS (Adopted Critical Lands Policies 4/92)
Bridgeport (Adopted 8/26/92)
East Wenatchee (Adopted 5/18/92)
Mansfield (Adopted 6/9/92)
Rock Island (Adopted 4/9/92)
Waterville (Adopted 4/20/92)

FERRY (Adopted interim SAO 3/93)

FRANKLIN (Adopted interim CAO 7/13/93)
Pasco (Adopted 2/16/93)

GRANT (Adopted CAO & Resource Lands 5/25/93)

ISLAND (Draft 4/23/92)
Langley (Draft 1/13/92)
Oak Harbor (Draft 2/17/92)

JEFFERSON (Draft CAO 9/93)
Port Townsend (Adopted 10/19/92)

KING (Adopted SAO 8/29/90)
Algona (Adopted 3/17/92)
Auburn (SEPA amendments Adopted 3/2/92)
Bellevue (Already in compliance before GMA)
Black Diamond (Adopted 5/21/92)
Bothell (Adopted 12/16/91)
Carnation (Adopted 2/24/92)
Clyde Hill (Has told DCD they have no wetlands)
Des Moines (Adopted as amended 2/27/92)
Duvall (Adopted 4/9/92)

Enumclaw (Adopted 1/13/92)
Federal Way (Adopted 8/30/91 as amended 1/92)
Hunts Point (Adopted 10/6/92)
Issaquah (Adopted interim 1992. Final to be adopted in 1994.)
Kent (Adopted Alternative B 4/20/93)
Kirkland (Adopted 10/6/92)
Lake Forest Park (Adopted 3/2/92)
Medina (Adopted 9/92)
Mercer Island (Adopted 2/11/92)
Normandy Park (Adopted 3/24/92)
North Bend (Adopted 1/93)
Pacific (Adopted 12/14/92)
Redmond (Adopted 6/15/92)
Renton (Adopted 3/12/92)
Sea Tac (Adopted 2/27/90)
Seattle (Adopted 7/13/92)
Snoqualmie (Adopted 8/12/91)
Tukwila (Adopted 9/30/91)

KITSAP (Adopted Policies & Interim Development Regulations 1/27/92)
Bainbridge (Adopted ESAO 2/20/92)
Bremerton (Adopted CAO 4/93)

KITTITAS (Draft CAO 10/93; expects adoption in June 1994)
Ellensburg (Adopted 9/7/92)

MASON (Adopted interim CAO 8/3/93)
Shelton (Adopted 2/24/92)

PACIFIC (Adopted 12/14/92)

PEND OREILLE (Adopted CAO & Resource Lands 12/28/92)

PIERCE (Adopted 2/92)
Bonney Lake (Adopted 9/92)
DuPont (Adopted 4/8/92)
Gig Harbor (Adopted 11/12/91)
Puyallup (Adopted 7/20/92)
Orting (Adopted 2/27/92)
Sumner (Adopted 4/6/92)
Tacoma (Adopted 2/25/92)

SAN JUAN (Adopted CAO 12/22/92)

SKAGIT (No regulations—tells applicants to deal with Corps)
Anacortes (Adopted 1/1/90)
Burlington (Adopted)
Laconnor (Adopted 8/27/91)
Mt. Vernon (Adopted 3/2/92)
Sedro Woolley (Adopted 11/17/91)

SNOHOMISH (Back to drawing board. Getting new direction from council.)
- Brier (Adopted 2/11/92)
- Edmonds (Adopted 3/17/92)
- Everett (Adopted 12/18/91)
- Lake Stevens (Adopted 12/16/91)
- Lynnwood (Adopted 2/26/92)
- Marysville (Adopted 12/14/92)
- Mill Creek (Adopted 4/28/92)
- Monroe (Adopted 9/26/90)
- Montlake Terrace (Adopted 10/11/84)
- Mukilteo (Adopted 3/23/92)
- Snohomish (Adopted 2/18/92)
- Sultan (2/25/92)

THURSTON (Planning Commission Draft dated July 1993)
- Lacey (Adopted 3/26/92)
- Olympia (Adopted 3/17/92)
- Tumwater (Adopted 8/20/91)

WALLA WALLA (No regulations, no drafts)

WHATCOM (Adopted 6/28/92)
- Bellingham (Adopted 12/9/91)
- Blaine (Adopted 3/23/92)
- Everson (Adopted 1/28/92)
- Nooksack (Adopted 11/5/91)

YAKIMA (Draft "Stream Corridor" Ordinance 10/1/93)
- Grandview (No regs no drafts)

GARFIELD AND COLUMBIA ARE EXCLUDED

SURVEY: 24 COUNTIES . . . 80 CITIES
* DATE CHART PREPARED: OCTOBER 1, 1993

APPENDIX B
COUNTY/CITY WETLAND BUFFER COMPARISON*

Buffer Width	Wetland Class I Type/Category A	II Type/Category B	III Type/Category C	IV
300′	CLARK [1]JEFFERSON [2]THURSTON [3]Brier [4]Lacey [5]Olympia [6]Port Angeles [7]Tumwater Vancouver			
250′	Wenatchee			
200′	BENTON [8] [9]FERRY [10]CLALLAM [11]DOUGLAS [12]WHATCOM Bonney Lake Bremerton Bridgeport Chelan DuPont East Wenatchee Issaquah [13]Mansfield Nooksack North Bend [14]Rock Island Sequim Tacoma [15]Waterville	CLARK [16]JEFFERSON [17]THURSTON [18]Brier [19]Lacey [20]Olympia [21]Port Angeles [22]Tumwater Vancouver		
150′	[23]CHELAN [24]KITTITAS [25]PEND OREILLE PIERCE SAN JUAN Bainbridge Island [26]Bothell Forks Gig Harbor [27]Lake Stevens [28]Mill Creek Orting [29]Redmond [30]Shelton Sumner	Wenatchee		
100′	ISLAND KING MASON PACIFIC Bellingham Carnation Des Moines	BENTON [32]CHELAN [33]FERRY [34]CLALLAM [35]DOUGLAS [36]KITTITAS [37]PEND OREILLE	CLARK [46]JEFFERSON [47]THURSTON [48]Brier Federal Way [49]Lacey [50]Olympia	Federal Way

	Duvall	PIERCE	[51]Port Angeles	
	Edmonds	[38]WHATCOM	[52]Tumwater	
	Enumclaw	Bainbridge	Vancouver	
	Everett	Bonney Lake		
	Everson	[39]Bothell		
	Federal Way	Bremerton		
	Kent	Bridgeport		
	Lake Forest Park	Chelan		
	Langley	DuPont		
	Lynnwood	East Wenatchee		
	Marysville	Federal Way		
	Mukilteo	Gig Harbor		
	Normandy Park	Issaquah		
	Pacific	[40]Mansfield		
	[31]Puyallup	[41]Mill Creek		
	Renton	Nooksack		
	SeaTac	North Bend		
	Snohomish	Port Townsend		
	Snoqualmie	[42]Redmond		
	Tukwila	[43]Rock Island		
		Sequim		
		[44]Shelton		
		Sumner		
		Tacoma		
		[45]Waterville		
90′	Battle Ground			
85′	Algona			
75′	KITSAP	KITSAP	KITSAP	KITSAP
	Blaine	MASON	[54]Shelton	
	Monroe	SAN JUAN	Wenatchee	
		Enumclaw		
		Everett		
		Forks		
		[55]Puyallup		
65′		[55]Lake Stevens		
60′		Marysville		
50′	GRANT	KING	BENTON	CLARK
	Bellevue	PACIFIC	[56]CHELAN	[69]JEFFERSON
	Black Diamond	Bellevue	[57]CLALLAM	[70]THURSTON
	Kirkland	Black Diamond	[58]DOUGLAS	Black Diamond
	Seattle	Blaine	[59]FERRY	[71]Brier
	Sedro Woolley	Carnation	[60]KITTITAS	[72]Lacey
		Duvall	MASON	[73]Olympia
		Edmonds	SAN JUAN	Seattle
		Kent	[61]WHATCOM	[75]Shelton
		Lake Forest Park	Bainbridge	[76]Tumwater
		Langley	Black Diamond	Vancouver
		Lynnwood	Bonney Lake	Wenatchee
		Mukilteo	[62]Bothell	
		Orting	Bremerton	
		Pacific	Bridgeport	
		Renton	Chelan	
		SeaTac	East Wenatchee	
		Seattle	Enumclaw	
		Snohomish	Everett	
		Snoqualmie	Forks	
		Tukwila	Gig Harbor	
			[63]Lake Stevens	
			[64]Mansfield	

			[65]Mill Creek Nooksack North Bend Port Townsend [66]Redmond [67]Rock Island Seattle Sequim Sumner Tacoma [68]Waterville	
40′			Marysville	
35′		Algona Des Moines Monroe Normandy Park	[77]Puyallup	SAN JUAN
30′		Sedro Woolley		
25′	Anacortes Burlington Hunts Point LaConnor Medina Mercer Island Mt. Vernon	GRANT ISLAND Anacortes Bellevue Burlington Hunts Point LaConnor Kirkland Medina Mercer Island Mt. Vernon	KING PACIFIC Anacortes Bellingham Blaine Burlington Carnation Duvall Edmonds Everson Hunts Point Kent LaConnor Lake Forest Park Langley Lynnwood Medina Mercer Island Monroe Mt. Vernon Mukilteo Orting Pacific Renton SeaTac Sedro Woolley Snohomish Snoqualmie Tukwila	BENTON [78]CHELAN [79]CLALLAM [80]DOUGLAS [81]FERRY MASON PIERCE [82]WHATCOM Anacortes Bainbridge Bonney Lake Bridgeport Burlington East Wenatchee Enumclaw Everett Everson Forks Gig Harbor Hunts Point Issaquah LaConnor Mansfield Marysville Medina Mercer Island [83]Mill Creek Mt. Vernon Port Townsend Rock Island Sequim Sumner Tacoma Waterville
20′			GRANT	Chelan
10′			Algona	GRANT Lynnwood [84]Puyallup
NOT AVAILABLE (no regulations or drafts)	SKAGIT SNOHOMISH WALLA WALLA YAKIMA	SKAGIT SNOHOMISH WALLA WALLA YAKIMA	SKAGIT SNOHOMISH WALLA WALLA YAKIMA	SKAGIT SNOHOMISH WALLA WALLA YAKIMA

	Grandview	Grandview	Grandview	Grandview
NOT ADDRESSED (category not defined or buffer width not addressed)	FRANKLIN Clyde Hill Pasco Oak Harbor	FRANKLIN Clyde Hill Pasco Oak Harbor	FRANKLIN ISLAND PEND OREILLE Battle Ground Clyde Hill Des Moines DuPont Kirkland Normandy Park Oak Harbor Pasco	FRANKLIN ISLAND KING PACIFIC PEND OREILLE Algona Battle Ground Bellevue Bellingham Blaine Bothell Carnation Clyde Hill Des Moines DuPont Duvall Edmonds Kent Kirkland Lake Forest Park Langley Monroe Mukilteo Normandy Park North Bend Oak Harbor Orting Pacific Pasco Renton SeaTac Sedro Woolley Snohomish Snoqualmie Tukwila
ZERO (no buffers required)		Battle Ground	Bellevue	KITTITAS Lake Stevens Nooksack Redmond
CASE BY CASE (each project evaluated separately)	Auburn Camas Ellensburg Mountlake Terrace Sultan	Auburn Camas Ellensburg Mountlake Terrace Sultan	Auburn Camas Ellensburg Mountlake Terrace Sultan	Auburn Camas Ellensburg Mountlake Terrace Sultan

SURVEY: 24 COUNTIES . . . 80 CITIES
* DATE CHART PREPARED: OCTOBER 1, 1993

NOTES TO APPENDIX B

1. 300' high intensity, 200' low intensity
2. 300' high intensity, 200' low intensity
3. 300' high intensity, 200' low intensity
4. 300' high intensity, 200' low intensity
5. 300' high intensity, 200' low intensity
6. 300' high intensity, 200' low intensity
7. 300' high intensity, 200' low intensity

8. 0-150' high Intensity, 0-125' low intensity
9. 200' high intensity, 100' low intensity
10. 200' major development, 100' minor development
11. 200' high intensity, 100' low intensity
12. 200' high intensity, 100' low intensity
13. 200' high intensity, 100' low intensity
14. 200' high intensity, 100' low intensity
15. 200' high intensity, 100' low intensity
16. 200' high intensity, 100' low intensity
17. 200' high intensity, 100' low intensity
18. 200' high intensity, 100' low intensity
19. 200' high intensity, 100' low intensity
20. 200' high intensity, 100' low intensity
21. 200' high intensity, 100' low intensity
22. 200' high intensity, 100' low intensity
23. 150'-25' high intensity, 125'-25' low intensity
24. 150' high impact, 75' low impact
25. 150' high intensity, 50' low intensity
26. 150' maximum, 75' minimum
27. 150' high intensity, 100' low intensity
28. 150' high impact, 75' low impact
29. 150' maximum, 100' minimum
30. 150' high intensity, 100' low intensity
31. Standard, 75' Enhancement
32. 100'-25' high intensity, 75'-25' low intensity
33. 100' high intensity, 50' low intensity
34. 100' major development, 50' minor development
35. 100' high intensity, 50' low intensity
36. 100' high intensity, 50' low intensity
36. 100' high impact, 50' low impact
37. 100' high intensity, 50' low intensity
38. 100' high intensity, 50' low intensity
39. 100' maximum, 50' minimum
40. 100' high intensity, 50' low intensity
41. 100' high impact, 50' low impact
42. 100' maximum, 75 minimum
43. 100' high intensity, 50' low intensity
44. 100' high intensity, 75' low intensity
45. 100' high intensity, 50' low intensity
46. 100' high intensity, 50' low intensity
47. 100' high intensity, 50' low intensity
48. 100' high intensity, 50' low intensity
49. 100' high intensity, 50' low intensity
50. 100' high intensity, 50' low intensity
51. 100' high intensity, 50' low intensity
52. 100' high intensity, 50' low intensity
53. 75' standard, 50' enhancement
54. 75' high intensity, 50' low intensity
55. 65' high intensity, 35' low intensity
56. 25-50' high or low intensity
57. 50' both major and minor development
58. 50' high intensity, 25' low intensity
59. 50' high intensity, 25' low intensity
60. 50' high impact, 25' low impact
61. 50' high intensity, 25' low intensity
62. 50' maximum, 25' minimum
63. 50' high intensity, 25' low intensity
64. 50' high intensity, 25' low intensity
65. 50' high impact, 25' low impact
66. 50' maximum, 25' minimum
67. 50' high intensity, 25' low intensity
68. 50' high intensity, 25' low intensity

69. 50' high intensity, 25' low intensity
70. 50' high intensity, 25' low intensity
71. 50' high intensity, 25' low intensity
72. 50' high intensity, 25' low intensity
73. 50' high intensity, 25' low intensity
74. 50' high intensity, 25' low intensity
75. 50' high intensity, 25' low intensity
76. 50' high intensity, 25' low intensity
77. 35' standard, 25' enhancement
78. 25' high intensity, exempt low intensity
79. 25' from both major and minor development
80. 25' both high and low intensity
81. 25' both high and low intensity
82. 25' both high and low intensity
83. 25' high impact, 0-10' low impact
84. 10' standard, 5' enhancement

From:	Wiser, Sonja
To:	Hermen, Matt
Subject:	FW: CPZ20019-00023
Date:	Friday, July 05, 2019 5:54:33 PM
Attachments:	Regulation of Wetlands in Western Washington Under the Growth Management Act.pdf Hinton.pptx

---

From: Greg Huggins [driveserv@hotmail.com]
Sent: Friday, July 05, 2019 4:17 PM
To: Wiser, Sonja
Subject: CPZ20019-00023

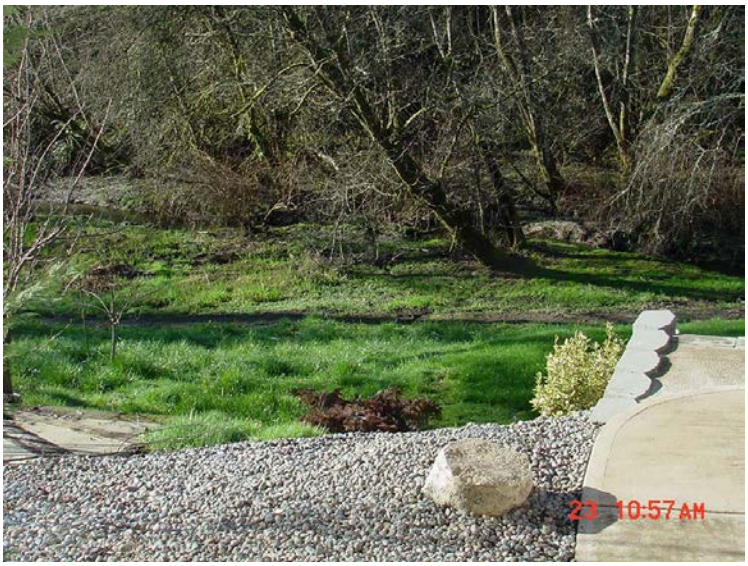
Sonja,

We sent this power point to Matt Hermen as our testimony on this proposal. After sending it we found a couple things we wanted to clarify. First, the plan on Page 2 of the power point for development shows 109 lots at 7000 sq. ft. but it does not take in to account county code 40.250.60 which mandates 9000 sq. ft. minimum. The map shows as many lots as possible put on the this size property. Doing the math 7/9 of 109 = 84 lots minus 2 for the increased lot size on the adjacent lots leaves 82. We don't know how that affects the calculations but it should be noted.

We are also attaching "Regulation of Wetlands in Western Washington Under the Growth management Act". The GMA repeatedly states the goal of the GMA is to limit damage to wetlands by decreasing urban sprawl and increasing infill. The Hinton property is 11 driving miles from downtown Vancouver. Mill Creek Forest PUD is strongly opposed to lifting the urban holding on this property until we can be assured our properties won't be damaged by flooding, sink holes or land slides; all of which we have experienced in the past. With the large wet lands area on this property we would be living with a ticking time bomb next door. If you want to see our documentation, we have a lot of it, just call my cell phone and we can discuss this. if no answer leave a message or text me to call you.

Greg Huggins
Cell 360 609 2431

Mill Creek Forest HOA is opposed to the lifting of the urban holding overlay proposed in CPZ20019-00023. We worked extensively with the county on the Mill Creek Sub Area plan in 2009. Our concerns ,at that time, were the hard surface increase around Mill Creek would increase flooding in our PUD and cause increased property damage to our homes. Since then the development up 29th street has added hundreds of houses on the other side of the creek that runs through our property. This has turned the creek into a raging river during rain storms



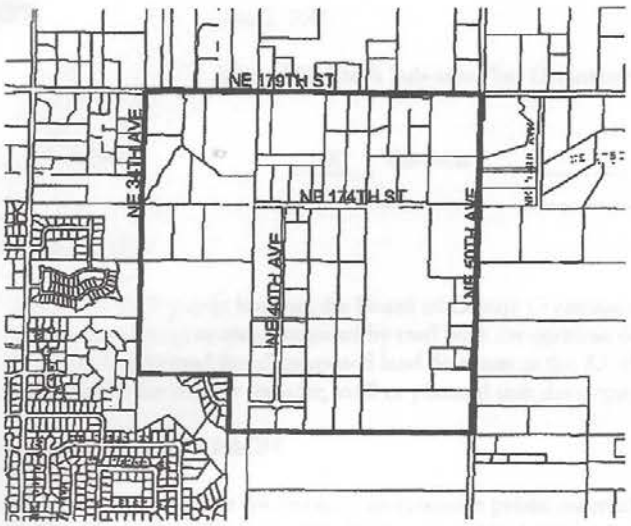
We received this from the planning department who said it came from Hinton development. Lifting urban holding makes this is one step closer.

This area is part of the Mill Creek Sub Area Plan covered by county code 40.250.060 which states the lot size shall be 9000 Sq. Ft. minimum. The lots on this drawing are only 7000 Sq. Ft. Another stipulation of the code is the adjacent lot to Mill Creek Forest must be either 200 feet from our HOA or the lots sizes must be at least the size of the adjacent lots from Mill Creek Forest 17550 Sq. Ft. This drawing shows 7000 Sq. Ft. and no setback from our HOA.

Figure 1 is from the county website. Most of the Hinton property is classified by the county as unstable slopes, Hydric soils, and **wetlands.** Hydric soil is soil which is permanently or seasonally saturated by water, resulting in anaerobic conditions, as found in wetlands. In the winter I have walked into the field in spring and the water was over 6" up on my boots. This is the ground water that keeps the water flowing for the salmon, various fish and eels found in the stream.

Since 2009 not much has happened on this side of the creek that would make it more desirable for development. The road system has gotten much more congested. Most of the properties are still on wells and septic's. The sewer line that was supposed to service this property has been compromised by a land slide. We still have only one way in and one way out, 50th Ave. which has large dips in both directions that can be very dangerous if you are not paying attention. The closest retail business is the John Deere dealer on 72nd Ave.

Figure 40.250.060-1

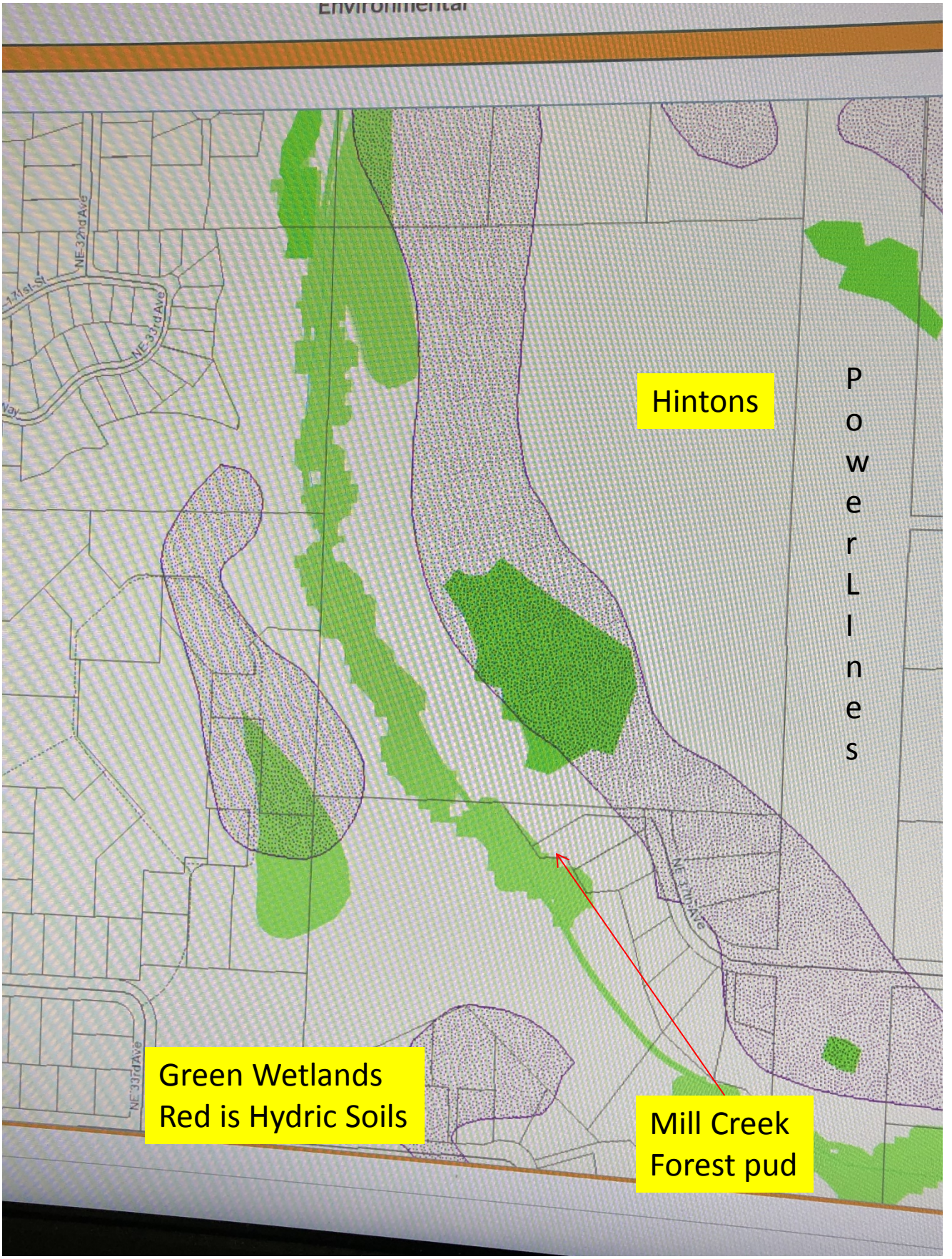


C. Standards.

The following additional standards apply in the overlay district:

1. New lots created adjacent to urban subdivision lots existing at the time of the adoption of the Mill Creek Overlay District shall meet or exceed the average lot size of the abutting subdivision lots unless there is at least two hundred (200) feet of open space between the existing and proposed lots.
2. Prior to approval of any development that would add traffic to NE 37th Avenue, additional access via a public road connection to NE 40th Avenue or NE 174th Street must be assured.
3. A minimum lot size of nine thousand (9,000) square feet is required for all land divisions in the R1-10 and R1-20 districts proposing to develop under the density transfer provisions of 40.220.110(C)(5), the infill provisions of 40.260.110 or the Planned Unit Development provisions of 40.520.080. The exceptions to lot sizes in 40.200.050 shall still apply.

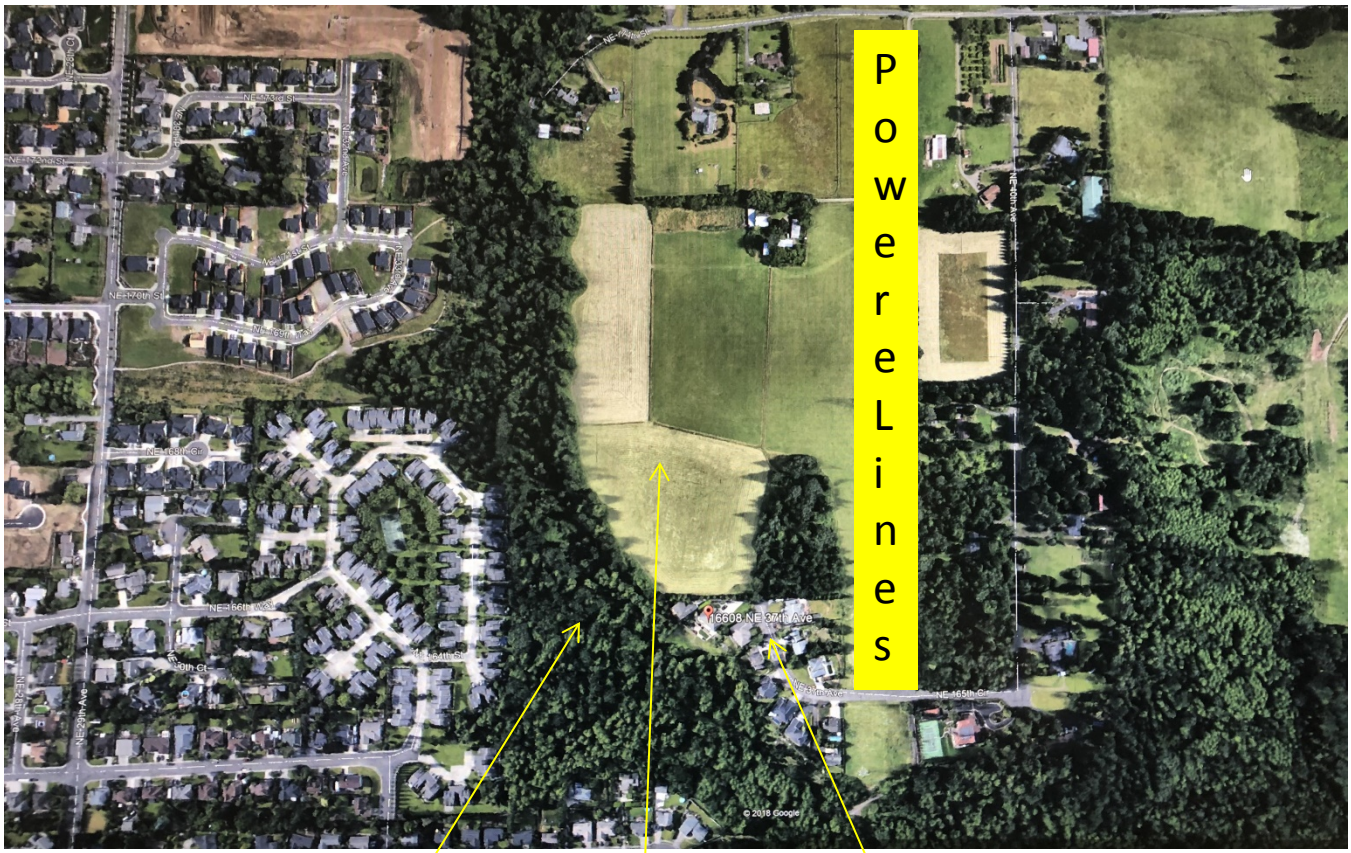
Figure 1



From county website

Our HOA is not opposed to lifting the urban holding where needed but lifting it on this particular property will be the first step for them starting the development process with very bad consequence for us.

We are also including portions of the power point presentation we use to document the flooding, Sink holes, and the slope of Hinton's property in 2009.



The west fork of Mill Creek is in the trees west of Hintons and the back of Mount Vista about 4 miles driving distance. Notice the west side of the creek is all low density with settling ponds. One washed out into the creek and very badly silted up the creek and had to get federal fund to rebuild it. The brown area at the top of the west side is now developed. The only natural recharge is the east side of the creek which is under consideration for dense packing. Sheet 5 of this presentation shows wetlands and hydic soils over most of this land

David T. McDonald
2212 NW 209th Street
Ridgefield, Washington 98642

July 5, 2019

Dr. Oliver Orjiako
Director
Clark County Department of Community Planning
Public Services Building
Vancouver, Washington 98660

RE: Determination of Non-Significance Amend Comprehensive Plan to remove Urban Holding Overlay near the I5/179th Street interchange (Hinton Phase III and Wollam Phase IV)

Sent via e-mail pdf to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

I am submitting these comments as an individual and not on behalf of any particular group, political party or organization. These comments assert that a checklist and DNS is an inadequate environmental review in these cases for the reasons stated below. "Non-project" proposals are subject to SEPA, the lead agency cannot conduct an environmental review of a non-project proposal under the assumption that there will be no direct and/or indirect environmental impacts, including potential cumulative impacts from the "non-project" action. When actions such as these are proposed, it should still be subject to a comprehensive review of potential environmental impacts from reasonably foreseeable developments, especially where the action to be taken will increase the intensity of developments in areas that specifically restricted developments until certain prerequisites for removal of the overlay have been met.

There are several issues that arise with the piecemeal SEPA review process being conducted by the County and the Clark Regional Wastewater District. I am adopting by reference the letter dated August 14, 2018, a copy of which is attached and incorporated by this reference, which sets forth some of the concerns that are now compounded by the fact that these projects can no longer be considered "non-projects" and should include, at a minimum, the combined environmental impacts of all of the

current projects (Wollam, Hinton, Mill Creek (Holt)[1] and Three Creeks (Killian) at build-out as those projects are a reality despite the "non-project" designation. In addition, I am adopting by reference the records from various planning commission hearings, and Council Hearings/Council Time meetings and Work Sessions on Amending the Comprehensive Plan to remove Urban Holding Overlay near the I5/179th Street interchange including but not limited to all of the documents and audio records posted on the Grid on or between January 1, 2018 and the date of this letter. In addition, these environmental review should also incorporate the proposed annexation of properties into the Clark Regional Wastewater District (a copy of that document is filed concomitantly with this document and is incorporated by this reference).

At the outset, these projects are not properly defined as required by WAC 197-11-060(3) as they are not described in a way that encourages "considering and comparing alternatives" and does not describe the proposal in terms of "objectives rather than preferred solutions". *See* WAC 197-11-060(3)(a)(iii). In addition, these proposals violate WAC 197-11-060(3)(b). Under that provision, "proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action, shall be evaluated ***in the same environmental document***. *Id.* Although "phased review" is allowed in some circumstances [*See* WAC 197-11-060(5)]. In this case, §§ 5 is inapplicable because all of these projects are inextricably intertwined by the need for the universal removal of the urban holding and the expenditure of a minimum of $66.2[2] million dollars to meet concurrency standards under GMA and the projects:

> (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or
> (ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.
>
> WAC 197-11-060(3)(b)(i) and (ii).

In addition to failing to include all the projects in the area under one comprehensive "project" (as opposed to "non-project") environmental review, the documents fail to address all of the impacts as defined by WAC 197-110-060(4)(c)(a

---

1 https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q3/071619_MillCreekMasterPlanNarrative%3B%20Ex_BtoDA.pdf, and https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q3/071619_MillCreekMasterPlanNarrative%3B%20Ex_BtoDA.pdf

2 In addition, there is information that the Council is no considering expanding the project area and adding an additional 97 million dollars worth of infrastructure, predominantly roads, to the current project. *See* https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q2/061219WS_179St_I5_FinancialOptions.pdf. at p 14.

copy of which is attached and incorporated by this reference) in that they fail to address impacts).

The areas in Urban Holding subject to these reviews are in Urban Holding due to lack of infrastructure available for development of the underlying zoning. The current overlay covers a large swath of area surrounding the 179th Street/I5 interchange. *See* PPTs dated June 12, 2019. https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q2/061219WS_179St_I5_FinancialOptions.pdf

It appears that this "non-project" action is the County's effort to do an end around a comprehensive review and instead make a strong effort to remove the current overlay in a piecemeal fashion with no comprehensive plan for the entire area subjected to the Urban Holding Overlay. These documents even designate this "non-project" action as "Phase IV" (The Three Creeks Development that was the subject of the SEPA comments dated August 14, 2018 was designated as Phase I). Therefore, it is clear that the County anticipates specific growth, and specific cumulative actions and impacts, that are inevitably going to occur as preconditions to the lifting of the Overlay as the lifting will be conditioned upon specific Development Agreements being signed and in effect. *See generally* https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2018/2018_Q4/121818_Hearing_AnnualReviewDockets_179thSt_I5_DA.pdf and https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q3/071619_HoltMillCreekDADRAFT.pdf.

It is also assumed that the County seeks to allow certain developers, pursuant to development agreements that may or may not be subject to public review, the ability to consume any existing capacities that may exist for smaller "cut-out" projects without considering the overlay as a whole. Such a false narrative would selectively allow some development while excluding other developments leading to disparate treatment of landowners in the area and could cause greater expense to landowners who are forced into plans previously approved by the Council pursuant to the piecemeal development agreements.

Second, these "non-project" actions involve a modification of an existing environment designated under the Growth Management Act planning process by a proposal to amend the comprehensive plans and to, at least partially (and maybe totally as the Council's actions have remained a moving target throughout this process regarding the scope of their desires to remove the Urban Holding and/or the scope of the work and the cost of the work), remove the overlay on this area but does not discuss the development of new transportation plans along with potential new ordinances, rules, and regulations and environmental impacts that will be concomitant to the piecemeal implementation of these development agreements.

Third, according to the checklist, this SEPA (which claims no impacts to the environment) fails to consider the impacts of the the proposed development but states that the action is conditioned on "the execution of a development agreement" that, at this stage, does not exist or has not been put into the public record. Thus, it is clear that there will be impacts and it is impossible for the public to comment on the proposal's impact on the environment if there is no discussion of the development under the propose and it being done in conjunction with the full infrastructure analysis of the area, including but not limited to:

1. Diversion of the money by the County to these projects when the County has a current Road Fund Deficit of $158 million dollars (or at least that is the deficit set forth in the 2015 Comprehensive Plan update;
2. Diversion of money from repairing existing infrastructure in the County including but not limited to Bridges that need repair and upgrading. *See* https://www.clark.wa.gov/sites/default/files/dept/files/public-works/bridges/BridgeReport.pdf and the 7 bridges listed here https://www.clark.wa.gov/public-works/restricted-bridges;

In addition, the Document itself does not discuss in any fashion the following:

The lack of substantial public benefit to use of public funds for market rate residential construction and that residential is a net tax loser, which costs $1.16 in services per tax dollar received. *See* Columbian 5/26/19. In addition, any of the beneficiaries of this proposed County spending who are not currently Clark County residents/taxpayers would unjustifiably benefit by the use of public funds without public benefit can be considered an unconstitutional gift under WA and US Constitutions.

Therefore, the SEPA document(s) should consider an alternative that prohibits the use of public funds in order to lift urban holding designation. Assuming *argumento*, that the County wishes to pursue the use of public funds for lifting the urban holding, the public's % share of the costs should be reserved for road capacity for family wage jobs and affordable housing in a Growth Allocation Plan. *See* Growth Allocation Plan used by the City of Vancouver to reserve Mill Plain/192nd Ave road capacity for jobs. If the public pays for 25% of the costs, then 25% of the road capacity should be reserved for jobs and affordable housing. Jobs reservations should be for pure commercial/industrial uses and not for added residential or retain in "Mixed use". "Affordable Housing" should be homes that are priced so that they can be afforded by people making 60% of the County's average income.

Thank you for your consideration of these comments. Please submit them for the record.

Best Regards,

David T. McDonald

DETERMINATION OF NON-SIGNIFICANCE

Description of Proposal: *Amend Comprehensive Plan to remove Urban Holding Overlay near the I-5/179th St. Interchange, CPZ2019-00023 (Hinton), Phase III*

Proponent: *Clark County Community Planning*

Location of proposal, including street address, if any: *3801 NE 174th St., Vancouver, WA 98686*

Lead Agency: *Clark County, Washington*

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. In 2007, the Vancouver Urban Growth Area was expanded to include the properties affected in this proposal. An Environmental Impact Analysis was completed in 2007 that was associated with this urban land. In 2016 a supplemental Environmental Impact Statement was completed in association with the 2016 Comprehensive Plan update. A new environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below.

Comments must be submitted by: July 5, 2019

Responsible Official: Oliver Orjiako
Position/title: Director
Address: **RE: SEPA Comments**
Clark County Community Planning
1300 Franklin Street; 3rd Floor
P.O. Box 9810
Vancouver, WA 98666-9810

Date: 6-12-19 **Signature:** Oliver Orjiako

The staff contact person and telephone number for any questions on this review is Matt Hermen, Planner III, (564) 397-4343.

For other formats, contact the Clark County ADA Office at ADA@clark.wa.gov.

DETERMINATION OF NON-SIGNIFICANCE

Description of Proposal: *Amend Comprehensive Plan to remove Urban Holding Overlay near the I-5/179th St. Interchange, CPZ2019-00024 (Wollam), Phase 4*

Proponent: *Clark County Community Planning*

Location of proposal, including street address, if any: *807 NW 179th St., Ridgefield, WA 98642*

Lead Agency: *Clark County, Washington*

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. In 2007, the Vancouver Urban Growth Area was expanded to include the properties affected in this proposal. An Environmental Impact Analysis was completed in 2007 that was associated with this urban land. In 2016 a supplemental Environmental Impact Statement was completed in association with the 2016 Comprehensive Plan update. A new environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below.

Comments must be submitted by: July 5, 2019

Responsible Official: Oliver Orjiako
Position/title: Director
Address: **RE: SEPA Comments**
Clark County Community Planning
1300 Franklin Street; 3rd Floor
P.O. Box 9810
Vancouver, WA 98666-9810

Date: 6-12-19 **Signature:** Oliver Orjiako

The staff contact person and telephone number for any questions on this review is Matt Hermen, Planner III, (564) 397-4343.

For other formats, contact the Clark County ADA Office at ADA@clark.wa.gov.

August 14, 2018

Dr. Oliver Orjiako
Director
Clark County Department of Community Planning
Public Services Building
Vancouver, Washington 98660

RE: Determination of Non-Significance Amend Comprehensive Plan to remove Urban Holding Overlay near the I5/179th Street interchange Phase I

Sent via e-mail pdf to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

I am submitting these comments as an individual and not on behalf of any particular group, political party or organization. These comments assert that a checklist and DNS is an inadequate environmental review in this case for the reasons stated below. "Non-project" proposals are subject to SEPA, the lead agency cannot conduct an environmental review of a non-project proposal under the assumption that there will be no direct and/or indirect environmental impacts, including potential cumulative impacts from the "non-project" action. When a action such as this one is proposed, it should still be subject to a comprehensive review of potential environmental impacts from reasonably foreseeable developments, especially where the action to be taken will increase the intensity of developments in areas that specifically restricted developments until certain prerequisites for removal of the overlay have been met.

First, the area in Urban Holding subject to this review is in Urban Holding due to lack of infrastructure available for development of the underlying zoning, in this case Mixed Use zoning. I believe, and can supplement the record, that this holding was put in place as part of the original comprehensive plan from 1994. The current overlay covers a large swath of area surrounding the 179th Street/I5 interchange.

It appears that this "non-project" action is the County's initial attempt to remove the current overlay in a piecemeal fashion with no comprehensive plan for the

entire area subjected to the Urban Holding Overlay. It even designates this "non-project" action as "Phase I" and therefore, it is clear that the County anticipates specific growth, and specific cumulative actions, but anticipates them occurring in a piecemeal basis. It is assumed that the County seeks to allow certain developers, pursuant to development agreements that may or may not be subject to public review, the ability to consume any existing capacities that may exist for smaller "cut-out" projects without considering the overlay as a whole, which would selectively allow some development while excluding other developments leading to disparate treatment of landowners in the area and could cause greater expense to landowners who are forced into plans previously approved by the Council pursuant to the piecemeal development agreements.

Second, this "non-project" action involves a modification of an existing environment designated under the Growth Management Act planning process by a proposal to amend the comprehensive plans and to, at least partially, remove the overlay on this area but does not discuss the development of new transportation plans along with potential new ordinances, rules, and regulations and environmental impacts that will be concomitant to the piecemeal implementation of these development agreements.

Third, according to the checklist, this SEPA (which claims no impacts to the environment) fails to consider the impacts of the the proposed development but states that the action is based upon "the execution of a development agreement" that, at this stage, does not exist or has not been put into the public record. Thus, it is clear that there will be impacts (at least a minimum of 402 trips per day) and it is impossible for the public to comment on the proposal's impact on the environment if there is no discussion of the development under the propose

Moreover, a recent work session with the Council exhibited that there were many other possible projects and development agreements being proposed in the impacted area around the 179th street interchange. Based upon a review of the materials presented to the county, the following have/are being proposed:

Killian 60,000 Sq. Ft. Retail (DA Approved Phase 1)

- Killian Three Creeks North Phase 1– (DA in progress)
- Killian remainder Phase 2 - NE 179th Street Commercial Center (DA Approved Phase 2)
- Holt Mill Plain PUD (606 homes/99 townhomes)
- Hinton Property (129 homes)
- Wollam Property (220 homes)

See The Grid Materials from 7/11/18 WS and audio of that work session all of which are incorporated into these comments by reference[1].

However, there has been no comprehensive analysis of traffic impacts or the impacts of the contemplated infrastructure and developments on the existing environment as required by SEPA and, if one has been completed, it has not been adopted by the County and is not incorporated into this SEPA document.

Therefore, this SEPA review for this non-project actions fails in many ways including failing to consider conduct a comprehensive analysis of the reasonably foreseeable impacts, failing to address the cumulative impacts of all of these developments that are being proposed, failing to consider any possible alternatives and failing to outline any potentially successful mitigation measures.

Fourth, the DNS/Checklist lists no other actions that have been taken by the County regarding the Urban Holding in general and this parcel specifically. Presumably, there have been other determinations, and reviews of those determinations by the Growth Management Hearings Board(s). If other decisions, papers, determinations, environmental reviews etc have been completed by the County regarding this parcel specifically, and the overlay in general, then those documents should be made a part of and/or referenced in the environmental review for this proposed Comprehensive Plan amendment. If those do exist, the DNS/Checklist does not, but should, list the other relevant environmental documents/studies/models that have been done regarding the Urban Holding area since it was placed under the Urban Holding overlay. For example, a county's EIS for its comprehensive plan may have information relevant to the Urban Holding Overlay. In addition, there should be other county, Growth Board and/or appellate court references to the Urban Holding Overlay and the reason(s) that it has not been removed over the years.

Fifth, there is no description of any alternatives much less a range of alternative or preferred alternative or any description of if a particular alternative was fully implemented (including full build-out development, redevelopment, changes in land use, density of uses, management practices, etc.), any description of where and how it would direct or encourage demand on or changes within elements of the human or built environment, as well as the likely affects on the natural environment. In addition, the document fails to identify where the change or affect or increased demand might or could constitute a likely adverse impact, or any description of any further or additional adverse impacts that are likely to occur as a result of those changes and affects.

Sixth, this checklist cannot serve as an environmental analysis for later project reviews because it has been created in a way that does not anticipate any such

---

[1] It is unclear to me at this point if this current SEPA is for one of those proposed developments.

projects where, in contrast, the county definitely is contemplating such projects. The more detailed and complete the environmental analysis is during the "non-project" stage, the less review will needed during project review and, therefore, any project review can focus on those environmental issues not adequately addressed during the "non-project" stage. The current checklist and DNS fails to provide any analysis that could be utilized later at a proposed project phase and fails to give notice to the citizen of the real potential environmental impacts that will occur once the Urban Holding Overlay is lifted and projects can proceed.

Currently, given the potential development agreements listed above, along with others that may not be in the public realm, there is ample ability for the lead agency to anticipate and analyze the likely environmental impacts of taking this action and the failure to do so creates an inadequate SEPA document (for example a minimum of 2500 peak hour trips if the developers' numbers are to be believed in the documents that they submitted in the July work session). Failure to conduct a full environmental review at this juncture allows for the removal of the overlay while precluding the public to speak to the removal of the overlay at all. Plus, once this overlay is removed, the question arises as to whether the removal of all the other portions of the overlay must be removed either piecemeal or as a whole through this "non-project" action that has no real environmental review or input from the public.

Although an environmental checklist can act as a first step in an environmental process, including Part D, Supplemental Sheet for "non-project" activities it should not stand in the way of a more comprehensive environmental impact statement, especially in this case given the large areas under the urban holding overlay that are obviously intended to be subject to removal only upon meeting specific prerequisites. Further, there has been no analysis of the traffic impacts on 179th street, 15th Avenue and/or the 179th street intersection by the current proposal(s) by the lead agency. A full environmental review, that includes all known proposed projects, along with the impact of full build-out should the entire overlay be removed, should be conducted prior to the removal of any portion of the overlay.

These comments assert that this "non-project" SEPA proposal review should also 1) consider all existing regulations, 2) set forth the underlying rational behind the fact that there is an Urban Holding Overlay in existence, 3) the reason for the overlay being placed on the area, 4) remove it from the overlay and 5) the requirements that are required to remove the overlay as well as and 6) any other development under consideration. Plus the environmental review should include an analysis of the potential impacts of the entire area once the overlay is lifted in the larger area surrounding the 179th Street interchange, there will be a plethora of impacts, including but not limited to traffic impacts.

Therefore, this "nonproject" action involves a comprehensive plan amendment, or similar proposal governing future project development, and the probable

environmental impacts that would be allowed for the future development need to be considered. The environmental analysis should analyze the likely impacts of the of build-out of all the underlying zones covered by the overlay when determining the efficacy of allowing this one "non-project" to have the overlay removed. In addition, the proposal should be described in terms of alternative means of accomplishing an objective.

Thank you for your consideration of these comments. Please submit them for the record.

Best Regards,

David

CLARK REGIONAL WASTEWATER DISTRICT

COMMISSIONERS
Norm Harker
Denny Kiggins
Neil Kimsey
GENERAL MANAGER
John M. Peterson, P.E.

8000 NE 52 Court Vancouver, WA 98665 PO Box 8979 Vancouver, WA 98668
Phone (360) 750-5876 Fax (360) 750-7570 www.crwwd.com

File: Annexation 03-17
DNS 03-17

Date Published:
June 21, 2019

June 17, 2019

Please find enclosed an environmental Determination of Non-Significance issued pursuant to the State Environmental Policy Act (SEPA) Rules (Chapter 197-11), Washington Administrative Code.

You may comment on this DNS by submitting written comments within Fifteen (15) days of this notice as provided for by WAC 197-11-340.

Please address all correspondence to: Clark Regional Wastewater District
PO Box 8979
Vancouver, WA 98668-8979
Attn: Steve Bacon

DISTRIBUTION LIST

Federal Agencies:
US Army Corps of Engineers, Seattle District
US Fish and Wildlife Service
National Marine Fisheries Service
Northwest Power & Conservation Council
Bonneville Power Administration

Native American Interests:
Yakima Indian Nation
Cowlitz Indian Tribe
Chinook Indian Tribe

State Agencies:
Department of Ecology
Department of Fish and Wildlife
Department of Community Development
Department of Commerce
Department of Health
Department of Natural Resources – SEPA Center
Department of Transportation
Office of Archaeology and Historic Preservation

Regional Agencies:
Fort Vancouver Regional Library
Southwest Clean Air Agency
Southwest Washington Regional Transportation Council

ACCREDITED AGENCY A•P•W•A

Local Agencies:

Clark County
- Administration
- Building
- Community Planning
- Public Works
- Auditor
- Public Health

Vancouver/Clark Parks and Recreation
City of Battle Ground
City of Vancouver
- Administration
- Community Preservation & Development
- Public Works

Other Agencies:

Clark Public Utilities
CRESA
C-Tran
Battle Ground School District
Fire Protection District 5
Clark County Sheriff

Interest Groups:

Building Industry Association of Clark County
Clark County Natural Resources Council
Vancouver Housing Authority
Columbia River Economic Development Council
Vancouver Chamber of Commerce
Fairgrounds Neighborhood Association
Pleasant Highlands Neighborhood Association
North Salmon Creek Neighborhood Association

Interested Parties:

David T. McDonald

DETERMINATION OF NONSIGNIFICANCE

Description of proposal:

Annexation of properties into the District boundary. Said properties are located in NE ¼ Section 13 T3N R1E WM; NE & NW ¼ of the SE ¼ Section 13 T3N R1E WM, NE & SE ¼ of the NW ¼ Section 13 T3N R1E WM.

Proponent:

Clark Regional Wastewater District

Location of proposal, including street address, if any.

The proposed annexation includes all properties within the following described areas:

- ***The SE ¼ of Section 12 T.3N., R.1E., W.M.,***
- ***The NE ¼ of Section 13 T.3N., R.1E., W.M.,***
- ***The E ½ of the NW ¼ of Section 13 T.3N., R.1E., W.M.,***
- ***The N ½ of the SE ¼ of Section 13 T.3N., R.1E., W.M.,***
- ***The N ½ of the NE ¼ of the SW ¼ of Section 13 T.3N., R.1E., W.M.,***
- ***19002 NE 50th Ave 181440-000***
- ***19100 NE 50th Ave 181449-000***
- ***19020 NE 50th Ave 181517-000***

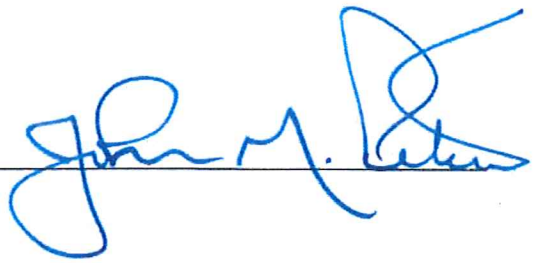
Lead Agency: ***Clark Regional Wastewater District***

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. The environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

___ There is no comment period for this DNS.

_X_ This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 15 days from the date below. Comments must be submitted by July 8, 2019.

Responsible Official: ***John Peterson***
Position/Title: ***General Manager***
Telephone: ***(360) 750-5876***
Fax: ***(360) 750-7570***
Address: ***8000 NE 52nd Court***
PO Box 8979
Vancouver, WA 98668-8979

Date: 18 JUNE 2019 Signature 

ENVIRONMENTAL CHECKLIST

Purpose of Checklist:

The State Environmental Policy Act (SEPA), Chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probably significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for Applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or given the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply". Complete answers to the questions may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of Checklist of Non-Project Proposals:

Complete this checklist for non-project proposals, even though questions may be answered "does not apply". IN ADDITION, complete the SUPPLEMENTAL SHEET FOR Non-project ACTIONS (part D).

For non-project actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of Proposed Project, if applicable:

   Annexation #03-17, Mill Creek

2. Name of Applicant:

   Clark Regional Wastewater District

3. Address and Phone Number of Applicant and Contact Person:

   8000 NE 52nd Court
   PO Box 8979
   Vancouver, WA 98668-8979
   (360) 750-5876
   Attn: Steve Bacon, P.E., Development Program Manager

4. Date Checklist Prepared:

   June 14, 2019

5. Agency Requesting Checklist:

   Clark Regional Wastewater District

6. Proposed Timing or Schedule (including phasing, if applicable):

   The annexation will proceed following the completion of this SEPA process.

7. Do you have any plans for future additions, expansions, or further activity related to or connected with this proposal? If yes, please explain.

   This action will allow for future extensions of sanitary sewer service into the area.

8. List any environmental information you know about that has been or will be prepared related to this proposal:

   None known.

9. Are other applications pending for governmental approvals affecting the property covered by your proposal? If yes, please explain.

   None known.

10. List any government approvals or permits that will be needed for your proposal.

    Approval of the proposed annexation by the Board of Commissioners of Clark Regional Wastewater District and the Board of County Councilors.

11. Give a brief, complete description of your proposal, including the proposed uses and size of the project and site. There are several questions addressed later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page (Lead agencies may modify this form to include additional specific information on project description).

    This action amends the service boundary of the District to include an additional area of approximately 491 acres within Clark County's urban growth boundary.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including street address, section, township, and range. If this proposal occurs over a wide area, please provide the range or boundaries of the site. Also, a legal description, site plan, vicinity map, and topographic map. You are required to submit any plans required by the agency, but not required to submit duplicate maps or plans submitted with permit applications related to this checklist.

    This action proposes to add 82 parcels into the Clark Regional Wastewater District service area. The area is generally described as north of NE 164th Street, east of NE 34th Avenue, west of NE 50th Avenue, and south of NE 192nd Street.

B. ENVIRONMENTAL ELEMENTS

1. EARTH

A. General description of the site (circle one): flat, rolling, **hilly**, steep slopes, mountainous, other.

B. What is the steepest slope on the site and the approximate percentage of the slope?

The steepest slope is 60% primary along the banks of Mill Creek.

C. What general types of soils are found on the site (e.g., clay, sand, gravel, peat, muck)? Please specify the classification of agricultural soils and note any prime farmland.

The soils are classified as Gee silt loam, with the specific classification of GeB, GeD, GeE, and GeF, and Hillsboro silt loam, with the specific classification of HoA, HoB, HoC.

D. Are there surface indications or history of unstable soils in the immediate vicinity? If so, please describe.

There are areas of potential instability along Mill Creek.

E. Describe the purpose, type, and approximate quantities of any filling or proposed grading. Also, indicate the source of fill.

No grading activities are proposed.

F. Could erosion occur as a result of clearing, construction, or use? If so, please describe.

This non-project action will not propose any activities that could cause erosion.

G. What percentage of the site will be covered with impervious surfaces after the project construction (e.g., asphalt or buildings)?

No improvements are being proposed.

H. Proposed measures to reduce or control erosion, or other impacts to the earth include:

No erosion causing activities are proposed.

2. **AIR**

A. What types of emissions to the air would result from the proposal (e.g., dust, automobile, odors, industrial wood smoke) during construction and after completion? If yes, describe and give approximate quantities.

No emissions will be associated with this non-project action.

B. Are there any off-site sources of emissions or odor that may affect your proposal? If so, please describe:

No.

C. Proposed measures to reduce or control emissions or other impacts to air:

None.

3. **WATER**

A. Surface

1. Is there any surface water body on or in the vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names and into which stream or river it flows into.

There are known surface waters within the area. There is a mapped year-round stream, Mill Creek, within the annexation boundary. The area is within the Salmon Creek watershed.

2. Will the project require any work within 200 feet the described waters? If yes, please describe and attach available plans.

No.

3. Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

None.

4. Will the proposal require surface water withdrawals or diversions? Please provide description, purpose, and approximate quantities:

No.

5. Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

   There is an area classified as floodway fringe, located along the banks of Mill Creek.

6. Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

   No.

B. Ground

1. Will ground water be withdrawn, or will water be discharged to ground water? Please give description, purpose, and approximate quantities.

   No.

2. Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (e.g., domestic sewage; industrial, containing the following chemicals…; agricultural; etc.). Describe the size and number of the systems, houses to be served; or, the number of animals or humans the system are expected to serve.

   None.

C. Water Runoff (including storm water):

1. Describe the source of runoff (including storm water) and the method of collection and disposal. Include quantities, if known. Describe where water will flow, and if it will flow into other water.

   Does not apply.

2. Could waste materials enter ground or surface waters? If so, please describe.

   No.

D. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

   None.

4. **PLANTS**

A. Check or circle types of vegetation found on the site:
__x__ Deciduous tree: alder, maple, aspen, other
__x__ Evergreen tree: fir, cedar, pine, other
__x__ Shrubs
__x__ Grass
__x__ Pasture
___ Crop or grain
___ Wet soil plants: cattail, buttercup, bulrush, skunk cabbage, other
___ Water plants: water lily, eelgrass, milfoil, other
___ Other types of vegetation

B. What kind and amount of vegetation will be removed or altered?

   None.

C. List any threatened or endangered species known to be on or near the site.

   None known.

D. List proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site:

None.

5. **ANIMALS**

A. Circle any birds and animals which have been observed on or near the site:

Birds: **hawk**, heron, eagle, **songbirds**, other:
Mammals: **deer**, bear, elk, beaver, other: **coyotes**, **rabbits**, **squirrels, and small rodents.**
Fish: bass, **salmon**, trout, herring, shellfish, other:

B. List any threatened or endangered species known to be on or near the site.

The Washington Department of Fish & Wildlife classifies Coho and Summer Steelhead as threatened, accessible in the area.

C. Is the site part of a migration route? If so, please explain.

The entire region is part of the Pacific Flyway.

D. List proposed measures to preserve or enhance wildlife:

None.

6. **ENERGY AND NATURAL RESOURCES**

A. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

None.

B. Would your project affect the potential use of solar energy by adjacent properties? If so, please describe.

No.

C. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts:

None.

7. **ENVIRONMENTAL HEALTH**

A. Are there any environmental hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, please describe.

No.

1. Describe special emergency services that might be required.

None.

2. Proposed measures to reduce or control environmental health hazards, if any?

   None.

B. Noise

1. What types of noise exist in the area which may affect your project (e.g., traffic, equipment operation, other)?

   None.

2. What types and levels of noise are associated with the project on a short-term or a long-term basis (e.g., traffic, construction, operation, other)? Indicate what hours the noise would come from the site.

   None.

3. Proposed measures to reduce or control noise impacts:

   None.

8. **LAND AND SHORELINE USE**

A. What is the current use of the site and adjacent properties?

The current use of the area is single family residences, agricultural and forest land.

B. Has the site been used for agriculture? If so, describe.

There are parcels in the area that have been used as farmland.

C. Describe any structures on the site.

There are residential structures and associated outbuildings on the site.

D. Will any structures be demolished? If so, please describe.

No.

E. What is the current zoning classification of the site?

Current zoning in the area includes, R1-7.5, R1-10, R1-20 and MX.

F. What is the current comprehensive plan designation of the site?

The current comprehensive plan designation of the site is Urban Low Density Residential and Mixed Use.

G. What is the current shoreline master program designation of the site?

Does not apply.

H. Has any part of the site been classified as an "environmentally sensitive" area? If so, please specify.

Does not apply.

I. How many people would reside or work in the completed project?

This non-project action will not change the current number of people who reside or work in the area.

J. How many people would the completed project displace?

None.

K. Please list proposed measures to avoid or reduce displacement impacts:

None.

L. List proposed measures to ensure the proposal is compatible with existing and projected land uses and plans:

The proposed non-project action will allow the current urban zoned properties to obtain sanitary sewer service, as well as allow future developments to extend and connect to sewer as required by County Code.

9. **HOUSING**

A. Approximately how many units would be provided? Indicate whether it's high, middle, or low-income housing.

Does not apply.

B. Approximately how many units, if any, would be eliminated? Indicate whether it's high, middle, or low-income housing.

None.

C. List proposed measures to reduce or control housing impacts:

Does not apply.

10. **AESTHETICS**

A. What is the tallest height of any proposed structure(s), not including antennas? What is proposed as the principal exterior building materials?

None proposed.

B. What views in the immediate vicinity would be altered or obstructed?

None.

C. Proposed measures to reduce or control aesthetic impacts:

Does not apply.

11. **LIGHT AND GLARE**

A. What type of light or glare will be proposal produce? What time of day would it mainly occur?

None.

B. Could light or glare from the finished project be a safety hazard or interfere with views?
Does not apply.

C. What existing off-site sources of light or glare may affect your proposal?

None.

D. Proposed measures to reduce or control light and glare impacts:

None.

12. **RECREATION**

A. What designated and informal recreational opportunities are in the immediate vicinity?

There are public hiking trails located on the Washington State University campus, south of the annexation area at NE 159th Street and NE 50th Avenue.

B. Would the project displace any existing recreational uses? If so, please describe.

No.

C. Proposed measures to reduce or control impacts on recreation, including recreational opportunities to be provided by the project or applicant:

None.

13. **HISTORIC AND CULTURAL PRESERVATION**

A. Are there any places or objects listed on or near the site which are listed or proposed for national, state, or local preservation registers? If so, please describe.

None known.

B. Please describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

None.

C. Proposed measures to reduce or control impacts:

None.

14. **TRANSPORTATION**

A. Identify public streets and highways serving the site and describe proposed access to the existing street system. Show on site plans, if any.

The area is served by NE 50th Avenue, NE 179th Street, NE 174th Street and NE 40th Avenue. Private roads lie within the annexation area.

B. Is the site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

No, the nearest transit stop is located approximately 3 miles west, at NE 29th Avenue and WSU, C-Tran #19 Salmon Creek from 99th Street Transit Center to WSU.

C. How many parking spaces would the completed project have? How many would the project eliminate?

Does not apply.

D. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, please describe and indicate whether it's public or private.

No.

E. Will the project use water, rail, or air transportation? If so, please describe.

No.

F. How many vehicular trips per day would be generated by the completed project? Indicate when peak traffic volumes would occur.

None.

G. Proposed measures to reduce or control transportation impacts:

None.

15. **PUBLIC SERVICES**

A. Would the project result in an increased need for public services (e.g., fire protection, police protection, health care, schools, other)? If so, please describe.

No.

B. Proposed measures to reduce or control direct impacts on public services.

None.

16. **UTILITIES**

A. Circle the utilities currently available at the site: **Electricity**, natural gas, **water**, **refuse service**, **telephone**, sanitary sewer, **septic system**, other.

B. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on or near the site.

None.

17. **SIGNATURE**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature _____

Steve Bacon, P.E., Development Program Manager
Clark Regional Wastewater District

Date Submitted: 06/17/19

D. SEPA SUPPLEMENTAL SHEET FOR NON-PROJECT ACTIONS

INSTRUCTIONS:

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment. When answering these questions, be aware of the extent of the proposal and the types of activities likely to result from this proposal. Please respond briefly and in general terms.

1. How would the proposal increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

   The proposal would not increase these elements.

   Proposed measures to avoid or reduce such increases are:

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

   The proposal would not affect plants, animals, fish, or marine life.

   Proposed measures to protect or conserve plants, animals, fish, or marine life are:

3. How would the proposal be likely to deplete energy or natural resources?

   The proposal would not deplete energy or natural resources.

   Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal use or affect environmentally sensitive areas or those designated (or eligible or under study) for governmental protection such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

   The proposal would not affect environmentally sensitive areas.

   Proposed measures to protect such resources or to avoid or reduce impacts are:

5. How would the proposal be likely to affect land and shoreline use? Will it allow or encourage land or shoreline uses incompatible with existing plans?

   The proposal would not affect land and shoreline use.

   Proposed measures to avoid or reduce shoreline and land use impacts are:

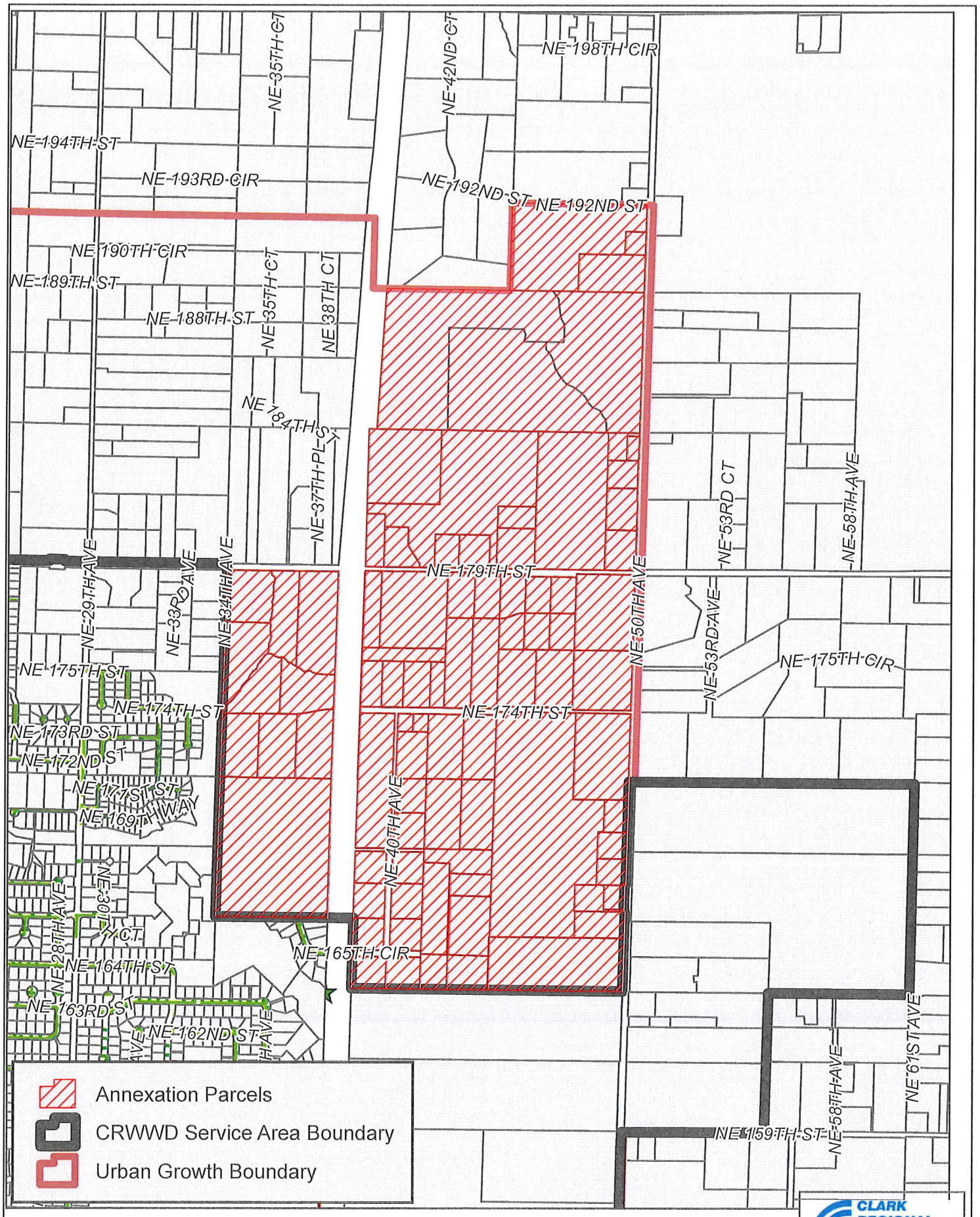
6. How would the proposal be likely to increase demands on transportation or public services and utilities?

   The proposal would not increase demands on transportation or public services and utilities.

Proposed measures to reduce or respond to such demand(s) are:

7. Identify whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

The proposal would not cause conflict with local, state, or federal laws or requirements for the protection of the environment.



Annexation 03-17
Vicinity Map

CLARK REGIONAL WASTEWATER DISTRICT

RIDGEFIELD
SCHOOL DISTRICT
unlimited possibilities

SUPERINTENDENT
DR NATHAN MCCANN

BOARD OF DIRECTORS
DISTRICT 1 EMILY ENQUIST
DISTRICT 2 JOSEPH VANCE
DISTRICT 3 BRETT JONES
DISTRICT 4 BECKY GREENWALD
DISTRICT 5 SCOTT GULLICKSON

July 3, 2019

Oliver Orjiako, Director
SEPA Comments
Clark County Community Planning
1300 Franklin Street, 3rd Floor
PO Box 9810
Vancouver, WA 98666-9810

RE: DNS for CPZ2019-00023-Amendment to Comp Plan to remove Urban Holding (Hinton) Phase III

Dear Mr. Orjiako:

The Ridgefield School District received the Determination of Non Significance (DNS) that was issued in the above referenced matter and appreciates the opportunity to submit the following comments.

Removing Urban Holding from the 32.45 acres of property that is the subject of the DNS will open the way for development of approximately 129 single family homes. The SEPA Checklist that was included with the DNS describes the County's plans to enter into a development agreement "that funds critical infrastructure," presumably to serve the anticipated development. Public schools are part of the infrastructure that is needed. Contrary to the answer "none" to question 15a regarding increased needs for public services, allowing residential development will increase the need for public schools.

The Ridgefield School District will provide public education to the students residing in the homes that will be built if Urban Holding is removed. If recent housing demographics continue, approximately 38 students will reside in the 129 homes. The District does not have unused capacity in existing schools. To serve the 38 students from this development, and students from other pending and planned developments, the District needs to build a new elementary, middle and high school.

The costs to build new schools is significant. The District's 2015 Capital Facility Plan, which the County has adopted, forecast the cost to build needed schools at over $90,000,000. Construction costs have increased since then. A bond, state construction assistance, and school impact fees are all needed to pay the costs to build the needed schools. The District calculated school impact fees using the County and City formula is $11,289.80 for single family homes.

If a bond is not approved, and school impact fees are not assessed in the full amount, removing Urban Holding will have a significant adverse impact on schools. That impact can be mitigated by imposing a requirement that future development pay the District's $11,289.80 school impact fee.

The District respectfully requests that any actions the County takes that will open the way for new development include a requirement that the developers pay the full $11,289.80 school impact fee. Thank you for considering these comments and sharing them with the County Council as they deliberate and decide whether to remove Urban Holding.

Sincerely,

Dr. Nathan McCann
Superintendent

August 14, 2018

Dr. Oliver Orjiako
Director
Clark County Department of Community Planning
Public Services Building
Vancouver, Washington 98660

RE: Determination of Non-Significance Amend Comprehensive Plan to remove Urban Holding Overlay near the I5/179th Street interchange Phase I

Sent via e-mail pdf to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

I am submitting these comments as an individual and not on behalf of any particular group, political party or organization. These comments assert that a checklist and DNS is an inadequate environmental review in this case for the reasons stated below. "Non-project" proposals are subject to SEPA, the lead agency cannot conduct an environmental review of a non-project proposal under the assumption that there will be no direct and/or indirect environmental impacts, including potential cumulative impacts from the "non-project" action. When a action such as this one is proposed, it should still be subject to a comprehensive review of potential environmental impacts from reasonably foreseeable developments, especially where the action to be taken will increase the intensity of developments in areas that specifically restricted developments until certain prerequisites for removal of the overlay have been met.

First, the area in Urban Holding subject to this review is in Urban Holding due to lack of infrastructure available for development of the underlying zoning, in this case Mixed Use zoning. I believe, and can supplement the record, that this holding was put in place as part of the original comprehensive plan from 1994. The current overlay covers a large swath of area surrounding the 179th Street/I5 interchange.

It appears that this "non-project" action is the County's initial attempt to remove the current overlay in a piecemeal fashion with no comprehensive plan for the entire area subjected to the Urban Holding Overlay. It even designates this "non-project" action as "Phase I" and therefore, it is clear that the County anticipates specific growth, and specific cumulative actions, but anticipates them occurring in a piecemeal basis. It is

assumed that the County seeks to allow certain developers, pursuant to development agreements that may or may not be subject to public review, the ability to consume any existing capacities that may exist for smaller "cut-out" projects without considering the overlay as a whole, which would selectively allow some development while excluding other developments leading to disparate treatment of landowners in the area and could cause greater expense to landowners who are forced into plans previously approved by the Council pursuant to the piecemeal development agreements.

Second, this "non-project" action involves a modification of an existing environment designated under the Growth Management Act planning process by a proposal to amend the comprehensive plans and to, at least partially, remove the overlay on this area but does not discuss the development of new transportation plans along with potential new ordinances, rules, and regulations and environmental impacts that will be concomitant to the piecemeal implementation of these development agreements.

Third, according to the checklist, this SEPA (which claims no impacts to the environment) fails to consider the impacts of the the proposed development but states that the action is based upon "the execution of a development agreement" that, at this stage, does not exist or has not been put into the public record. Thus, it is clear that there will be impacts (at least a minimum of 402 trips per day) and it is impossible for the public to comment on the proposal's impact on the environment if there is no discussion of the development under the propose

Moreover, a recent work session with the Council exhibited that there were many other possible projects and development agreements being proposed in the impacted area around the 179th street interchange. Based upon a review of the materials presented to the county, the following have/are being proposed:

Killian 60,000 Sq. Ft. Retail (DA Approved Phase 1)

- Killian Three Creeks North Phase 1– (DA in progress)
- Killian remainder Phase 2 - NE 179th Street Commercial Center (DA Approved Phase 2)
- Holt Mill Plain PUD (606 homes/99 townhomes)
- Hinton Property (129 homes)
- Wollam Property (220 homes)

See The Grid Materials from 7/11/18 WS and audio of that work session all of which are incorporated into these comments by reference[1].

[1] It is unclear to me at this point if this current SEPA is for one of those proposed developments.

However, there has been no comprehensive analysis of traffic impacts or the impacts of the contemplated infrastructure and developments on the existing environment as required by SEPA and, if one has been completed, it has not been adopted by the County and is not incorporated into this SEPA document.

Therefore, this SEPA review for this non-project actions fails in many ways including failing to consider conduct a comprehensive analysis of the reasonably foreseeable impacts, failing to address the cumulative impacts of all of these developments that are being proposed, failing to consider any possible alternatives and failing to outline any potentially successful mitigation measures.

Fourth, the DNS/Checklist lists no other actions that have been taken by the County regarding the Urban Holding in general and this parcel specifically. Presumably, there have been other determinations, and reviews of those determinations by the Growth Management Hearings Board(s). If other decisions, papers, determinations, environmental reviews etc. have been completed by the County regarding this parcel specifically, and the overlay in general, then those documents should be made a part of and/or referenced in the environmental review for this proposed Comprehensive Plan amendment. If those do exist, the DNS/Checklist does not, but should, list the other relevant environmental documents/studies/models that have been done regarding the Urban Holding area since it was placed under the Urban Holding overlay. For example, a county's EIS for its comprehensive plan may have information relevant to the Urban Holding Overlay. In addition, there should be other county, Growth Board and/or appellate court references to the Urban Holding Overlay and the reason(s) that it has not been removed over the years.

Fifth, there is no description of any alternatives much less a range of alternative or preferred alternative or any description of if a particular alternative was fully implemented (including full build-out development, redevelopment, changes in land use, density of uses, management practices, etc.), any description of where and how it would direct or encourage demand on or changes within elements of the human or built environment, as well as the likely affects on the natural environment. In addition, the document fails to identify where the change or affect or increased demand might or could constitute a likely adverse impact, or any description of any further or additional adverse impacts that are likely to occur as a result of those changes and affects.

Sixth, this checklist cannot serve as an environmental analysis for later project reviews because it has been created in a way that does not anticipate any such projects where, in contrast, the county definitely is contemplating such projects. The more detailed and complete the environmental analysis is during the "non-project" stage, the less review will needed during project review and, therefore, any project review can focus on those environmental issues not adequately addressed during the "non-project" stage. The current checklist and DNS fails to provide any analysis that could be utilized later at a proposed project phase and fails to give notice to the citizen of the real potential

environmental impacts that will occur once the Urban Holding Overlay is lifted and projects can proceed.

Currently, given the potential development agreements listed above, along with others that may not be in the public realm, there is ample ability for the lead agency to anticipate and analyze the likely environmental impacts of taking this action and the failure to do so creates an inadequate SEPA document (for example a minimum of 2500 peak hour trips if the developers' numbers are to be believed in the documents that they submitted in the July work session). Failure to conduct a full environmental review at this juncture allows for the removal of the overlay while precluding the public to speak to the removal of the overlay at all. Plus, once this overlay is removed, the question arises as to whether the removal of all the other portions of the overlay must be removed either piecemeal or as a whole through this "non-project" action that has no real environmental review or input from the public.

Although an environmental checklist can act as a first step in an environmental process, including Part D, Supplemental Sheet for "non-project" activities it should not stand in the way of a more comprehensive environmental impact statement, especially in this case given the large areas under the urban holding overlay that are obviously intended to be subject to removal only upon meeting specific prerequisites. Further, there has been no analysis of the traffic impacts on 179th street, 15th Avenue and/or the 179th street intersection by the current proposal(s) by the lead agency. A full environmental review, that includes all known proposed projects, along with the impact of full build-out should the entire overlay be removed, should be conducted prior to the removal of any portion of the overlay.

These comments assert that this "non-project" SEPA proposal review should also 1) consider all existing regulations, 2) set forth the underlying rational behind the fact that there is an Urban Holding Overlay in existence, 3) the reason for the overlay being placed on the area, 4) remove it from the overlay and 5) the requirements that are required to remove the overlay as well as and 6) any other development under consideration. Plus the environmental review should include an analysis of the potential impacts of the entire area once the overlay is lifted in the larger area surrounding the 179th Street interchange, there will be a plethora of impacts, including but not limited to traffic impacts.

Therefore, this "nonproject" action involves a comprehensive plan amendment, or similar proposal governing future project development, and the probable environmental impacts that would be allowed for the future development need to be considered. The environmental analysis should analyze the likely impacts of the of build-out of all the underlying zones covered by the overlay when determining the efficacy of allowing this one "non-project" to have the overlay removed. In addition, the proposal should be described in terms of alternative means of accomplishing an objective.

Thank you for your consideration of these comments. Please submit them for the record.

Best Regards,

David McDonald

Comprehensive Plan Text Changes

Clark County 20-Year Comprehensive Growth Management Plan, 2004-2024
Land Use Chapter 1: Pg. 1-17

OVERLAY DISTRICTS

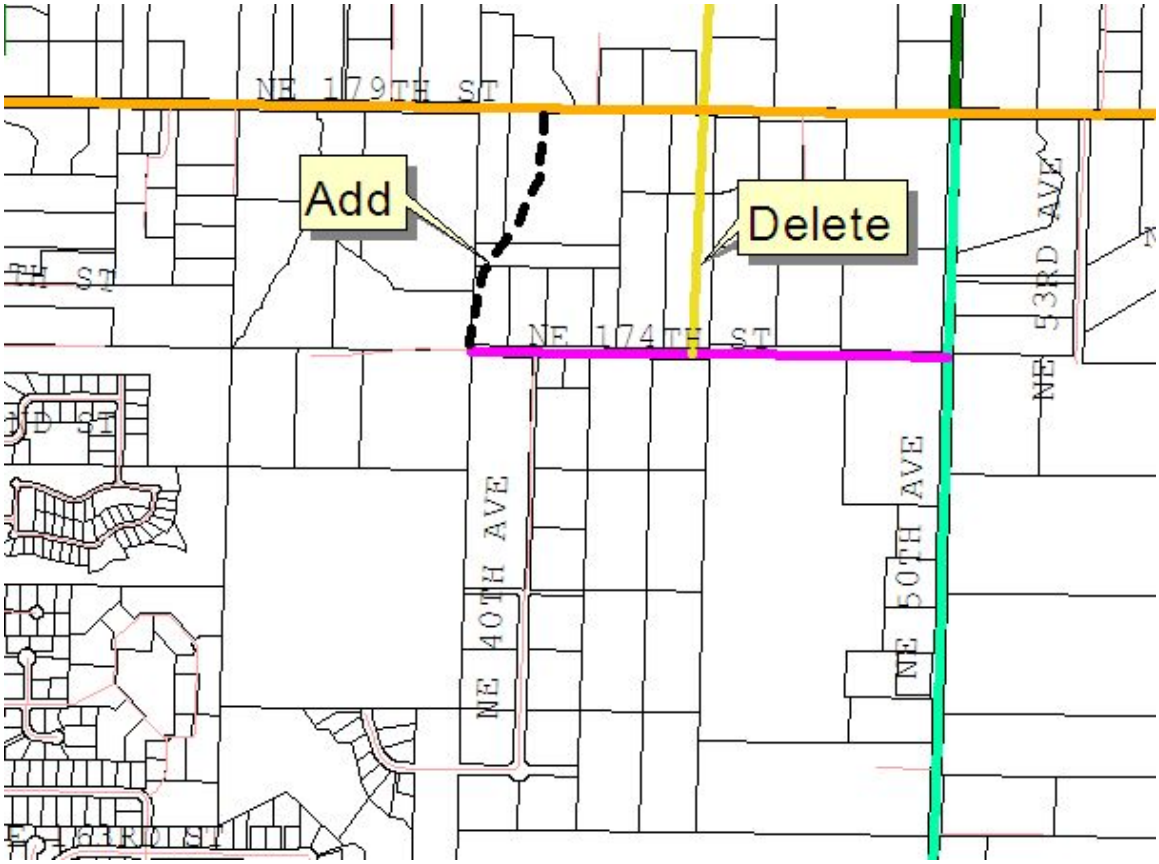
Additional 20-Year Plan Map designations or symbols are used to identify certain land use policies that are implemented in several different ways.

Mill Creek Overlay District

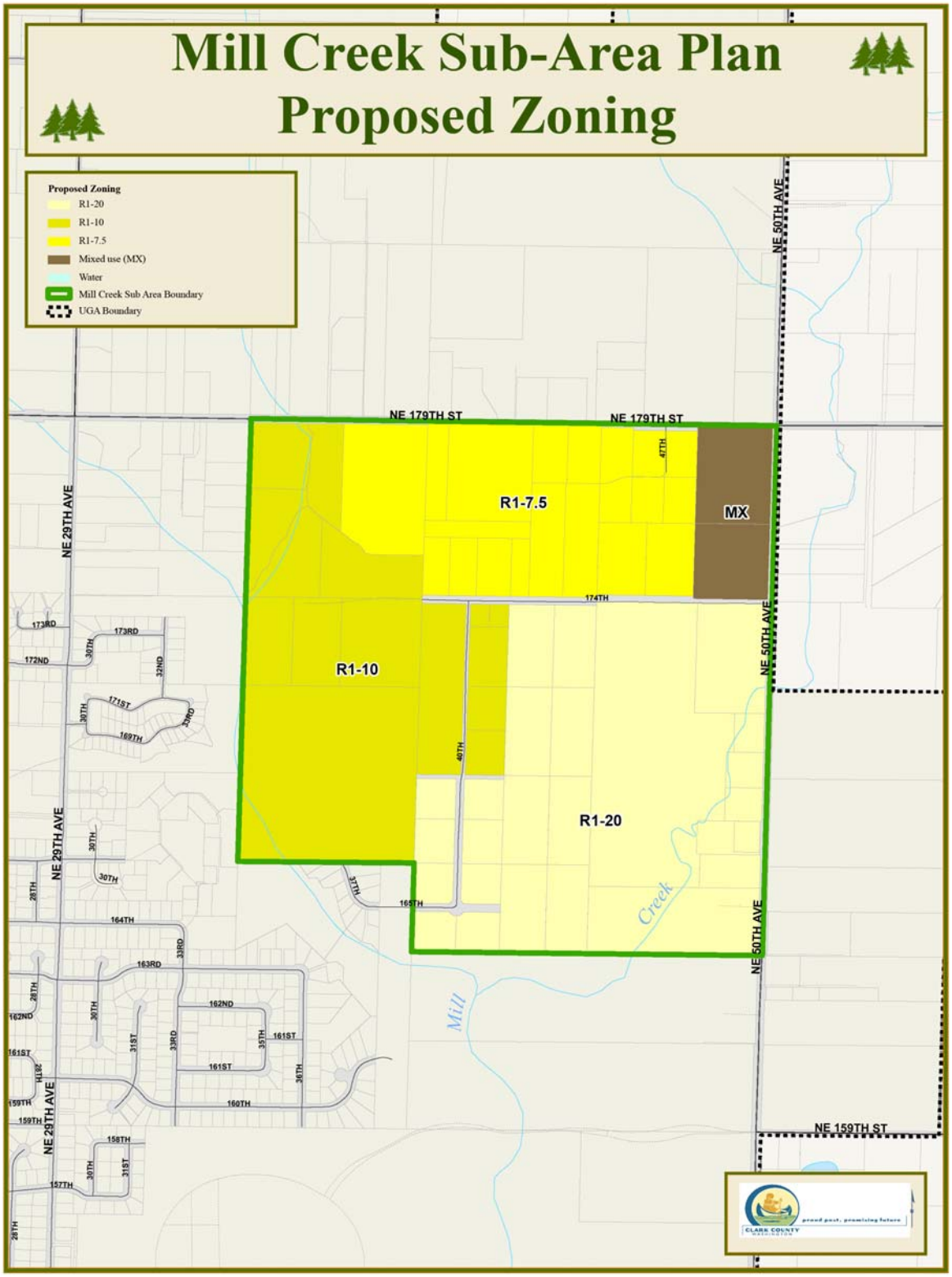
This overlay district implements the Mill Creek Sub-Area Plan. The overlay district provides for special provisions and modifies other regulations for the underlying zoning districts within the sub-area.

Arterial Plan Map Changes

The location of a future north/south street connection between NE 174th and NE 179th Streets is proposed to shift to the west from the alignment currently shown on the Arterial Plan Map. The proposed street classification is neighborhood circulator.



Zoning Map Changes



UDC Title 40 Changes

Clark County Unified Development Code Title 40
Amend Table 40.200.020-1

40.200.020 Zoning Classifications

A. Classification of Zoning Districts.
For the purposes of this title, the county is divided into zoning districts designated as shown in Table 40.200.020-1.

Table 40.200.020-1. Zoning Districts				
Zoning District	**Map Symbol**	**Urban**	**Rural**	**Code Section**
OVERLAY DISTRICTS (40.250, 40.420 and 40.460)				
Airport Environs	AE-1, AE-2	X	X	40.250.010
Surface Mining	S	X	X	40.250.020
Historic Preservation		X	X	40.250.030
Floodplain	FP	X	X	40.420
Shoreline	SL	X	X	40.460
Highway 99	TC-1	X		40.250.050
Mill Creek	MC	X		40.250.060

Clark County Unified Development Code Title 40
New Title 40.250.060

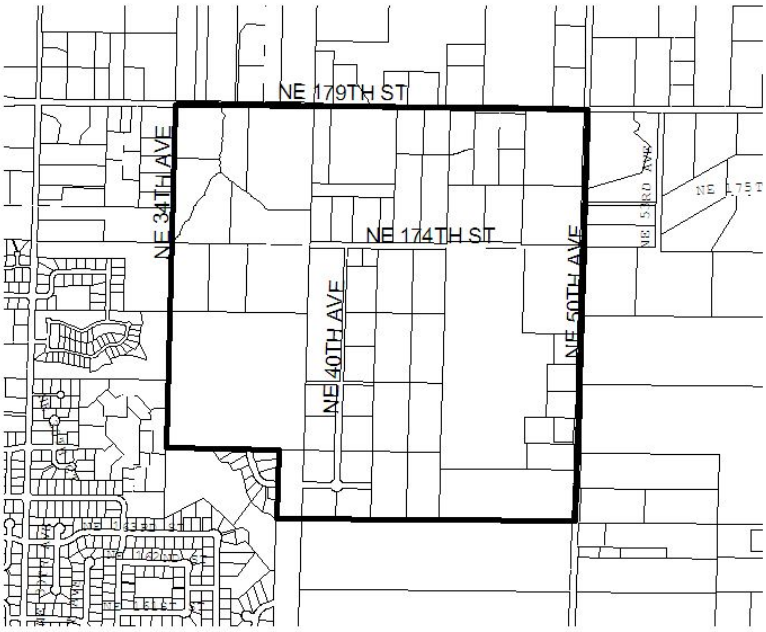
40.250 OVERLAY DISTRICTS

40.250.060 MILL CREEK OVERLAY DISTRICT

A. Purpose.
The Mill Creek overlay district (MC) is intended to implement the Mill Creek Sub-Area Plan. It provides for special provisions to be applied to developments within the overlay district boundary.

B. Applicability.
The provisions of this section shall apply to parcels or groups of parcels within the geographic area of the Mill Creek Sub-Area Plan shown in Figure 40.250.060-1.

Figure 40.250.060-1



C. Standards.

The following additional standards apply in the overlay district:

1. New lots created adjacent to urban subdivision lots existing at the time of the adoption of the Mill Creek Overlay District shall meet or exceed the average lot size of the abutting subdivision lots unless there is at least two hundred (200) feet of open space between the existing and proposed lots.
2. Prior to approval of any development that would add traffic to NE 37th Avenue, additional access via a public road connection to NE 40th Avenue or NE 174th Street must be assured.
3. A minimum lot size of nine thousand (9,000) square feet is required for all land divisions in the R1-10 and R1-20 districts proposing to develop under the density transfer provisions of 40.220.110(C)(5), the infill provisions of 40.260.110 or the Planned Unit Development provisions of 40.520.080. The exceptions to lot sizes in 40.200.050 shall still apply.

ORDINANCE NO. 2009-06-01

AN ORDINANCE relating to land use and zoning; adopting amendments to the Comprehensive Plan, Land Use Chapter 1, the Arterial Plan Map, the Zoning Map and UDC 40.200.020; and adopting UDC 40.250.060 Mill Creek Overlay District.

WHEREAS, Clark County adopted a 20-year comprehensive growth management plan in September 2004 and updated it in 2007 in accordance with the goals and requirements of RCW 36.70A (the Growth Management Act, or GMA); and

WHEREAS, the County's adopted comprehensive growth management plan identifies "Mill Creek" as the area bordered by NE 179th Street to the north, NE 50th Avenue to the east, NE 163rd Street to the south, and NE 34th Avenue to the west; and

WHEREAS, the County's adopted comprehensive growth management plan requires a the completion of a sub-area plan for Mill Creek prior to removal of the urban holding designation; and

WHEREAS, no sub-area plan for Mill Creek has previously been adopted; and

WHEREAS, the Mill Creek sub-area plan as proposed to and as adopted by the Board of County Commissioners does not modify the comprehensive plan policies or designations applicable to the sub-area; and

WHEREAS, the Clark County Planning Commission considered the staff recommendations and took public testimony at a duly advertised public hearing on February 19, 2009; and

WHEREAS, the Board of County Commissioners took public testimony from interested parties and considered all written and oral arguments at a duly advertised public hearing on March 17, 2009 ; and

WHEREAS, the Board of County Commissioners finds that adoption of this ordinance is in the public interest; now, therefore,

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY STATE OF WASHINGTON, as follows:

Section 1. New. A section is hereby added to the list of Overlay Districts in Land Use Chapter 1, page 1-17 of the Clark County Comprehensive Growth Management Plan, 2004 – 2024 as shown in Exhibit A.

Section 2. Amendatory. The Clark County Arterial Plan Map is hereby amended as shown in Exhibit B.

Section 3. Amendatory. The Clark County Zoning Plan Map is hereby amended as shown in Exhibit C.

Section 4. Amendatory. UDC 40.200.020 is hereby amended as shown in Exhibit D.

Section 5. New. UDC Section 40.250.060 is hereby added as shown in Exhibit D.

Section 6. Effective Date. This ordinance shall go into effect July 1, 2009.

Section 7. Instructions to Clerk. The Clerk of the Board shall:

1) Transmit a copy of this ordinance to the Washington State Department of Community Trade and Economic Development within ten days of its adoption pursuant to RCW 36.70A.106:
2) Record a copy of this ordinance with the Clark County Auditor; and
3) Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.

ADOPTED this _____ day of _____, 2009.

Attest:

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

_____
Clerk of the Board

_____
Marc Boldt, Chair

Approved as to Form Only:

_____
Steve Stuart, Commissioner

ARTHUR D. CURTIS
Prosecuting Attorney

By: _____
Christine M. Cook
Deputy Prosecuting Attorney

_____
Tom Mielke, Commissioner

David T. McDonald
2212 NW 209th Street
Ridgefield, Washington 98642

AMENDED 3:00 PM 7/15/19

July 15, 2019

Clark County Councilors
% Dr. Oliver Orjiako
Director of Community Planning
Public Services Building
1300 Franklin Street
Vancouver, Washington 98660

Via pdf and e-mail to Oliver.Orijako@clark.wa.gov and Rebecca.Messinger@clark.wa.gov

Dear Councilors:

Earlier I sent a letter using what I thought was the current applicable TIF ($536/trip). I have since learned that the applicable TIF is $605/trip. This letter amends the previously sent letter to have numbers that correspond to the $605/trip TIF currently applicable to Mt. Vista SubArea of which this project are is a part. My apologies for any inconvenience caused by this error. I took the number from what I thought was the applicable part of the County website--- https://www.clark.wa.gov/sites/default/files/dept/files/public-works/TIFProjectListRates.pdf.

I have put the changes in BLUE.

This matter comes before the County on Tuesday, July 16, 2019 at 6:00pm for a public hearing. For the reasons stated in this letter, the County should not adopt any of the proposed Funding packages as none of them satisfy the criteria for reasonably funding the area's infrastructure and all fail to have the developers pay their fair share of the costs of development. At the outset, I must confess that this is a huge project and the "rules of the road" have continually changed over the past year regarding many, many aspects of this project, including funding. Just comparing the various PPTs that are part of the various Work Sessions and Hearings (PC and Council) is difficult at best. Therefore, having these posted last week, and not being able to hear the audio from the WS has made it difficult to get timely comments to the Council.

Under the previous scenarios presented in a variety of hearings and work sessions before the Planning Commission and Councilors, funding plans envisioned a $66.2 million package of which the Developers would have only been required to do no

more than make some advance payments of their TIF obligations. Thus, the "private share" for this massive project, other than TIF payments taken from the current county coffers and the required TIF payments for these 4 developments, would have been zero.

Although reading the current proposed Holt Draft Development Agreement with the three proposed funding options does not create a clear set of funding scenarios, it appears that under the Draft DA, Holt has only agreed to pay a total amount (TIF plus surcharge) that is substantially less than what their TIF obligation would ultimately be if the County increased the TIF to $916/trip or $930/trip prior to the lifting of the Urban Holding.

However, if the County did not include the new projects that add $97 million dollars to the price tag, and kept the TIF at $605/trip, the Holt Draft DA would only require Holt to pay 2.9 million in TIF [less than their apparent obligation at either 6654 trips per day (at rate of 10/day for SFR and 6/day for TH) or at 6346 trips per day (at rate of 9.52 trips/day for SFR] and a $2,467,500 "surcharge". If Holt was required to pay that amount, the County would still be short $9,832,500 of the 12,300,000 listed under Option #7. However, their TIF obligation at buildout at $605/trip would be either $4,025,670 or $3,839,330. Therefore, it is unclear why the Draft DA only requires total payments of $2.9 million in TIF when the total appears to be at least $1 million greater.

It has previously been suggested that bullet points may be easier to "digest" in providing comments so I have attempted to provide my comments in those bullet points below.

NO REQUIREMENT THAT COUNCIL LIFT URBAN HOLDING

- There is no current requirement, nor emergency, which exists that mandates that this Council authorize expenditure of any public funds, much less over $66.2 million dollars of public funds to subsidize some limited traffic capacity to serve only 4 residential developers to the detriment of the entire area's development.

- No current requirement, nor emergency, exists to authorize the expenditure of over $163 Million Dollars (Proposed $66.2 Million Dollars plus $97 Million in evanescent TIF = 163.2 Million Dollars) with an evanescent hope that economic development ***might*** come and that the increase in TIF will provide any money in the coming 6 years to help fund the new projects added to the CFP in the six year plan at a cost of $97 million especially given the current $158 million CFP deficit.

FUNDING OPTIONS SHOULD BE BEFORE THE PLANNING COMMISSION FIRST

Query: Since this is a type IV process, why are these funding options NOT going before the Planning Commission to be vetted there first?

If this is a Type IV review process, then should not these funding options be placed in front of the PC in order to fully vet them and have them provide a recommendation to the Council?

NO PUBLIC CLAMORING FOR THE LIFTING OF URBAN HOLDING EXCEPT BY THE 4 PURVEYORS OF RESIDENTIAL DEVELOPMENT

At the Fairgrounds Neighborhood Association (FGNA) meeting on Thursday night, July 11th, there was NO person in the gathering (40-50 people showed up who live in the area) who spoke in favor of this project and everyone was, in fact, skeptical at best and vehemently opposed at worst.[1]

Killian is the only true owner of all the land he proposes to develop but he does not live in the area. Holt (Greg Kubicek), Hinton and Wollam are all residential developers who, according to the GIS, appear to only own contingent interests in the properties they wish to develop.

Thus the impetus for "moving forward" is not a wave of citizens in the area, much less across the county, clamoring for this area to be developed. Rather, it is a few residential developers who are agreeing to pay some small pittance of advance TIF charges that come to barely 10% of the 66.2 million and, when factoring in the additional 97 million, their share is 4%.

---

[1] Any person who doubts this statement may simply check with County Staff who attended this meeting and who, I would suggest, will more than agree with this statement.

1ST STATED PURPOSE OF COUNTY IS NOT MET SUFFICIENTLY TO JUSTIFY COUNTY AND STATE COMMITTING $200[2] MILLION IN PUBLIC FUNDS

-Stated Purpose: Economic Development

Economic Development Properties are either located Outside the Urban Holding area where no improvements will be made and no proposed improvements target the properties that would generate economic development.

-The current four projects, according to the Kittleson Traffic Study submitted to the County in July 2018, will consume the majority, if not all, of the increased capacity that will be created by the improvements projected to be constructed with the $66.2 million dollar package, thus leaving NO capacity for any economic based land development including but not limited to commercial, business park or light manufacturing developments without additional expenditures of money from the County.

-Thus, the $66.2 million "investment" ***will not create any capacity*** for any future economic job based land development in the corridor and the $66.2 million dollar "investment" fails to provide any capacity for the "Stated Purpose" of promoting economic development.

Some Land Designated for Economic Development shows no signs of being able to develop for Commercial, Business Park or ML-

-The land designated for economic development west of NE Delfel is already in other uses, some pretty expensive and likely way too expensive for a BP person to want to contend with, even if the land is for sale. Along NE Delfel between 179th and 199th are a) two brand new homes on 10 acres (5 acres each) on the SW corner of NE Delfel and NE 199th, b) a Church is proposed for 10 acres fronting NE Delfel between 184th Street and 189th Street, c) many, many single family residences all along 184th, 189th and 199th headed to the west from I5 (some of those residences have been

[2] 66.2 Million for Small Fixes along 179th, $50 Million Commitment from State WSDOT for Interchange Improvements and $97 Million for new commitments for new projects including expanding 179th east to 50th Avenue.

there for years and some are newer. This house is a recent sale in, or next to, the BP zoning--https://www.zillow.com/homedetails/513-NW-184th-St-Ridgefield-WA-98642/23291875_zpid/) and d) an approximately 30 unit manufactured home park (real affordable housing not the $400K-$450K for the Holt Homes that are proposed) just south of 189th and fronting NE Delfel. Does the County Council plan to displace those 30 + families and, if so, does the County have a suggestion as to where they would go to get concomitant affordable housing?

Development along 10th Avenue just north of Three Creeks property could be compromised by the fact that a family just put in a new home, the church at the corner of 194th and 10th and Shorty's Nursery on the SW corner of 199th and 10th. There are also private residences on both sides of 10th Avenue from 179th Street to 219th Street that would need to be bought by economic job based developers which could add to the cost of development.

Therefore the land that is touted as being the "economic engine" is either going to go the way of residential development (Hinton, Holt, Three Creek/Killian and Wollam), or lay fallow, as there is no business entity or development group that has come forward to bring real economic activity to this area other than short term dollars from construction industry that will result in long term lack of services and inability to deal with rising residential population.

SECOND STATED PURPOSE-KEEP PEOPLE WORKING IN CLARK COUNTY

This current effort fails to meet the second stated purpose for the following reasons:

There is no developer who is proposing any economic development.

The land in urban holding is not likely to develop as economic property.

There are no transportation alternatives to single occupancy vehicle available to the almost 1500 dwelling units being proposed for the 4 developments leading to 1500+ new daily peak hour trips of SOV going through an intersection that is not yet improved.

There are no designs or provisions for BRT, much less ***any*** bus or mass transit service. There are no sidewalks, bike lanes or bus lanes shown in the Kittleson Traffic study. C-Tran has neither made comments about the area, nor made any public commitment to serve the area (at least nothing in the record is to the contrary).

Without any employment based developments, the 1500 plus PH trips will clog already over burdened area around the interchange with no capacity for any employer traffic and that is according to the developers own traffic study.

Therefore the question for the county remains "what economic jobs-based developer is going to be willing to commit to putting in development in the area when the streets are under construction and totally clogged with residential SOV traffic with no extra capacity and no improvements to their land (assuming the land designated as economic based land **is** south of 219th street). A second question is "what is going to happen to the 7000 plus daily trips being added to the 179th corridor from I5 to 50th Avenue when the work begins to make 179th street a 4 lane major collector?"

CONCURRENCY

Matt Hermen, at a work session on the issue, stated that in order to lift urban holding the County needed to address that services that need to be in place before UH is lifted as transportation, sewer and water—with the County needing to be responsible for transportation while the CRWWD would be responsible for Sewer and water but all need to be available to lift Urban Holding.

https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/071217WS_UrbanHolding.mp3 at 5:35.

This statement by Mr. Hermen at the WS is consistent with the County's Comprehensive Plan:

> Chapter 14 of the CP and it provides that the UH can be lifted as follows:
>
> The urban holding overlay designation may be removed

pursuant to Clark County Code 40.560.010 upon satisfaction of the following:

Mill Creek: The area is bordered by NE 179th Street to the north, NE 50 Avenue to the east, NE 163rd Street to the south, and NE 34th Avenue to the west. Determination that the completion of localized critical links and intersection improvements are reasonably funded as shown on the county 6 Year Transportation Improvement Plan or through a development agreement.

West Fairgrounds and East Fairgrounds: Determination that the completion of localized critical links and intersection improvements are reasonably funded as shown on the county 6 year Transportation Improvement Plan or through a development agreement.

HOWEVER, under our CP, sewer and water availability are treated as DIRECT concurrency requirements and therefore, even if the County is not directly responsible for the availability of sewer and water (that is the role of the CRWWD) concurrency applies to the provisions of sewer and water under our Comprehensive Plan.

Page 167 of Comp Plan appears to make sanitary water and sewer a Direct (required) as opposed to Indirect (advisory—i.e.. good idea that should be achieved)

Direct and Indirect Concurrency Services Direct concurrency will be applied on a project by project basis for public facilities of streets, water and sanitary sewer. While the GMA requires direct concurrency only for transportation facilities, this plan extends the concept of direct concurrency to cover other critical public facilities of water and sanitary sewer. Indirect services include schools, fire protection, law enforcement, parks and open space, solid waste, libraries, electricity, gas and government **facilities. and this from page 175 of the CP Within unincorporated Urban Growth Areas other than the Vancouver UGA the Comprehensive Plan Map has designated relatively little land for short term urban density** development which would require public sewer

service. These UGA lands are affixed with an "Urban Holding" overlay designation, which explicitly precludes urbanization until a site-specific demonstration of serviceability is made. Provisions for lands within corporate limits are addressed in the city comprehensive plans. Within the Vancouver UGA there is a substantial amount of land under county jurisdiction, which is designated for near term urban development without the Urban Holding overlay. The District serves the City of Vancouver Urban Growth Area consistent with the County's Comprehensive Plan.

Read together, Sewer and Water must be available BEFORE you can lift UH.

According to the CRWWD, they either have the ability to directly serve 2 of the properties (I think Wollam and Hinton) and they can serve the other two properties (Three Creeks and Holt) on an interim basis if, and only if, these two developments (TC and Holt) pay all of the direct cost of service. The main developer that must pay for a line extension is Holt and, according to CRWWD, there is no agreement in place for the interim upgrade that would be required.

In addition, CRWWD may NOT have the ability to serve ***any other developments in the area*** without interim agreements, and, therefore, no one should be recommending the lifting of ALL of the UH area. CRWWD folks also ***do not*** have the lines that are required to go from 179th and I5 east to 50th in their 6-year plan (they are in the 20-year plan but are not funded. Even if those lines were funded (approximately 45 million dollars in today's costs), the CRWWD would NOT put those lines into the roadway along 179th UNLESS it was done ***concomitantly*** with the improvement of 179th from 2 lane to 4 lane.

Ironically (sadly, not surprisingly), the County has NO money (need 97 million) to build that infrastructure in the next 6 years UNLESS it collects 97 million in TIF from the Mt. Vista SubArea during the next six years. However,

there are no plans for any other projects, much less projects that would generate $97 million in TIF over the next 6 years ***and*** the County's Capital Facilities Plan ***currently has a deficit of $158 million***.

In addition, the proposed start date for the construction of the 15th Avenue extension is not until 2023 and for the NE Delfel divsion not until 2025/2026 concomitantly with the interchange work being done in 2027. Therefore, there is not going to be capacity for any job based economic development until these projects are completed. Residential development of Holt, Killian, Wollam and Hinton are projected to be completed by 2023 while there will not be any new roads yet for them to drive upon to get to the intersection. I hope someone is considering where approximately 6500 trips per day are going to go before, and during, all of these improvements.

DEVELOPMENT AGREEMENT (HOLT[3])-TWO ISSUES (SPECIFIC PROVISIONS NOT RELATED TO PAYMENTS AND PAYMENT PROVISIONS)

Holt/Mill Creek DA

A. November 2018-1st Public Draft Development Agreement (Hereafter DDA #1)

Original Staff Report underestimates Holt TIF obligation by between $1,135,202 ($4,025,670-$2,890,468) and $948,862 ($3,839,330--$2,890,468). *See* My calculations of TIF for this project, which are attached as Exhibit #1 and incorporated by this reference.

Original Staff and Development Agreement both designate the approximately 2.9 million as "TIF" NOT "surcharge"—those terms are ***different*** as the Council and PC members know.

---

[3] These comments only address the Holt projects 3 different proposed DDAs regarding payments as the most current Hold Draft DA is the only one before the Council on 7/16/19. However, it should be noted that the generic DDA proposed by Holt seems to be a template for the Wollam and Hinton DDAs that are in front of the PC on Thursday 7/18/19. In addition, the Killian DA adopted by the Council in December contains none of the provisions regarding payments that are proposed in the Draft DA by Holt and the template Draft DAs by Hinton and Wollam. In addition, this commentator will try to provide more specific comments regarding the other provisions of DDA #3 prior to the hearing tomorrow.

Original Draft Development Agreement has NO provision for paying any money in advance, much less TIF money which resulted in November PC Hearing being cancelled due to Staff Report finding not reasonably funded.

B. February 2019 PC Work Session Holt's Second "Draft Development Agreement" (Hereafter DDA # 2 which is attached as Exhibit #3 and incorporated by this reference)

Staff Continues to underestimate Holt's TIF obligation a full build-out by between $1,135,202 ($4,025,670-$2,890,468) and $948,862 ($3,839,330--$2,890,468).

Holt's DDA #2 adds a New Provision entitled "8. Advanced Payment of TIF"

In that paragraph, Holt proposes in pertinent part to make advanced payments of TIFs. However, the advanced payments are, at least in part, an illusion because the TIF obligation is NOT based upon the total number of units, (606 SFR + 99 TH), but on ***the "middle range of the number of Units provided for in the Master Plan-685*** units. Assuming the midrange is 343 units, the total TIF obligation for those 343 units would be $2,075,150 (343 x 605 x 10). 25% of that number is $518,787.50. Therefore, the DDA #2 obligates the Developer to pay a little more than 10% of their total TIF obligation at the lifting of urban holding and another 10% at preliminary plat with the remainder due on normal schedule.

DDA #2 proposes paying ***something*** in advance but there is no indication the total dollar amount.

C. July 16, 2019 Council Hearing reveals Third "Draft Development Agreement" (Hereafter DDA # 3 which is attached as Exhibit #4 and incorporated by this reference).

DDA # 3 proposes a schedule by which Holt will pay something, but is still only is agreeing to pay $2.9 million while calling some of the payments "TIF" and some of the payments "Surcharge" as follows:

150 lots for preliminary plat approval by 2/15/20 at $2,680 per lot ($402,000)-**NOTE: $2,680 per lot ($402,000) = ½ of the TOTAL TIF owed at rate of $536.00 on each of the 150 lots.**

However, if we use $605/trip (current rate) at 10 trips per day, then the total TIF for these 150 lots would be $907,500 (1/2=$453,750). ALSO NOTE: The DA DOES NOT use the bumped up rate of $930 TIF listed in Option 8. Therefore, there is no apparent justification for using the $2,680/lot unless the drafter was under the same misimpression as I was that the actual TIF was $536.

150 lots for preliminary plat approval by 2/15/21 at $2,680 per lot ($402,000)

150 lots for preliminary plat approval by 2/15/22 at $2,680 per lot ($402,000)

91 lots for preliminary plat approval by 2/15/23 at $2,680 per lot ($243,880)

The total amount of the payment of what they would owe at the issuance of the building permit is **$1,449,880** of the total TIF of $4,025,670 at the current rates ($605 per trip—10 trips per day for SFR and 6 trips per day per TH).

Therefore, under DDA#3, there is NO money paid at the lifting of the UH but $1,449,880 (150 x $2,680) must be paid at preliminary plat, but for only 541 of the 705 Units. Importantly, over 150 lots/units are now excluded from TIF payments (606 SFR plus 99 TH= 705 units is total but DDA #3 only deals with 541 not 705).

DDA #3 then provides for additional TIF payments at Final Plat approval in the same manner.

150 lots prior to November 1st, 2020 at $2,680/lot

150 lots prior to November 1st, 2021 at $2,680/lot

150 lots prior to November 1st, 2022 at $2,680/lot

91 lots 150 lots prior to November 1st, 2023 at $2,680/lot

Thus, by November 1, 2023, the Developer is obligated to pay the full TIF amount for the 541 lots at $2,680/lot. Total for all TIF under DDA #3 is the original $2,899,760[4].

DDA #3 then addresses the "surcharge" issue and states that each building permit for each lot developed upon the Property, shall pay an additional surcharge (the "Surcharge") in the amount of $3,500 per lot. Unlike the other provisions, where the TIF for only 541 lots must be paid by December 2023, there is no requirement for timing on the payment of $3,500/lot so there is no guarantee that money will be paid to the County within 6 years. In addition, there is required number of lots that are required to pay the allotment (ie, there is no requirement that 541 lots, or any other number of lots, pays the "surcharge" of $3,500/lot. In a best-case scenario for the County, assuming full build out of 705 lots at $3500/lot, there would be an additional $2,467,500, for a total payment of TIF and "surcharge" of $5,367,260 ($2,899,760 + $2,467,500).

NOTE: The Draft Development Agreement also states that By December 2023, Holt or a successor shall have paid $2,900,000 in *COMBINED* TIF and Surcharge. If any portion of the $2,900,000 has not been paid by December 31, 2023, such amount shall be paid on December 31, 2023.

Thus, this statement appears to suggest that no matter what is paid, they are limited to paying no more than 2,900,000 in TIF and "Surcharge" combined.

Finally, the last provision of Paragraph states that

> The transportation vesting provided for in this Section shall be subject to the mitigation measures and the timing provided for in Exhibit "D". Some of the transportation

[4] It appears that somehow, Mr. Printz took the total expected TIF as designated by staff in the November 2018 staff report to the PC and made some calculations to achieve that payment of $2,899,760.

> improvements may be on the County's Transportation Capital Facility Plan. Holt or successor in interest to the Property, upon construction of such qualifying transportation improvement, shall be eligible to apply for Transportation Impact Fee Credits, but only if such improvements are eligible for Credits under the County's applicable Capital Facilities Plan and Transportation Impact Fee programs.

Does this paragraph mean that despite the promises to pay as set forth in paragraph 8 that they can get credits back from the County and, if so, how much credits can they get back from the County?

Coincidentally, if the County just charged the actual TIF at the rate of $916/trip (option #9-Funding package dated July 10, 2019), then at 6654 generated trips for this development at full build out, the total TIF reimbursement ***alone*** to the County would be $6,095,064. Therefore, by getting some upfront costs, the County is giving up almost $700,000. That number goes up under option 8 if the TIF imposed is $930/trip ($6,188,220), a loss to the County of over $800,000.

Since these 4 developers will actually be paying less in TIF plus "surcharge" than they would be paying in TIF total, the question should be asked, **"why aren't the developers paying for all of the TIF fees PLUS the "Surcharge"?"** If that were the case, the Holt Developer would owe $6,095,064 (or $6,188,220)[5] plus the $2,467,500 for a total of $8,655,720 (at $916/trip) or $8,655,720 (if at $930/trip).

Thank you for allowing me to comment on the proposed development of this area. Sadly, it appears that this County is once again listening to the purveyors of residential development and using an extremely large amount of public funds to subsidize the profits for residential development without any promise of economic development or jobs based land development.

It is a fallacy to assume that real job based development will follow "rooftops". If that was the case, Clark County would be full of job based economic

---

[5] Depending on whether one uses 6654 trips or 6346 trips.

engines and the traffic flow across the river would slow to a trickle. Instead the true reality is that over the last 20 years, people who live and work in Portland, but cannot afford to buy a home there, have to come to Clark County to purchase homes and then commute to Portland.

These 4 projects will just create more of the same and there is nothing in the record to show different. In addition, the developers own traffic study shows that the 4 developments consume almost all of the capacity that will be created by the 66.2 million dollar investment leaving no capacity for any job based economic development.

As Bridget Schwartz commented at the FGNA meeting the other night, "if this goes through, we will all be in our own private hell".

Sincerely,

David T. McDonald

EXHIBIT #2 TIF Calculation for Holt Home Development

The original staff report from November 2018 calculated the TIF for this development at almost 2.9 Million based upon **606 Single Family Residences** and **99 Townhouses** (which was determined to create 657 PH trips).

Assuming 10 daily trips per SFR and 6 Daily trips per general townhouse, and a current TIF rate of $605 per trip (current Mt. Vista TIF Rate), then the total TIF obligation for this development should be $4,025,670 (6,060 daily trips (SFR) plus 594 daily trips for (TH)=6654[1] daily trips x $605=$4,025,670.

If the TIF rate changed to $916 or $930, then the ultimate TIF obligation at 6654 trips would be $6,095,064 or $6,188,220, respectively.

Therefore, it is unclear to this writer why the total in the staff report in November showed a total of $2,890,468. This writer did not give any credit for reduction for BEF or .085 under 40.620.010 and sees no justification in the record for either of those credits.

---

[1] DDA #3 has a list of 6346 Daily Trips which appear to be the total if one uses the County charts of 9.52 (not 10) for a SFR (3,092,248.32) and 5.81 (not 6) for a TH ($308,301.84) for a total of $3,839,330. But, even if one uses the county chart technical rate, not the "rounded up" rate, the TIF number in the staff report ($2,890,468) is still almost $1,000,000 short of the actual number (6346 x 605=$3,839,330). If one considers 6346 at $916/trip, the total is $5,812,936 and if at $930/trip is $5,901780.

State of Washington
DEPARTMENT OF FISH AND WILDLIFE
Southwest Region 5 • 5525 South 11th Street, Ridgefield, WA 98642
Telephone: (360) 696-6211 • Fax: (360) 906-6776

July 2, 2019

Matt Hermen
Clark County
1300 Franklin Street
Vancouver, WA 98660

RE: WDFW Comments for the Comprehensive Plan Urban Holding Overlays: Reference CPZ2018-00021, CPZ2019-00023, and CPZ2019-00024

Dear Mr. Hermen:

Thank you for the opportunity to provide comments on the proposed removal of the urban holding overlays on the above referenced actions. We appreciate the thoughtful process Clark County (hereafter 'the County') uses in managing these urbanizing areas and share your value of maintaining the functions of critical areas.

We have no objections of removing the overlay from the two proposed locations and providing safeguards necessary for protecting the function of the critical areas within and adjacent to those locations. As the land is further developed, we encourage you to use your land use authority to ensure adequate designation and protection of areas to provide for No Net Loss of Critical Area functions.

Thank you for the opportunity to participate in this process. Please feel free to contact me if you have any questions. (360) 906-6764.

Best Regards,

Chuck Stambaugh-Bowey, CWB
Assistant Regional Habitat Program Manager

Nisqually Indian Tribe
4820 She-Nah-Num Dr. S.E.
Olympia, WA 98513
(360) 456-5221

June 25, 2019

Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin St.; 3rd Floor
PO Box 8910
Vancouver, WA 98666

Dear Mr. Orjiako

The Nisqually Indian Tribe thanks you for the opportunity to comment on:

Re: CPZ2019-00023 – (Hinton) Urban Holding Overlay near the I-5/179th St Interchange, Phase III

The Nisqually Indian Tribe has reviewed the report you provided for the above-named project. The Nisqually Indian Tribe has no further comments or concerns at this time. Please keep us informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials.

Sincerely,

Brad Beach
THPO Department
360-456-5221 ext 1277
beach.brad@nisqually-nsn.gov

Annette "Nettsie" Bullchild
THPO Department
360-456-5221 ext 1106
bullchild.annette@nisqually-nsn.gov

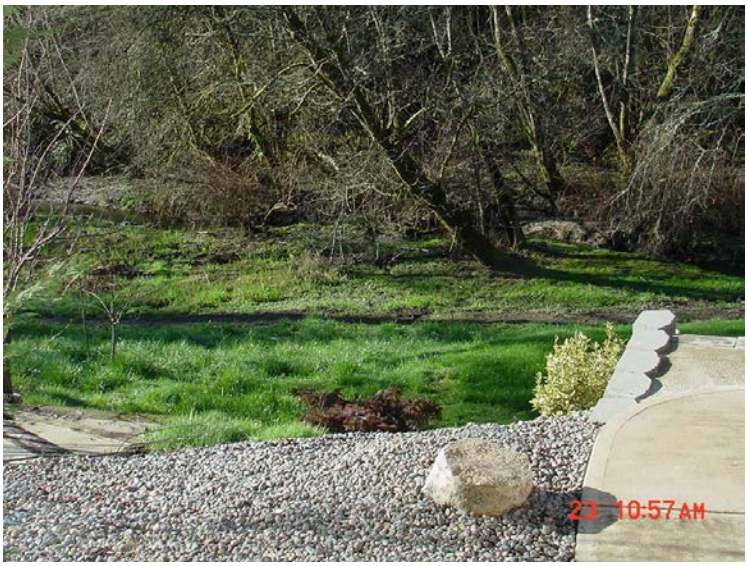
Jeremy "Badoldman" Perkuhn
THPO Department
360-456-5221 ext 1274
badoldman.jp@nisqually-nsn.gov

From: Greg Huggins
To: Hermen, Matt; David Gilroy; Greg Huggins
Subject: CPZ2019-00023
Date: Wednesday, July 03, 2019 1:41:45 PM
Attachments: Hinton.pptx

Matt attached is the presentation we talked about this one is why we oppose removing urban holding on just this parcel.

Greg Huggins
Cell 360 609 2431

Mill Creek Forest HOA is opposed to the lifting of the urban holding overlay proposed in CPZ20019-00023. We worked extensively with the county on the Mill Creek Sub Area plan in 2009. Our concerns ,at that time, were the hard surface increase around Mill Creek would increase flooding in our PUD and cause increased property damage to our homes. Since then the development up 29th street has added hundreds of houses on the other side of the creek that runs through our property. This has turned the creek into a raging river during rain storms



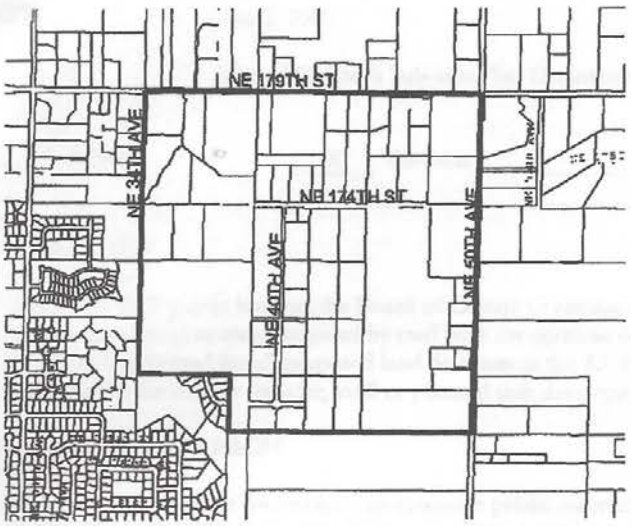
We received this from the planning department who said it came from Hinton development. Lifting urban holding this is one step closer.

This area is part of the Mill Creek Sub Area Plan covered by county code 40.250.060 which states the lot size shall be 9000 Sq. Ft. minimum. The lots on this drawing are only 7000 Sq. Ft. Another stipulation of the code is the adjacent lot to Mill Creek Forest must be either 200 feet from our HOA or the lots sizes must be at least the size of the adjacent lots from Mill Creek Forest 17550 Sq. Ft. This drawing shows 7000 Sq. Ft. and no setback from our HOA.

Figure 1 is from the county website. Most of the Hinton property is classified by the county as unstable slopes, Hydric soils, and **wetlands.** Hydric soil is soil which is permanently or seasonally saturated by water, resulting in anaerobic conditions, as found in wetlands. In the winter I have walked into the field in spring and the water was over 6" up on my boots. This is the ground water that keeps the water flowing for the salmon, various fish and eels found in the stream.

Since 2009 not much has happened on this side of the creek that would make it more desirable for development. The road system has gotten much more congested. Most of the properties are still on wells and septic's. The sewer line that was supposed to service this property has been compromised by a land slide. We still have only one way in and one way out, 50th Ave. which has large dips in both directions that can be very dangerous if you are not paying attention. The closest retail business is the John Deere dealer on 72nd Ave.

Figure 40.250.060-1

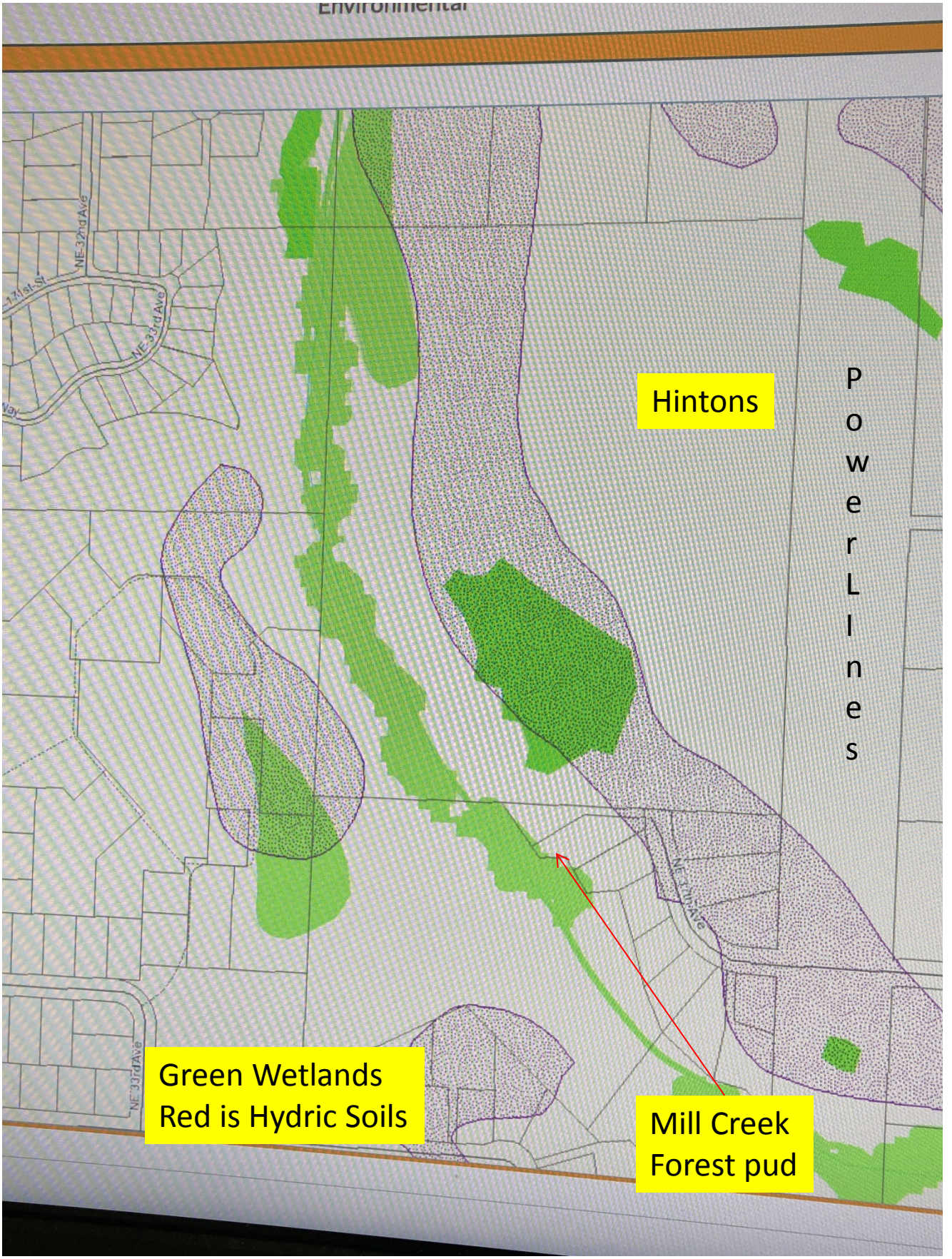


C. Standards.

The following additional standards apply in the overlay district:

1. New lots created adjacent to urban subdivision lots existing at the time of the adoption of the Mill Creek Overlay District shall meet or exceed the average lot size of the abutting subdivision lots unless there is at least two hundred (200) feet of open space between the existing and proposed lots.
2. Prior to approval of any development that would add traffic to NE 37th Avenue, additional access via a public road connection to NE 40th Avenue or NE 174th Street must be assured.
3. A minimum lot size of nine thousand (9,000) square feet is required for all land divisions in the R1-10 and R1-20 districts proposing to develop under the density transfer provisions of 40.220.110(C)(5), the infill provisions of 40.260.110 or the Planned Unit Development provisions of 40.520.080. The exceptions to lot sizes in 40.200.050 shall still apply.

Figure 1



From county website

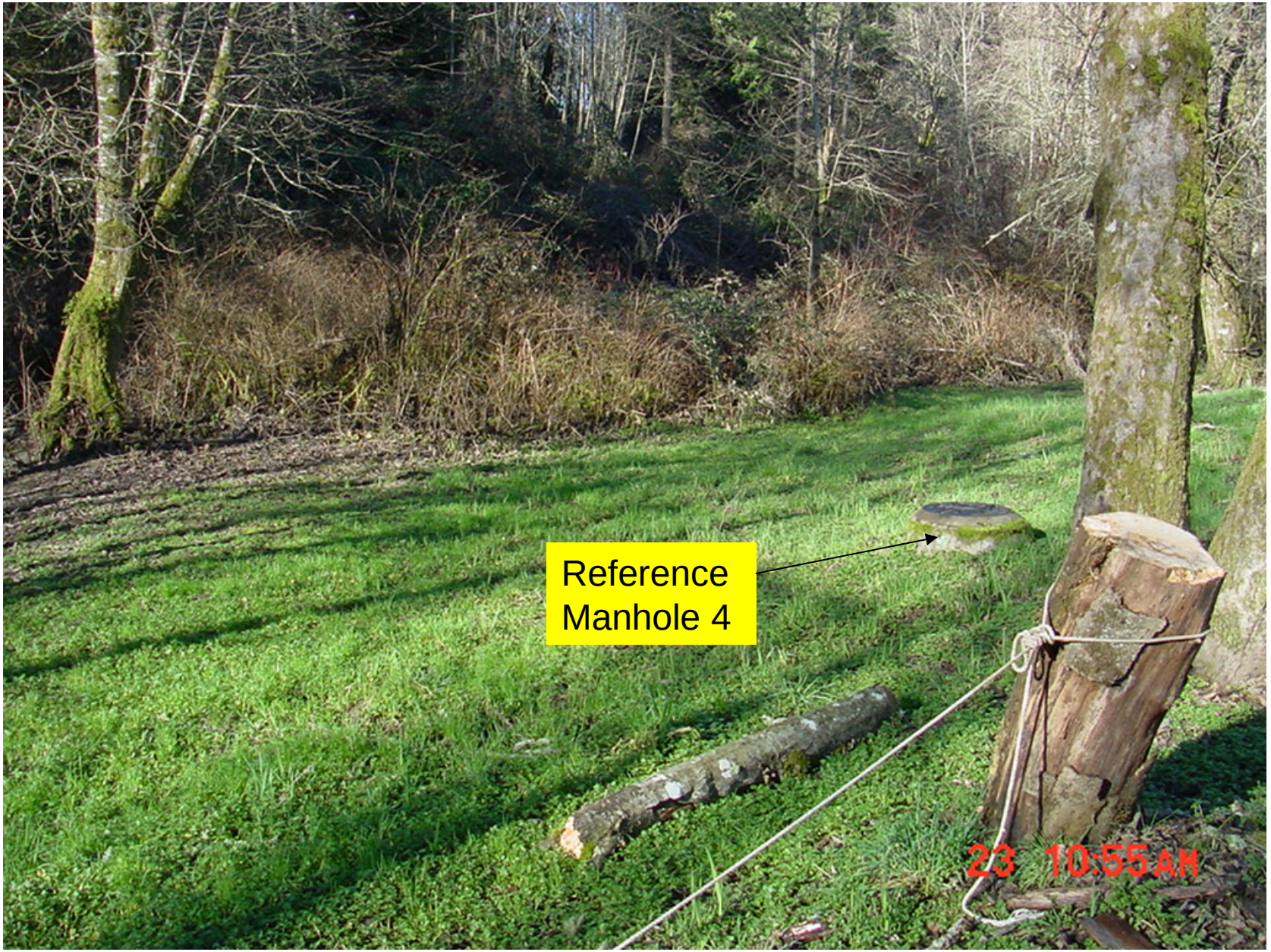
Our HOA is not opposed to lifting the urban holding where needed but lifting it on this particular property will be the first step for them starting the development process with very bad consequence for us.

We are also including portions of the power point presentation we use to document the flooding, Sink holes, and the slope of Hinton's property in 2009.

Flooding

Normal creek flow below Mill Creek Forest HOA.

This is the same picture during heavy rains. From 5 ft across to 50 FT.



The creek is normally on the other side of the bushes.

This kind of flooding will only increase if proper planning is not undertaken.

Normal flow.

Estimated 50 times normal flow. Usually 5’ wide now 50’ wide

Flood Jan. 31, 2003. Our HOA has spent a considerable amount of time anchoring trees to eroding banks and planting trees to prevent further damage.


Property line
31 9:41AM


EROSION FROM ONE
FLOOD JAN, 2003

This run-off from the Hinton parcel flowed through Mill Creek Forest for 4 weeks without further rain.

Water caused red landscape rocks to be washed down the hill with considerable erosion.

Red landscaping rock washed down hill to path and into creek

In places the erosion is 18” deep from water the drain pipe could not handle.


31 9:48AM

Here the runoff goes under the ground

Regulation of Wetlands in Western Washington Under the Growth Management Act

*Alison Moss**
*Beverlee E. Silva***

I. INTRODUCTION

Wetlands, simply defined, are lands such as marshes, bogs, or swamps that are seasonally or periodically wet.[1] Wetlands serve numerous significant biological and environmentally valuable functions. They provide not only fish and wildlife habitat, but they also aid in water purification, maintenance of groundwater supplies, sediment entrapment, floodwater retention, shoreline stabilization, and maintenance of streamflows.

Wetlands protection has long been an important issue in the central Puget Sound. With the passage of the Growth Management Act (GMA),[2] all counties and cities within the state are now required to adopt regulations "protecting" critical areas, including wetlands. This requirement furthers the GMA's environmental goal to "[p]rotect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water."[3]

This environmental goal is, however, only one of the

* Alison Moss is a partner at Bogle and Gates, Seattle, Washington, where she focuses her practice on land use law. Ms. Moss is the chair of the Seattle/King County Economic Development Council Wetlands Task Force, and she is a member of the Department of Ecology's State Wetlands Integration Strategy Regulatory Reform Work Group. Ms. Moss received her B.A. from Radcliffe College and her J.D. from the University of Chicago Law School.

** Beverlee E. Silva is an associate at Bogle & Gates in Seattle, Washington. Her practice focuses on land use and environmental law. Ms. Silva earned her A.B. and A.M. from the University of Chicago and her J.D. from Northwestern University School of Law in Chicago.

1. A precise definition of "wetland" has become a highly controversial and politically charged issue, perhaps because of the complexity of the regulatory process. *See infra* part III.A.

2. 1990 Wash. Laws 1972, 1st Ex. Sess., ch. 17 (amended by 1991 Wash. Laws 2903, 1st Sp. Sess., ch. 32 and 1992 Wash. Laws 1050, ch. 227) (codified at WASH. REV. CODE ANN. ch. 36.70A (West 1991 & Supp. 1993), WASH. REV. CODE ANN. ch. 47.80 (West Supp. 1993), and WASH. REV. CODE ANN. ch. 82.02 (West 1991 & Supp. 1993)).

3. WASH. REV. CODE ANN. § 36.70A.020(10) (West 1991).

GMA's thirteen goals.[4] All of these goals are intended to guide the creation not only of the comprehensive plans, but also of the development regulations that implement the comprehensive plans. Wetlands regulations are "development regulations," as that term is used in the GMA. Thus, all thirteen goals should be considered in developing local wetlands regulations.[5]

The GMA expressly provides that these thirteen goals are not listed in order of priority.[6] It does not, however, explain how the goal of environmental protection should be balanced with the GMA's other twelve planning goals. This lack of guidance is problematic because the adoption of critical areas regulations is the first task local governments must complete under the GMA, preceding adoption even of the comprehensive plans in those jurisdictions required to adopt comprehensive plans. Consequently, jurisdictions are developing these regulations with little understanding of how they will mesh with such competing goals as the reduction of sprawl, the encouragement of economic development and affordable housing, and the protection of property rights. Predictably, many local governments are encountering problems.

A task force of the Economic Development Council of Seattle and King County recently examined the regulatory treatment of wetlands following the adoption of the GMA.[7]

---

4. The planning goals include the following: encourage development in urban areas where adequate public facilities and services already exist or can be efficiently provided; reduce sprawl; encourage affordable housing for all economic segments of the population; encourage economic development; protect property rights; process permits in a timely manner to ensure predictability; maintain natural resource-based industries including timber, agricultural and fisheries industries; retain open space and develop recreational opportunities; encourage citizen involvement in the planning process and interjurisdictional coordination; ensure adequate public services and facilities; and encourage historic preservation. *Id.* § 36.70A.020(1)-(13).

5. *See* Clark County Natural Resources Council v. Clark County, Western Washington Growth Planning Hearings Board, No. 92-02-0001, at 2-3 (1992) (*CCNRC*). *CCNRC* was the first case to come before any of the three Growth Planning Hearings Boards established to hear appeals of comprehensive plans, development regulations, and population projections. The Western Washington Growth Planning Hearings Board hears appeals from all of Western Washington except King, Kitsap, Pierce, and Snohomish Counties and the cities within those counties. These four counties and the cities within them collectively comprise the central Puget Sound. *See* WASH. REV. CODE ANN. §§ 36.70A.250-.300 (West Supp. 1993). The Hearing Board's decision in *CCNRC* was appealed to the Thurston County Superior Court, which dismissed the case with prejudice on September 27, 1993, for failure to serve the Board within 30 days as required by the Administrative Procedure Act.

6. WASH. REV. CODE ANN. § 36.70A.020 (West 1991).

7. The task force consisted of a wide variety of interested professionals, including

The task force looked at the permit process at the local, state, and federal level and examined key issues related to the protection and management of wetlands. Describing the current process as a "quagmire," the task force summarized the principal issues as follows: (1) the current regulatory system requires too much money to be spent on the permit process, rather than on resource management and protection; (2) the current regulatory system's focus on individual properties fragments the resource and is, therefore, often counter-productive to wetlands management and protection; (3) the permit process does not offer equal access to all applicants; and (4) the permit process involves duplicate review of projects by the federal and local government without offering consistent criteria for review.[8] In cases where the state also has jurisdiction, triplicate review compounds the problem.

This Article will explore these and related issues arising under the wetlands regulatory scheme in Washington following the adoption of the GMA. It will show how this complex, multi-layered regulation scheme is sometimes duplicative and inconsistent and, ironically, may not always result in the most effective protection of wetlands.

Accordingly, Section II will discuss the GMA's requirements regarding wetland regulations. Section III will address the Department of Ecology (DOE) Model Wetlands Protection Ordinance (Model Ordinance)[9] and the problems the Model Ordinance presents for wetlands regulation under the GMA. And finally, Section IV will suggest a framework for local governments to consider in reevaluating their wetlands regulations for consistency with their comprehensive plans.

II. GMA Requirements for Wetland Regulations

A. Regulatory Background

In response to heightened state and federal concern regarding wetlands protection, the Washington State Legislature considered, but failed to adopt, state-wide wetlands man-

---

wetlands biologists, engineering and architectural consultants, a representative of the environmental community, a county resource planner, a city zoning administrator, and members of the business and legal community.

8. The Economic Development Council of Seattle & King County, The Wetlands Quagmire: A Report and Recommendations 26-27 (1992) [hereinafter EDC Report].

9. Washington State Dep't of Ecology, Model Wetlands Protection Ordinance (Sept. 1990) [hereinafter Model Ordinance].

agement bills in both 1989 and 1990.[10] As a result of the failures in 1989, Governor Booth Gardener issued Executive Order 89-10, establishing a goal of no-net loss of wetlands acreage and function.[11] Against this backdrop, although it did not adopt a comprehensive wetlands bill in 1990, the legislature adopted the GMA, directing all local governments to designate critical areas and all local governments planning under the GMA to adopt development regulations[12] "precluding land uses which are incompatible with" wetlands. Governor Gardner then issued Executive Order 90-04, which directed various state agencies "to the extent legally permissible" to take various actions to protect wetlands.[13] Among other things, Executive Order 90-04 expressly directed DOE to assist the Department of Community Development (DCD) in developing "wetlands protection policies and standards for the implementation of grants programs and to guide the development of local government comprehensive plans and development regulations under the growth management bill passed by the 1990 legislature."[14] In response, DOE prepared, with virtually no public participation, the Model Ordinance.[15] In 1991, the legislature amended the GMA to require that *all* cities and counties in the State of Washington, including those required to or choosing to plan under the GMA, adopt development regulations that "protect" those critical areas.[16]

B. Adoption of Wetlands Regulations

The GMA defines "critical areas" as including (a) wetlands, (b) areas with a critical recharging effect on aquifers used for potable water, (c) fish and wildlife habitat conservation areas, (d) frequently flooded areas, and (e) geologically

10. *See* S.H.B. 1392, S.B. 5378 (1989); H.B. 2729, S.S.B. 6799 (1990).

11. Exec. Order No. 89-10, Wash. St. Reg. 90-01-050 (1990).

12. Exec. Order No. 90-04, Wash. St. Reg. 90-10-027 (1990).

13. *Id.* § 16.

14. MODEL ORDINANCE, *supra* note 9. The Model Ordinance has had a significant influence on the development of local wetlands regulation under the GMA. The majority of Washington jurisdictions have based their wetlands ordinances, at least in part, on the Model Ordinance.

15. "Development regulations" are defined as "any controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances." WASH. REV. CODE ANN. § 36.70A.030(7) (West 1991).

16. *Id.* § 36.70A.060(2) (West Supp. 1993).

hazardous areas.[17] For purposes of this Article, we will concentrate on wetlands. Counties and cities planning under the GMA were to have adopted wetlands regulations by September 1, 1991. The deadline for all other counties and cities was March 1, 1992.[18] If counties and cities were unable to meet their deadlines, DCD was permitted to grant a one hundred eighty day extension.[19]

Following the adoption of comprehensive plans, each jurisdiction must review its critical areas designations and regulations for consistency with the new comprehensive plan. At that time, the designations and regulations may be altered to ensure such consistency.[20] Thus, the initial critical areas regulations are commonly referred to as "interim regulations." The requirement that local governments revisit their wetlands regulations affords them an opportunity to address many of the problems that local governments elsewhere are encountering.[21]

C. Scope of Wetlands Regulations

The GMA provides little guidance as to the proper scope of wetlands regulations. The major "scope" issues involve determining which wetlands should be protected and to what extent. These issues arise because not all wetlands perform equal functions and not all activities are equally harmful to those functions. In determining which wetlands deserve protection and what degree of protection is appropriate, each jurisdiction, either implicitly or explicitly, weighs economic needs and environmental interests.[22]

In *Clark County Natural Resources Council (CCNRC) v. Clark County*,[23] the petitioners, challenging the Clark County Wetlands Protection Ordinance, argued that the GMA requires

17. *Id.* § 36.70A.030(5) (West 1991).

18. *Id.* § 36.70A.060(2) (West Supp. 1993). Appendix A shows the status of adoption of wetlands regulations for most jurisdictions in western Washington as of October 1, 1993. It is clear from Appendix A that many regulations are not yet finalized. The Department of Community Development (DCD) has indicated that it views the deadline as flexible provided that a jurisdiction is making a good faith effort to develop its critical areas regulations.

19. *Id.* § 36.70A.380.

20. *Id.* § 36.70A.060(3).

21. *See* discussion *infra* part IV.

22. In an attempt to create a rational hierarchy of wetland "values," some jurisdictions have adopted a rating system by which to differentiate between dissimilar wetlands. *See, e.g.*, the Clallam County, Clark County, Jefferson County, and King County Wetlands Ordinances.

23. Western Washington Growth Planning Hearings Board, No. 92-02-0001 (1992).

local governments to adopt development regulations governing all wetlands and virtually any activity that could have an adverse impact on wetlands, including activities that may alter the wetlands' water chemistry.[24] The petitioners challenged the exemption of small wetlands, prior converted croplands, and riparian wetlands less than five feet wide that are otherwise regulated under the county's Shoreline Master Program.[25] The petitioners also challenged the exemption for "marginal" wetlands, which were defined by the ordinance as either isolated wetlands having only one wetland class and a predominance of exotic species or wetlands that had been legally altered and that would not revert to wetlands.[26]

In rejecting petitioners' argument regarding wetlands regulation, the Hearings Board looked to the GMA's legislative history, stating:

> Because of [the] language change [from "precluding land uses that are incompatible with the critical areas" to "protect"] and the overall scheme of the [GMA] which authorizes discretion by local government in formulating policy decisions, we hold that [the GMA] does not require regulation of each and every wetland.[27]

The Board then specifically held that each of these activities, with regard to the challenged activities exempted from regulation, was within the reasonable range of discretion afforded to the county.[28]

After *CCNRC*, therefore, it appears that the GMA allows local governments to differentiate between wetlands, to make value judgments as to which wetlands deserve protection, and to determine the appropriate level of protection.

D. GMA Minimum Guidelines for Regulation of Wetlands

The GMA directs DCD to issue guidelines for the classifi-

---

24. *Id.* at 2.

25. The Clark County Shoreline Master Program was adopted pursuant to the Washington State Shoreline Management Act of 1971. WASH. REV. CODE ANN. ch. 90.58 (West 1992). The Shoreline Management Act regulates development on shorelines of the state, including marine waters, lakes, rivers and streams and their associated wetlands. Most development within a "shoreline of the state" requires either a substantial development permit, a conditional use permit, or a variance. *Id.* § 90.58.140.

26. *CCNRC*, WWGPHB No. 92-02-0001, at 10-11.

27. *Id.* at 4-5.

28. *Id.* at 4-5, 10.

cation of resource lands and critical areas (Minimum Guidelines).[29] The Minimum Guidelines were meant to allow for regional differences.[30] For critical areas classification guidelines, the GMA mandates that DCD consult with DOE.[31]

Despite the fact that the Minimum Guidelines were only intended to assist counties and cities in classifying critical areas, they contain significant direction on the substantive content of wetlands regulations. They also stray from the ambit of guidelines to directive.

1. Rating

The Minimum Guidelines state that jurisdictions should consider the following when developing a rating system for wetlands: (1) the Washington State Four-tier Wetlands Rating System (Four-tier System); (2) the wetlands' functions and values; (3) the rarity of the wetlands; and (4) the ability to compensate for destruction or degradation of the wetlands.[32] This guidance, which arguably relates to classification, strays into directive: if the Four-tier System is not used, the individual jurisdiction must justify the rationale for its decision in its next annual report to DCD.[33] The consequences of a failure to adequately justify an alternate classification scheme are unclear.

2. Delineation

For the delineation of wetlands,[34] the Minimum Guidelines suggest the use of the Federal Manual for Identifying and

29. WASH. REV. CODE ANN. § 36.70A.050 (West 1991). *See* Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas, WASH. ADMIN. CODE ch. 365-190 (1991).

30. WASH. REV. CODE ANN. § 36.70A.050(3) (West 1991). The GMA directs the Minimum Guidelines to take into account regional differences. *Id.* § 36.70A.050(3). However, neither the Minimum Guidelines nor the Model Ordinance provide guidance as to what regional differences exist and how they might be taken into account. It is our understanding that the Association of Counties has suggested that DOE develop Model Ordinances to address both eastern and western Washington, as well as rural and urban areas.

31. *Id.* § 36.70A.050(1).

32. WASH. ADMIN. CODE § 365-190-080(1)(a) (1991).

33. *Id.*

34. Delineation is the process by which a determination is made as to the boundaries of a wetland. In order to delineate a wetland, an expert uses the presence of indicators such as hydric soils, hydrophytic plants, and hydrology. *See* UNITED STATES ARMY CORPS OF ENGINEERS ET AL., FEDERAL MANUAL FOR IDENTIFYING AND DELINEATING JURISDICTIONAL WETLANDS (1989) [hereinafter 1989 MANUAL].

Delineating Jurisdictional Wetlands (1989 Manual),[35] which was developed in January 1989 by the U.S. Army Corps of Engineers (the Corps), the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service, and the U.S. Soil Conservation Service.[36] Use of the 1989 Manual creates a different delineation scheme than that currently used by the Corps.[37]

3. Consideration of DOE's Model Ordinance

The Minimum Guidelines "request" that counties and cities make their actions consistent with Executive Orders 89-10 and 90-04 and "suggest" that "counties and cities should consider wetlands protection guidance provided by the department of ecology including the model wetlands protection ordinance. . . ."[38]

In issuing this request, the Minimum Guidelines actually appear to recommend the specific content of wetlands regulation. This is the most significant way in which the Minimum Guidelines deviate from guiding the designation or classification of critical areas to the substantive regulation of these areas. In so doing, the Minimum Guidelines also elevate the Model Ordinance to a position of great importance.

---

35. *Id.*

36. WASH. ADMIN. CODE 365-190-080(1)(c) (1991).

37. This becomes problematic when a local ordinance calls for use of the 1989 manual and a project requires review by both the Corps and a local government. Some local wetlands regulations specifically address this problem. For instance, the Whatcom County Critical Areas Ordinance provides as follows in the event of dual regulation:

> In cases where the United States Army Corps of Engineers requires an individual permit in accordance with the Clean Water Act, and it is determined by the Administrator that the permit conditions satisfy the requirements of this Ordinance, the Administrator may allow requirements imposed by the Army Corps to substitute for the requirements of this Ordinance.

Whatcom County, Wash., Critical Areas Temporary Ordinance § 10.7.1 (July 1992).

The Tacoma City Code also deals with dual regulation. It allows for an "alternative review process" where the Corps review process will substitute for the Tacoma review process. TACOMA, WASH., CITY CODE § 13.11.160 (1992). Tacoma reserves the right to deny an applicant's project, but will consider the Corps' mitigation requirements in deciding what mitigation of wetland impacts is necessary. *Id. See infra* part III.C.

38. WASH. ADMIN. CODE 365-190-080(1) (1991).

III. THE MODEL ORDINANCE AS A PARADIGM FOR LOCAL GMA INTERIM REGULATIONS

In reviewing the Model Ordinance, it is important to remember that it was not prepared pursuant to the GMA. Rather, it was developed in response to Executive Order 90-04, which directs DOE to take steps to protect wetlands "to the extent legally permissible."[39] Consequently, the Model Ordinance does not seek to balance wetlands protection with other GMA goals.[40]

Despite this fact, the Model Ordinance has played a vital role in the development of many local jurisdictions' interim wetlands regulations. In fact, the majority of jurisdictions developing interim wetlands regulations have, in significant part, patterned their ordinances on the Model Ordinance.[41] The Model Ordinance has attained this level of importance for two reasons. First, as previously discussed, the Minimum Guidelines specifically direct local governments to "consider" the Model Ordinance.[42] Second, eligibility for grant funds from the Wetlands Protection Grant Fund was contingent on the local government basing its regulation on the Model Ordinance.[43]

---

39. Exec. Order No. 90-04, Wash. St. Reg. 90-10-027 (1990). The Attorney General, in construing Executive Order 90-04, determined that the governor does not have the ability, absent statutory authority, to create obligations and responsibilities having the force and effect of law by issuing an executive order for the protection of wetlands. 1991 Op. Att'y Gen. Wash. No. 21. *See also* 1989 Op. Att'y Gen. Wash. No. 21, in which the Attorney General concluded that state law did not, at that time, empower the DOE to promulgate wetlands protection rules.

40. Even though the Model Ordinance does not require an evaluation of those other goals, the Western Washington Growth Planning Hearings Board, in construing the Clark County Ordinance, decided that these other goals must be considered. CCNRC v. Clark County, Western Washington Growth Planning Hearings Board, No. 92-02-0001, at 2-3 (1992).

41. Examples of just a few of these jurisdictions are Clark County, Jefferson County, Pierce County, Mason County, San Juan County, Thurston County, Whatcom County, the City of Bothell, the City of Enumclaw, the City of Bainbridge Island, the City of Bremerton, the City of Bonney Lake, the City of Gig Harbor, the City of Everett, and the City of Tacoma.

42. WASH. ADMIN. CODE § 365-190-080(1) (1991).

43. *See* Washington State Dep't of Ecology, Wetland Protection Grant Program Application for State Fiscal Year 1991. The DOE administered a $600,000 Wetlands Protection Grant Program as mandated by E.O. 90-04. $373,500 of this amount came from funds appropriated to the DCD to implement the GMA and was, therefore, required to be distributed to local governments planning under the GMA.

In order to qualify for funds, the local jurisdiction was required to develop an ordinance for wetland protection based on DOE's model. The ordinance could "be tailored to meet identified regional characteristics and objectives," but the jurisdictions

Given the importance of the Model Ordinance as a guide for much of local wetlands regulation, it is important to examine certain key provisions and the impact of those provisions on actual wetlands regulation. This Section will discuss the following aspects of the Model Ordinance: the definition of wetlands, the rating system, the recommendation for delineation manual use, the scope of regulated activities, the buffer requirements, and the requirements for wetlands alteration and mitigation when alteration is permitted. This discussion will include a commentary on the practical results of using these regulations and an examination of their use or modification by various local jurisdictions.

A. Wetlands Definition

The Clean Water Act[44] defines "wetlands" as follows: "areas that are inundated or saturated by surface water or ground at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."[45]

The GMA and the Model Ordinance both adopt the Clean Water Act definition, but they add the following qualifying language:

> Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city.[46]

While the GMA and the Model Ordinance appear to have somewhat liberalized the wetlands definition, this has not proved to be true in practice. Most local governments have placed the burden on the property owner to demonstrate that

---

were required to view the Model Ordinance as a *minimum* standard. *Id.* at 4-5. As a further condition of funding, DOE was given the right to review and approve the local government's final draft.

44. The principle regulatory tool for Federal protection of wetlands is the Clean Water Act of 1977, Pub. L. No. 95-217, 91 Stat. 26 (1977).

45. 33 C.F.R. § 328.3(b) (1992).

46. WASH. REV. CODE ANN. § 36.70A.030(17) (West 1991); MODEL ORDINANCE, *supra* note 9, § 2(bb).

an allegedly artificial wetland was intentionally created from a non-wetland area. Arguably, placing this burden on property owners makes the exemption unavailable where the wetland was not intentionally created, such as wetlands resulting from improperly placed culverts or leaking irrigation systems.

The Model Ordinance definition also excludes Category II and III wetlands that are less than 2,500 square feet and Category IV wetlands that are less than 10,000 square feet.[47] Most local governments have adopted these exemptions for small, lower value wetlands.[48] It has been generally accepted that the burden on both the individual jurisdiction and the property owner to regulate and preserve these wetlands is greater than the possible environmental harm resulting from their exemption.

B. Wetlands Rating System

As stated above, not all wetlands are created equal. The Model Ordinance recognizes these differences by providing two rating systems: the Four-tier System and the Puget Sound Region Wetlands Rating System (Puget Sound System).[49] Both divide wetlands into four categories, ranging from most valuable (Category I) to least valuable (Category IV).[50] Buffer

47. MODEL ORDINANCE, *supra* note 9, § 2(bb).

48. *See* CCNRC v. Clark County, Western Washington Growth Planning Hearings Board, No. 92-02-0001, at 4-5 (1992) (upholding exemption for small, lower value wetlands).

49. The Puget Sound System is set forth in the MODEL ORDINANCE, *supra* note 9, § 4.4(a)-(b).

50. Under DOE's Four-tier System, Category I wetlands include those areas that contain any of the following criteria: habitat for endangered or threatened species or potentially extirpated plant species; high quality native wetland communities; high quality regionally rare wetland communities with irreplaceable ecological functions; or wetlands of exceptional local significance. *Id.* § 4.4(a)(1). The latter type of Category I wetlands is to be determined at a local level after appropriate public review. *Id.* § 4.4(a)(1)(D).

Category II wetlands are those that do not contain features of a Category I wetland but do include any of the following features: habitat for sensitive species; rare, quality wetland communities; or significant functions that may not be adequately replicated. Wetlands that have significant habitat value based on their diversity and size are also Category II wetlands, as are those contiguous with salmonid fish-bearing waters (including intermittent streams) or with significant use by fish and wildlife. *Id.* § 4.4(a)(2).

Category III wetlands are defined as those that do not contain features of Category I, II, or IV wetlands. *Id.* at § 4.4(a)(3).

Category IV wetlands are those regulated wetlands that do not meet the criteria of a Category I or II wetland, and those isolated wetlands one acre in size or less, which have only one class and monotypic vegetation, or those isolated wetlands that are two

widths and replacement ratios are determined by the placement of the wetland within one of the two systems. Since issuing the Model Ordinance, the DOE has updated both the criteria for altering wetlands and its rating system and urges local governments to use this revised wetlands tiering system.[51]

C. Delineation Manual Use

Perhaps the area of wetlands regulation inspiring the most heated debate is "delineation methodology"; that is, the specific criteria to be examined in determining whether an area fits the definition of a wetland. In particular, it is unclear which Federal Manual should be used in delineating wetlands. This debate has spilled over to affect local Washington jurisdictions in their consideration of regulations.

The first formal methodology for the delineation of wetland boundaries was developed in 1987 by the Corps in the Corps of Engineers Wetland Delineation Manual (1987 Manual).[52] A second methodology was developed in the 1989 Manual.[53]

In July 1991, Congress enacted the Energy and Water Development Appropriations Act of 1992 (Energy Act).[54] One of the Energy Act's provisions prohibits the Corps from using federal funds to make any permit or enforcement decision based on a wetlands delineation performed pursuant to the 1989 Manual.[55] This prohibition on the use of the 1989 Manual

---

acres in size or less, have only one wetland class, and a predominance of exotic species. *Id.* § 4.4(a)(4).

In the Puget Sound System, the criteria for Category I, III, and IV wetlands are the same as in the DOE's Four-tier System. Under the Puget Sound System, however, Category II is more specific and "tailored" to the Puget Sound region. *Id.* § 4.4(b)(2). For example, significant peat systems or forested swamps with three canopy layers (excluding monotypic stands of red alder greater than eight inches in diameter or significant spring fed systems) are included as examples of wetlands with significant value to the Puget Sound region and functions that may not be adequately replicated through creation or restoration of wetlands. *Id.* There are also specific guidelines for identifying wetlands with significant habitat value based on diversity and size.

51. In October 1991, DOE issued a revised rating system. WASHINGTON STATE DEP'T OF ECOLOGY, WASHINGTON STATE WETLANDS RATING SYSTEM FOR WESTERN WASHINGTON (Oct. 1991) [hereinafter WETLANDS RATING SYSTEM]. This system still uses ratings of I through IV, but it is intended to "introduce rating criteria that are more specific and less qualitative." *Id.* at iii.

52. UNITED STATES ARMY CORPS OF ENGINEERS, CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL (1987) [hereinafter 1987 MANUAL].

53. 1989 MANUAL, *supra* note 34.

54. Pub. L. No. 102-104, 105 Stat. 510 (1991).

55. *Id.*

arose because of concern over both the criteria established in the manual and the way in which it was being applied in the field.[56]

As a consequence, the Corps and the EPA have since used the 1987 Manual for wetlands delineations under the Clean Water Act. DOE also uses the 1987 Manual to perform its water quality certification under the Clean Water Act. The Model Ordinance, however, requires use of the 1989 Manual,[57] and DOE continues to strongly urge local governments to use the 1989 Manual in their local wetlands regulations.[58]

Under both the 1987 and 1989 Manuals, areas are designated as wetlands when they possess all of the following characteristics: hydrophytic vegetation (i.e., plants adapted to saturated soil conditions), hydric soils (i.e., soils that are saturated, flooded, or ponded), and wetland hydrology (i.e., surface saturation or inundation at some point).[59] Use of these three characteristics has come to be known as the "triple parameter test." Although the 1987 and 1989 Manuals both use this test, the two manuals mandate different technical criteria to be used in identifying which of the parameters are present. Some of the differences are explained below.

The 1987 Manual was not specific about the precise saturation depth that would satisfy the "wetland hydrology" criterion. In the Authors' experience, the most commonly used depth in the Corps' Seattle District was twelve inches. The 1989 Manual, however, provides specific saturation depths of

---

56. Dissatisfaction with the 1989 Manual led to proposed amendments because it was

> concluded that while the [1989 Manual] represented a substantial improvement over pre-existing approaches, several key issues needed to be re-examined and clarified. Some of the key technical issues needing re-examination were: (1) the wetlands hydrology criterion, (2) the use of hydric soil for delineating the wetland boundary, (3) the assumption that facultative vegetation indicated wetland hydrology, and (4) the open-ended nature of the determination process which created opportunities for misuse.

56 Fed. Reg. 40,446, 40,449 (1991).

57. MODEL ORDINANCE, *supra* note 9, § 4.3.

58. This inconsistency in manual endorsement stems from a perception that the 1987 Manual is not as scientifically sound as the 1989 Manual. The Corps, however, has determined that both manuals are scientifically sound.

Out of 80 western Washington jurisdictions surveyed, 62 have followed DOE's recommendation that the 1989 Manual be used. The result is that property owners subject to the jurisdiction of the Clean Water Act, as well as to the jurisdiction of a local wetlands ordinance, will have to conduct two separate delineations with potentially inconsistent results.

59. 1989 MANUAL, *supra* note 34, at 18; 1987 MANUAL, *supra* note 52, at part III.

six, twelve, and eighteen inches, depending on the soil type.[60] Therefore, in some situations, the discovery of water within eighteen inches of the surface satisfies the hydrology requirement.

Also newly included in the 1989 Manual were definitions of "problem areas" and "disturbed areas."[61] A problem area is one in which only two of the three parameters are present during certain times of the year.[62] For example, if the delineation is not performed in the growing season, vegetation might not be present. In the 1987 Manual, problem areas were limited to specific types of wetland areas, such as farmland with a cropping history.[63] The 1989 Manual expands the problem area definition to include all areas. A disturbed area is one that has been previously altered in a way that makes wetland identification more difficult than it would be in the absence of such changes.[64] Farmland that has been plowed for planting crops is an example of a disturbed area.

To satisfy the "hydrophytic vegetation" criterion under the delineation scheme of the 1987 Manual, an area must be vegetated by at least fifty-percent obligate wetland, facultative wetland, and/or facultative species plants.[65] If the area is predominately vegetated by facultative upland plants, it does not satisfy the vegetation criterion and, therefore, is not considered a wetland.[66] Under the 1989 Manual, for problem and disturbed areas, the hydrophytic vegetation criterion is presumed to be met if both the "hydric soil" and "wetland hydrology" criteria are satisfied.[67] In the dry season, however, when water may not be present, the presence of hydric soil alone is

60. 1989 MANUAL, *supra* note 34, at Part 2.7, p. 6.

61. *Id.* at Parts 4.21-4.26, pp. 50-59.

62. *Id.* at Part 4.24, p. 55.

63. 1987 MANUAL, *supra* note 52, at 93-94.

64. 1989 MANUAL, *supra* note 34, at Part 4.21, p. 50.

65. 1987 MANUAL, *supra* note 52, at 19. "Obligate wetland" plants always occur (estimated probability 99 percent) in wetlands under natural conditions, but they also occur, though rarely (estimated probability 1 percent), in non-wetlands. "Facultative wetland" plants occur usually (estimated probability 67-99 percent) in wetlands, but may also occur (estimated probability 1-33 percent) in non-wetlands. "Facultative" plants have a similar likelihood of occurring both in wetlands and non-wetlands. *Id.* at 18 (Table 1).

66. "Facultative Upland Plants" are those that occur approximately 1 percent to 33 percent of the time in wetlands, but 67 percent to 99 percent of the time in non-wetlands. Ronald D. Kranz, *Increasing Jurisdictional Wetland Boundaries Using the New Federal Interagency Method, in* KEY ISSUES IN WETLANDS REGULATIONS IN WASHINGTON 40 (William H. Chapman et al., eds., 1992).

67. 1989 MANUAL, *supra* note 34, at Parts 4.23 (step 3) & 4.25 (step 3), pp. 51 & 56.

sufficient.[68] Therefore, a problem or disturbed area can be a wetland even if it is dominated by facultative upland plants. Consequently, use of the 1989 Manual methodology may result in the regulation of areas considerably drier than the "swamps, marshes, bogs, and similar areas," all of which are defined as wetlands under the Clean Water Act regulations.[69]

The differences resulting from the use of the 1987 and 1989 Manuals can be significant.[70] Accordingly, Congress is currently seeking a solution to the manual controversy. In 1991, the EPA revised the 1989 Manual.[71] The revision was badly received by wetlands scientists and environmentalists. The EPA received over one hundred thousand comments on the revision. Consequently, in early 1992, the Bush Administration ordered an independent study, currently in progress, by the National Academy of Sciences (NAS). The recommendations of this study will hopefully resolve the manual controversy. In light of the pending study, it may be judicious for local jurisdictions to recommend use of either the Manual currently used under the Clean Water Act or the Manual as amended by result of the NAS review.

D. Regulated Activities

Regulated activities are those activities governed by a regulation and which typically require a permit. The effectiveness of any wetlands regulation scheme lies in the ability of the property owner to identify these activities and in the ability of the local jurisdiction to administer and enforce regulation of them. The Model Ordinance's definition of regulated activity presents some difficulties for both parties.

The Model Ordinance defines regulated activities very broadly. It states:

> A permit shall be obtained from local government prior to

---

68. *Id.*

69. 33 C.F.R. § 328(3)(b) (1992).

70. As an example, it is helpful to look at three projects located in the Kent Valley of western Washington: East/West Brook Business Center, Kent Industrial, and Riverbend Estates. The Wetlands in these developments were first delineated using the 1987 Manual and then re-delineated using the 1989 Manual. Both delineations were confirmed by the Corps. Identified wetlands increased 42 percent for the East/West Brook Business Center, 66 percent for the Kent Industrial project, and 908 percent for Riverbend Estates. Kranz, *supra* note 66, at 54.

71. 56 Fed. Reg. 40,446 (1991) (proposed amendments).

> undertaking the following activities in a regulated wetland or its buffer unless authorized by Section 5.2 below:
> a. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
> b. The dumping, discharging, or filling with any material;
> c. The draining, flooding, or disturbing of the water level or water table;
> d. The driving of pilings;
> e. The placing of obstructions;
> f. The construction, reconstruction, demolition, or expansion of any structure;
> g. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules; or
> h. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.[72]

In practice it is difficult to determine which project applications will adversely impact wetlands, triggering application of the regulations. For example, what kinds of development projects in which geographic locations alter a wetland's water chemistry? Does stormwater run-off from a shopping center five blocks from a wetland alter that wetland's water chemistry? It is difficult for a local jurisdiction to administer a wetlands regulatory scheme that adequately addresses all such activities.

The City of North Bend's Ordinance provides an example of potential administration problems.[73] That ordinance has adopted, with some additions, the Model Ordinance list of regulated activities. In North Bend, no regulated activity is allowed in a wetland absent a showing, after a public hearing, that all reasonable use of the property is denied.[74] As a result, if the regulated activities definition were literally applied, pruning or weeding of vegetation or weed removal might not be allowed on any wetland without proof by the property

72. MODEL ORDINANCE, *supra* note 9, § 5.1.

73. NORTH BEND, WASH., DRAFT WETLAND PROTECTION ORDINANCE (Dec. 19, 1991).

74. *Id.* § 3.4.0.

owner that, absent such pruning, he would be denied all reasonable use of the property. Clearly, this is impracticable and unenforceable.

Because of such enforceability problems, many local governments have tailored the regulated activity definition to meet their ability to administer it. The Clark County ordinance provides one such example. One of the "regulated activities" in this ordinance is as follows:

> (d) The destruction or alteration of wetlands vegetation through clearing, harvesting, intentional burning, or planting of vegetation that would alter the character of a wetland or buffer: Provided, that this subsection shall not apply to . . .:
>
> (i) the harvesting or normal maintenance of vegetation in a manner that is not injurious to the natural reproduction of such vegetation,
>
> (ii) the removal or eradication of noxious weeds. . . .[75]

This simple modification of the regulated activities definition means that Clark County, unlike North Bend, will be better able to administer its wetlands regulations. Specifically, the Clark County Ordinance is more reflective of the realities of day-to-day property maintenance.

E. Buffers

1. Standard Buffer Widths

A buffer is an area that surrounds a wetland and is intended to protect the wetland's functions from human and animal activity and runoff. The buffers required by the Model Ordinance vary depending on the intensity of the use adjacent to the wetland[76] and the category of the wetland:

75. CLARK COUNTY, WASH., CODE § 13.36.120(25) (1992) (enacted by CLARK COUNTY, WASH., ORDINANCE No. 1992-02-03 (Feb. 10, 1992)).

76. The Model Ordinance defines low-intensity land uses as those associated with low levels of human disturbance or low wetland habitat impacts. MODEL ORDINANCE, *supra* note 9, § 2(t). Examples include land uses associated with passive recreation, open space, or agricultural or forest management. *Id.*

TABLE A

Wetland Category	Intensity of Adjacent Use	Buffer
I	Low	200'
	High	300'
II	Low	200'
	High	100'
III	Low	100'
	High	50'
IV	Low	50'
	High	50'

These buffer widths have been adopted by some jurisdictions and modified by others. In western Washington, the buffer requirements range from zero to three hundred feet.[77]

In addition to the buffer, a fifteen-foot building setback from the buffer is required.[78] This setback is meant to protect the buffer during building construction. Most local governments that require the additional building setbacks have followed the fifteen-foot example. Pierce County, however, uses an eight-foot building setback.[79] Clallam County, on the other hand, does not require a building setback, but, instead, seeks to protect the buffer by requiring fencing during construction.

2. DOE Buffer Study

Following its release of the Model Ordinance, DOE undertook a study of appropriate buffer widths. Its June 1991 draft report concluded that "buffers widths of greater than [fifty] feet are necessary to protect wetlands from an influx of sediment and nutrients, to protect sensitive wildlife species from adverse impacts, and to protect wetlands from the adverse effects of changes in quantity of water entering the wetland."[80] In its final report, dated February 1992, DOE refined this statement. After conducting a field study, it concluded that ninety-five percent of buffers smaller than fifty feet suffered direct human impact *within* the buffer, while only thirty-five percent

77. Appendix B shows the wide variety of buffer requirements among Washington jurisdictions.

78. MODEL ORDINANCE, *supra* note 9, § 7.1(g).

79. PIERCE COUNTY, WASH., CODE § 17.12.070E (1992).

80. ANDREW J. CASTELLE ET AL., WASHINGTON STATE DEP'T OF ECOLOGY, WETLANDS BUFFERS: USE AND EFFECTIVENESS (June 1991) Draft Report, at 76.

of buffers wider than fifty feet suffered direct human impact.[81] DOE also concluded that, in determining the appropriate buffer width, it is important to take into account current and anticipated land uses.[82] The minimum buffer width, regardless of wetland category, should be fifty feet.[83] Despite the fact that these conclusions suggest value in determining appropriate buffer width on a case by case basis, the Model Ordinance calls for absolute buffers of greater width.[84] Problems encountered with rigid buffer requirements are discussed below.

3. Increased Buffer Width

Under the Model Ordinance, a jurisdiction maintains the right to increase buffer widths when: the increased width is necessary to maintain viable populations of existing species; the wetland either is used by or provides outstanding potential habitat for proposed or listed endangered, threatened, rare, sensitive, or monitored species; the wetland is an unusual nesting or resting site, such as a heron rookery or raptor nesting area; the adjacent land is susceptible to severe erosion; or the wetland has minimal vegetative cover or slopes greater than fifteen percent.[85]

The ability to increase buffer width based on endangered, proposed, or listed species is somewhat problematic because the wetland ranking system has already taken the presence of such species into account by ranking any wetland containing documented habitat for such species as a Category I wetland.[86] Nevertheless, many local governments have incorporated this provision.

4. Reduction of Buffer Width

The Model Ordinance retains the flexibility to reduce buffers on a case-by-case basis if the adjacent land is extensively vegetated with slopes of less than fifteen percent and if no direct or indirect, short-term or long-term adverse impacts

81. ANDREW J. CASTELLE ET AL., WASHINGTON STATE DEP'T OF ECOLOGY, WETLAND BUFFERS: USE AND EFFECTIVENESS (Feb. 1992) Publication #92-10, at iv. Ironically, the DOE field studies dealt with degradation of the buffer, not the wetland itself.

82. *Id.* at 48.

83. *Id.*

84. MODEL ORDINANCE, *supra* note 9, § 7.1(a).

85. *Id.* § 7.1(b).

86. *Id.* § 4.4(a)(1)(A).

will result.[87] A buffer width reduction is also allowed if the project includes a buffer enhancement plan using native vegetation.[88] A buffer cannot be reduced by more than twenty-five percent or to a width of less than twenty-five feet under any circumstances.[89]

5. Buffer Averaging

Averaging of the buffer width (i.e., allowing reduction of buffer width in one area and increasing buffer width in another) is also allowed, provided that the applicant can satisfy several criteria.[90] First, it must be shown that averaging is necessary to avoid an "extraordinary hardship." This is defined in the ordinance as a regulatory takings test.[91] Second, the wetland must contain "variations in sensitivity due to existing physical characteristics."[92] Third, low-intensity land uses, guaranteed in perpetuity by covenant or another binding mechanism, must be located adjacent to areas where buffer width is reduced.[93] Fourth, the width averaging must not adversely impact the wetland functional values.[94] Fifth, the width may not be reduced by more than fifty-percent or be less than twenty-five feet, and the total area of the buffer after averaging cannot be less than the area prior to averaging.[95]

The requirement of meeting all of these criteria is overkill. The fourth criterion—that width averaging must not adversely impact the wetland functional values—appears sufficient. If the applicant can demonstrate that the buffer width averaging will not adversely affect the wetland, then why should the local government prohibit buffer width averaging? What nexus can be shown between the impact to be avoided—degradation of wetland functions—and the three remaining criteria?

Similarly, if the standard buffers would result in denial of

87. *Id.* § 7.1(c).

88. *Id.* § 7.1(c)(2).

89. *Id.* § 7.1(c).

90. *Id.* § 7.1(d). It should be noted that while this process may allow the width to be reduced in one area, it does not result in an overall reduction of the square footage contained in the buffer.

91. *Id.* at §§ 7.1(d), 2(k). *See* Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992) (setting standard for denial of all economically viable use takings test).

92. MODEL ORDINANCE, *supra* note 9, § 7.1(d).

93. *Id.*

94. *Id.*

95. *Id.*

all reasonable economic use, then requiring the applicant to satsify all four criteria is difficult to defend. Once it is demonstrated that requiring the standard buffer width would cause a taking, the local government should decide whether to compensate the affected party or approve a reasonable use of the property. Moreover, as discussed below, by requiring that all four criteria be met, the local government loses much of the flexibility needed to deal with unanticipated circumstances as they arise.

6. Uses Permitted in the Buffer

The Model Ordinance allows only very limited activities in the wetland buffer. The only uses allowed in Category I and II wetland buffers are low-intensity, passive recreational activities, such as pervious trails, nonpermanent wildlife watching blinds, short-term scientific or educational activities, and sports fishing or hunting.[96] In the buffers of Category III and IV wetlands, permitted uses include stormwater management facilities having no reasonable on-site alternative location and development having no feasible alternative location.[97] The use of the modifier, "on-site," in reference to the alternative locations for stormwater management facilities, but not for other "development," suggests that the DOE would only allow "development" in the Class III and IV buffers if there is no practicable off-site alternative.

7. Problems Encountered

A jurisdiction's lack of flexibility in determining proper buffer width can occasionally lead to harsh results for property owners without necessarily achieving a corresponding benefit to the environment. This is particularly true in two types of situations: when buffer size is substantially greater than the wetland it protects and when a buffer is interrupted by existing improvements.

The first situation is especially prevalent with smaller wetlands where the area contained in the buffer is often significantly larger than the wetland itself. For example, a two hundred foot buffer on a one acre, roughly circular wetland, would consume 6.3 acres, more than six times the size of the wetland itself. Clark County has attempted to deal with this

96. *Id.* § 7.1(f)(1).
97. *Id.* § 7.1(f)(2)-(3).

result by limiting the buffer area to two times the total wetland area, provided that this limitation does not reduce the buffer by more than fifty percent of the base buffers.[98] Base buffers range from fifty feet for a Category IV wetland to three hundred feet for a Category I wetland.[99] Pierce County, on the other hand, provides for a reduction of no more than twenty-five percent if the acreage of the buffer would "substantially exceed the size of the wetland and the reduction will not result in adverse impacts to the wetland. . . ."[100]

The resource benefit is particularly questionable when the second situation is present; that is, where the buffer is interrupted by an existing public or private improvement such as a road. Here, the portion of the buffer on the far side of the improvement performs little "buffering" function. The Model Ordinance provides inadequate flexibility for such circumstances. It provides for a right to reduce or average buffers, but this right may only be exercised in a limited number of situations.[101] A more logical approach is taken by Clark County. Clark County's Ordinance provides that: "Areas which are functionally separated from a wetland and do not protect the wetland from adverse impacts due to pre-existing roads, structures, or vertical separation, shall be excluded from buffers otherwise required by this chapter."[102]

F. Substantive Standards for Wetland Alteration

Section 7.2 of the Model Ordinance sets forth the substantive standard for altering wetlands (i.e., engaging in a regulated activity within a wetland). The Model Ordinance states that "[r]egulated activities shall not be authorized in a regulated wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied."[103] Subsequent provisions refine this standard for the four wetland categories and, in doing so, draw on the "mitigation sequencing" and "practicable alterna-

98. CLARK COUNTY, WASH., CODE § 13.36.340(4) (1992) (enacted by CLARK COUNTY, WASH. ORDINANCE No. 1992-02-03 (Feb. 10, 1992)).

99. *Id.* § 13.36.320.

100. PIERCE COUNTY, WASH., CODE § 17.120.070(B)(2)(c) (1991).

101. MODEL ORDINANCE, *supra* note 9, § 7.1(c)-(d).

102. CLARK COUNTY, WASH., CODE § 13.36.340(3) (1992) (enacted by CLARK COUNTY, WASH. ORDINANCE No. 1992-02-03 (Feb. 10, 1992)).

103. MODEL ORDINANCE, *supra* note 9, § 7.2(a).

tives" tests formulated under the Clean Water Act[104] and the concept of regulatory takings.

The standard for alteration of a Category I wetland mixes takings and variance tests. The "applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property."[105]

In practice, there is fairly wide-spread and growing consensus that Category I wetlands should be preserved if at all possible. This consensus is due, in part, to the fact that Category I wetlands are generally more easily recognized as wetlands by the layperson. The real controversy focuses on the frequently more difficult to recognize Category III and IV wetlands.

1. Practicable Alternatives

For the alteration of Category II and III wetlands and the placement of most uses in the buffer of a Category III or IV wetland, the Model Ordinance adopts the "practicable alternatives" test.[106] This test is both time-consuming and expensive for the applicant and for the reviewing authority. Furthermore, it results in more data on what is not permissible on the site than on what is permissible. For these reasons, it is time to rethink the use of this test for Category II, III, and IV wetlands.

The practicable alternatives test is borrowed from the implementing regulations to the Clean Water Act, which state that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences."[107]

To be "practicable," an alternative must be available and feasible after taking into consideration the "cost, existing technology, and logistics in light of overall project purposes."[108]

---

104. *See infra* parts III.F.1-.2.

105. MODEL ORDINANCE, *supra* note 9, § 7.2(b). *See also id.* at § 2(k).

106. *See id.* §§ 7.1(f), 7.2(c).

107. 40 C.F.R. § 230.10(a) (1992).

108. *Id.* § 230.10(a)(2). Virtually every word of this test has been litigated. As to the "overall project purpose" aspect of the practicable alternatives test, *see* Sylvester v. U.S. Army Corps of Engineers, 882 F.2d 407 (9th Cir. 1989); Louisiana Wildlife Fed'n v. York, 603 F. Supp. 518 (W.D. La. 1984), *aff'd in part, vacated in part and remanded,*

The applicant does not have to own the alternative site for it to be considered practicable.[109] For projects that are not "water dependent," both the Clean Water Act regulations and the Model Ordinance presume that an alternative is available.[110]

The Model Ordinance codifies the steps necessary to rebut this presumption as follows:

> A. the basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and
> B. a reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and
> C. in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.[111]

The majority of western Washington jurisdictions have adopted this version of the practicable alternatives test. Unfortunately, the practicable alternatives test may not be appropriate for Category II, III, and IV wetlands. First, the cost of

---

761 F.2d 1044 (5th Cir. 1985); Shoreline Assocs. v. Marsh, 555 F. Supp. 169 (D. Md. 1983); National Audubon Soc'y v. Hartz Mountain Dev. Corp., [1984] ENVT'L L. REP. 20, 724 (D.N.J. 1983). As to "marketability," *see* Mall Properties, Inc. v. Marsh, 672 F. Supp. 561 (D. Mass. 1987), *appeal dismissed*, 841 F.2d 440 (1st Cir. 1988); Nat'l Audubon Soc'y v. Hartz Mountain Dev. Corp., [1984] 14 ENVTL. L. REP. 20, 724 (D.N.J. 1983).

109. 40 C.F.R. § 230.10(a)(2) (1992). As to the "availability" of a practicable alternative, *see* James City County v. EPA, 995 F.2d 254 (4th Cir. 1992); Hough v. Marsh, 557 F. Supp. 74 (D. Mass. 1982); Nat'l Audubon Soc'y v. Hartz Mountain Dev. Corp., [1984] 14 ENVT'L L. REP. 20, 724 (D.N.J. 1983).

110. 40 C.F.R. § 230.10(a)(3) (1992). *See* MODEL ORDINANCE, *supra* note 9, § 7.2(c)(2).

111. MODEL ORDINANCE, *supra* note 9, § 7.2(c)(2). As it relates to zoning, the requirement of making reasonable attempts to remove or accommodate deficiencies is difficult to reconcile with the GMA planning process. Under the GMA, process comprehensive plans are made and zoning is determined only after considerable public input and long-range planning. Thus, changing a land use designation is, at best, difficult and, at worst, impossible. Furthermore, critical areas regulations are to be developed and reviewed for consistency with the comprehensive plans. Theoretically, therefore, zoning of property containing wetlands should have been considered in comprehensive plan adoption. A further complication will arise for those attempting to demonstrate that zoning constraints cannot be removed because following adoption of a jurisdiction, comprehensive plan zone changes will be allowed only once a year.

satisfying the practicable alternatives test can be prohibitive. The applicant must compare the on-site wetlands impacts with the wetlands impacts that would occur if the project in question was relocated to another site. This process is extremely expensive and takes substantial time. Moreover, even after its completion, nothing has been accomplished toward the resolution of the primary question of what is permissible on the site.

Second, the practicable alternatives test was originally developed for navigable waters and their adjacent wetlands, locations where alternative water dependent uses are feasible. Many inland Category II, III, and IV wetlands, on the other hand, cannot feasibly support a truly water dependent use. Thus, the practicable alternatives test may not be the appropriate decision-making tool for Category II, III, and IV wetlands.

2. Mitigation Sequencing

Mitigation sequencing establishes a strict sequence to be followed when considering potential impacts on wetlands: mitigation becomes a viable option only after an attempt has been made, first, to avoid the impact altogether and, second, to minimize the impact.[112] In the mitigation sequencing process, wetlands are analyzed on a property-by-property basis rather than as part of the larger ecological system. Avoidance, as that term is used both under the Clean Water Act and the Model Ordinance,[113] does not necessarily mean that all adverse impacts to the wetland have been avoided or that the wetland's valuable functions will be protected in the long-term. Rather, it means that construction has physically avoided the wetland and, where relevant, its buffer.[114]

---

112. The mitigation sequencing concept originated in the joint ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF THE ARMY, *Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1)* Guidelines (Feb. 6, 1990) [hereinafter MEMORANDUM OF AGREEMENT]. *See also* MODEL ORDINANCE *supra* note 9, § 2(u).

113. *See* 40 C.F.R. 230.10(a) (1992); MODEL ORDINANCE, *supra* note 9, § 7.2.

114. The Cordata Retail Centre in Bellingham, Washington, and Reflections by the Lake, a multi-family project in Everett, Washington, provide excellent examples of the fragmentation that can result from mitigation sequencing. The applicant for the Cordata Retail Centre was able to develop a site plan that technically would have avoided the on-site wetlands. However, the wetlands would still have been surrounded by parking lots rockeries and, in several scenarios, would have been crossed in multiple locations by bridges to allow interior, upland areas to be used for parking. All of the federal and state resource agencies concurred that off-site mitigation would be preferable to this avoidance scenario. Yet, the mitigation sequencing rule would not

There are cases in which restoration, expansion or enhancement of other resources, such as higher value wetlands or riparian systems, may provide greater resource value than preservation of lower value, on-site wetlands. If a local ordinance has a rigid sequencing requirement with no flexibility to consider the individual circumstances, these opportunities will be lost. It is for this reason that we advocate an approach that allows the decision-maker to consider whether alternatives to avoidance, under the particular circumstances, yield a result that is more protective of the resource.

Several local governments have provided such flexibility. For example, Whatcom County has determined that a balancing of GMA goals should allow the mitigation sequencing to be disregarded within urban growth areas or high-intensity land use areas.[115] Pierce County also recognizes that strict mitigation sequencing may not always be preferable and allows for "circumstances" when an alternative mitigation strategy is preferable.[116]

G. Mitigation

The Model Ordinance requires that altered wetlands be recreated as nearly as possible. Such recreation should replicate the original wetland in terms of function, geographic location, and setting.[117] Therefore, "on-site, in-kind" mitigation is required when possible.[118]

1. Replacement Ratios

Based on the theory that there must be an adequate margin of safety to compensate for the inexact science of wetlands creation, restoration, or enhancement, the Model Ordinance requires that the mitigation wetland be considerably larger

---

have allowed them to approve off-site mitigation had any on-site avoidance scenario proven financially feasible. In the Everett case, the project was built, and the wetland "avoided," but the wetland was surrounded by parking lots, fragmented from the larger ecosystem.

115. WHATCOM COUNTY, WASH., CRITICAL AREAS TEMPORARY ORDINANCE § 10.9.1B (July 1992).

116. PIERCE COUNTY, WASH., CODE § 17.12.090 (1991).

117. MODEL ORDINANCE, *supra* note 9, § 7.5(f).

118. MEMORANDUM OF AGREEMENT, *supra* note 112, at Appendix 16-3. Although in-kind mitigation is required under the Model Ordinance, Section 7.5(F)(2)(B) seems to contradict that requirement by stating that "[w]here feasible, restored or created wetlands shall be a higher category than the altered wetland." MODEL ORDINANCE, *supra* note 9, § 7.5(F)(2)(B).

than the original wetland.[119] When mitigation is accomplished prior to or concurrent with alteration, is on-site, is of the same category as the altered wetland, and has a high probability of success, the required ratio of replacement to alteration is indicated under Table B:

TABLE B

Category I	6.00:1*
Categories II or III	
Forested wetland	3.00:1
Scrub-shrub wetland	2.00:1
Emergent wetland	1.50:1
Category IV	1.25:1

* Six acres of wetland must be created from non-wetlands, or degraded wetland restored, for each one acre of wetland destroyed.

Under the Model Ordinance, a jurisdiction retains the right to both increase and decrease these ratios.[120] An increase would be justified in the event that success of the proposed restoration or creation was uncertain or that there was a projected loss in functional value.[121] Ratios could also be increased if a significant period of time between wetland alteration and mitigation was anticipated.[122] In addition, the jurisdiction could decrease the mitigation ratio if it could be demonstrated that no let loss of wetland function or value would occur.[123] The replacement ratio may never be less than 1:1.[124]

2. Location of Mitigation

Under the Model Ordinance, mitigation must be conducted on the same site as the altered wetland, except where the applicant can demonstrate that the "hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the on-site loss."[125] The applicant must also satisfy one of the follow-

119. MODEL ORDINANCE, *supra* note 9, § 7.5(f).
120. *Id.* § 7.5(f)(2)(D)(i).
121. *Id.*
122. *Id.*
123. *Id.* § 7.5(f)(2)(D)(ii).
124. *Id.* § 7.5.(f)(2)(D)(iii).
125. *Id.* § 7.5(f)(5)(A).

ing requirements: (1) on-site mitigation is not scientifically feasible; (2) compensation (i.e., mitigation) is not practical due to potentially adverse impacts from surrounding land uses; (3) existing functional values at the mitigation site are significantly greater than the lost wetland functional values; or (4) regional goals for flood storage, flood conveyance, habitat, or other wetland functions have been established that strongly justify the location of compensatory measures at another site.[126]

In the event that off-site compensation is permitted, the Model Ordinance requires that such compensation for Category I, II, and III wetlands take place within the same watershed as the wetland loss.[127] Compensation for a Category IV wetland may occur outside of the watershed if there is no reasonable alternative.[128] The question arises, however, as to what happens if there is no reasonable alternative within the watershed for Category I, II, and III wetlands.

The Model Ordinance establishes an order of preference for mitigation sites.[129] Preference is given in the following order: "upland sites which were formerly wetlands," "upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds, or emergent vegetation," and other disturbed uplands.[130]

Mitigation affords an opportunity to encourage the restoration or creation of wetlands with greater functions or values than the altered wetland or wetlands that have historically been subject to the greatest loss. However, as with many other features of the Model Ordinance, while they may technically allow these activities, the provisions governing the location and type of mitigation discourage rather than foster them.

At least one local government has recognized this problem and has provided incentives to replace lower value wetlands with higher value ones when wetland alteration is allowed. Again, we look to Clark County for a creative, flexible approach to wetlands mitigation. There are many provisions in Clark County's ordinance that encourage restoration of higher value wetlands.[131] For example, when an applicant enhances a

126. *Id.*
127. *Id.* § 7.5(f)(5)(B).
128. *Id.*
129. *Id.* § 7.5(f)(5)(C).
130. *Id.*
131. *See* CLARK COUNTY, WASH., CODE (1992).

Category III or IV wetland as a condition of a wetland permit, the applicant may obtain a reduction in the replacement ratio by replacing the Category III or IV wetland with a higher category wetland (i.e., a Category II wetland). In these cases, the replacement ratio "is based on a 1:1 ratio which is reduced by 20% for each increase in wetland category."[132]

The Clark County Ordinance also seeks to foster voluntary restoration or enhancement. Thus, when voluntary enhancement results in the wetland meeting the criteria for a higher category, Section 13.36.300(4) states that the wetland will continue to be classified according to the characteristics of the original wetland.[133] This provision was included to ensure that the larger buffer requirement for higher value wetlands would not discourage enhancement or "penalize" the property owner.

3. Mitigation Banking

A "mitigation bank" is typically a large, consolidated wetland replacement, restoration, or enhancement project. It is either funded initially by applicants who have been permitted to alter wetlands on individual sites or by a public or private entity or some combination thereof which subsequently recoups planning, development, and monitoring costs through the sale of mitigation credits to applicants who are unable to provide on-site mitigation. A mitigation bank is usually created before, rather than concurrently or after, the wetland impact. It provides developers with credits that can be used to compensate for future wetland impacts.

Mitigation banking can benefit both developers and wetlands. Because the mitigation banking project is designed and built in advance, a "late-comer" applicant does not have to bear all of the expense of designing, permitting, and monitoring an individual mitigation project. Particularly in urban or urbanizing areas, mitigation banking can also provide more valuable mitigation than a number of smaller, individual mitigation projects. Economy of scale allows for the restoration, enhancement, and creation of larger wetlands, which generally have more diverse and valuable functions than smaller, individual mitigation efforts.

The Model Ordinance does not provide for mitigation

132. *Id.* § 13.36.420(2)(d).
133. *Id.* § 13.36.300(4).

banking per se. It does, however, allow for "cooperative restoration, creation or enhancement projects."[134] Such projects involve two or more private applicants joining together to fund a single, large, off-site compensatory project. This kind of cooperation is allowed when "restoration, creation or enhancement at a particular site may be scientifically difficult or impossible; or . . . creation of one or several larger wetlands may be preferable to many small wetlands."[135]

While these projects also allow for the creation of larger wetlands, they do not offer all of the same benefits of classic mitigation banking projects. With traditional mitigation banking, a small property owner who needs to compensate for altering a wetland on his property may be able to pay into a mitigation bank, thereby contributing to the creation of a large, high value wetland. He may not, however, be able to organize the type of cooperative mitigation project provided for in the Model Ordinance.

A number of western Washington jurisdictions, such as Jefferson, San Juan, Mason, Thurston, and Whatcom Counties, allow for this cooperative mitigation. Very few, however, provide for classic mitigation banking.[136] Snohomish County provides one example. The County permitted a mitigation banking program in which a three hundred sixty-three acre strawberry farm was converted into a saltwater marsh.[137] The restored wetland is now made available, at twenty thousand dollars per acre, to developers who alter wetlands elsewhere in Snohomish County.[138]

IV. RECOMMENDATIONS

In the year following adoption of their comprehensive plans, local governments planning under the GMA must revisit their wetlands regulations to ensure consistency with the plan.[139] The appropriate content of wetlands regulations is, in the end, a balance of science, policy, and values. In reviewing

134. MODEL ORDINANCE, *supra* note 9, § 7.5(f)(7).

135. *Id.* § 7.5(f)(7)(A).

136. Whatcom County anticipates the development of a mitigation banking system in the future.

137. *From Strawberries to Salt Marsh—Wetlands-bank idea worth serious study*, SEATTLE TIMES, July 19, 1991, at A-10.

138. *Id.*

139. WASH. REV. CODE ANN. § 36.70A.060(3) (West 1991 & Supp. 1993). *See also id.* § 36.70A.120 (West 1991).

their interim regulations, local governments have an opportunity to address more thoughtfully the issues discussed in this article: the practicable alternatives test, in-kind wetland replacement, non-regulatory tools, delineation manual use, and viewing wetlands as part of an ecosystem rather than part of an individual property. To facilicate their review of these issues, we offer the following recommendations for consideration:

(1) Use mitigation sequencing for Class I and II wetlands and a "no-net loss" standard for Category III and IV wetlands, as opposed to the practicable alternatives test. This would substantially reduce cost to both the applicant and the jurisdiction, would shorten the permitting process, and, most importantly, would focus resources on determining what is permissible on a site rather than what is impermissible.

(2) If the practicable alternatives test is used, limit alternative sites to those with an appropriate comprehensive plan and zoning designation.

(3) Encourage the replacement of lower value wetlands with higher value wetlands by offering incentives, such as reducing the replacement ratio if a lower category wetland is replaced with a higher category wetland. This is achievable at no cost to the government and may result in valuable wetland enhancement.

(4) Allow the area within the wetland and its buffer to count toward permitted density and/or open space or landscaping requirements. This would effectively reduce the "penalty" for having wetlands on one's property and would provide an incentive for wetlands preservation at no cost to the local government.

(5) Use the delineation manual currently being used under the Clean Water Act. This would foster consistency and create a more rational regulatory process.[140]

(6) Focus mitigation efforts on systems rather than on individual properties. This will ultimately provide more effective wetlands protection because watersheds, rather than smaller, individual wetlands, will be enhanced and protected.

(7) Give a more prominent role to non-regulatory tools. To date, most local governments have approached their wet-

140. By the time local governments revisit their wetlands regulations, the National Academy of Sciences should have completed its evaluation and generated a manual based on consensus, hopefully making this particular recommendation moot.

lands regulations as if the regulations standing alone must accomplish the mandate of wetlands protection. However, both the GMA and the Minimum Guidelines make clear that the regulations are only "one tool in the tool box" and are intended to be complemented by non-regulatory approaches.

If these recommendations are embodied in local wetlands regulations, local governments will be better able to divert monetary resources currently expended on process to the protection of wetlands and to diffuse much of the controversy over wetlands regulation that has been building in western Washington.

APPENDIX A*
STATUS OF WETLAND/CRITICAL AREA ORDINANCE

COUNTIES
Cities

BENTON (Draft Critical Resources Protection Ordinance 9/93)

CHELAN (Draft Wetlands Ordinance (9/14/93).
Chelan (Adopted 6/92)
Sequim (Adopted /92)
Wenatchee (Adopted 7/2/92)

CLALLAM (Adopted CAO 6/16/92)
Forks (Adopted 2/24/92)
Port Angeles (Adopted 11/19/91)

CLARK (Adopted wetlands ordinance 2/92)
Battle Ground (Adopted 6/1/92)
Camas (Adopted 12/8/91)
Vancouver (Adopted 2/24/92)

DOUGLAS (Adopted Critical Lands Policies 4/92)
Bridgeport (Adopted 8/26/92)
East Wenatchee (Adopted 5/18/92)
Mansfield (Adopted 6/9/92)
Rock Island (Adopted 4/9/92)
Waterville (Adopted 4/20/92)

FERRY (Adopted interim SAO 3/93)

FRANKLIN (Adopted interim CAO 7/13/93)
Pasco (Adopted 2/16/93)

GRANT (Adopted CAO & Resource Lands 5/25/93)

ISLAND (Draft 4/23/92)
Langley (Draft 1/13/92)
Oak Harbor (Draft 2/17/92)

JEFFERSON (Draft CAO 9/93)
Port Townsend (Adopted 10/19/92)

KING (Adopted SAO 8/29/90)
Algona (Adopted 3/17/92)
Auburn (SEPA amendments Adopted 3/2/92)
Bellevue (Already in compliance before GMA)
Black Diamond (Adopted 5/21/92)
Bothell (Adopted 12/16/91)
Carnation (Adopted 2/24/92)
Clyde Hill (Has told DCD they have no wetlands)
Des Moines (Adopted as amended 2/27/92)
Duvall (Adopted 4/9/92)

Enumclaw (Adopted 1/13/92)
Federal Way (Adopted 8/30/91 as amended 1/92)
Hunts Point (Adopted 10/6/92)
Issaquah (Adopted interim 1992. Final to be adopted in 1994.)
Kent (Adopted Alternative B 4/20/93)
Kirkland (Adopted 10/6/92)
Lake Forest Park (Adopted 3/2/92)
Medina (Adopted 9/92)
Mercer Island (Adopted 2/11/92)
Normandy Park (Adopted 3/24/92)
North Bend (Adopted 1/93)
Pacific (Adopted 12/14/92)
Redmond (Adopted 6/15/92)
Renton (Adopted 3/12/92)
Sea Tac (Adopted 2/27/90)
Seattle (Adopted 7/13/92)
Snoqualmie (Adopted 8/12/91)
Tukwila (Adopted 9/30/91)

KITSAP (Adopted Policies & Interim Development Regulations 1/27/92)
Bainbridge (Adopted ESAO 2/20/92)
Bremerton (Adopted CAO 4/93)

KITTITAS (Draft CAO 10/93; expects adoption in June 1994)
Ellensburg (Adopted 9/7/92)

MASON (Adopted interim CAO 8/3/93)
Shelton (Adopted 2/24/92)

PACIFIC (Adopted 12/14/92)

PEND OREILLE (Adopted CAO & Resource Lands 12/28/92)

PIERCE (Adopted 2/92)
Bonney Lake (Adopted 9/92)
DuPont (Adopted 4/8/92)
Gig Harbor (Adopted 11/12/91)
Puyallup (Adopted 7/20/92)
Orting (Adopted 2/27/92)
Sumner (Adopted 4/6/92)
Tacoma (Adopted 2/25/92)

SAN JUAN (Adopted CAO 12/22/92)

SKAGIT (No regulations—tells applicants to deal with Corps)
Anacortes (Adopted 1/1/90)
Burlington (Adopted)
Laconnor (Adopted 8/27/91)
Mt. Vernon (Adopted 3/2/92)
Sedro Woolley (Adopted 11/17/91)

SNOHOMISH (Back to drawing board. Getting new direction from council.)
- Brier (Adopted 2/11/92)
- Edmonds (Adopted 3/17/92)
- Everett (Adopted 12/18/91)
- Lake Stevens (Adopted 12/16/91)
- Lynnwood (Adopted 2/26/92)
- Marysville (Adopted 12/14/92)
- Mill Creek (Adopted 4/28/92)
- Monroe (Adopted 9/26/90)
- Montlake Terrace (Adopted 10/11/84)
- Mukilteo (Adopted 3/23/92)
- Snohomish (Adopted 2/18/92)
- Sultan (2/25/92)

THURSTON (Planning Commission Draft dated July 1993)
- Lacey (Adopted 3/26/92)
- Olympia (Adopted 3/17/92)
- Tumwater (Adopted 8/20/91)

WALLA WALLA (No regulations, no drafts)

WHATCOM (Adopted 6/28/92)
- Bellingham (Adopted 12/9/91)
- Blaine (Adopted 3/23/92)
- Everson (Adopted 1/28/92)
- Nooksack (Adopted 11/5/91)

YAKIMA (Draft "Stream Corridor" Ordinance 10/1/93)
- Grandview (No regs no drafts)

GARFIELD AND COLUMBIA ARE EXCLUDED

SURVEY: 24 COUNTIES . . . 80 CITIES
* DATE CHART PREPARED: OCTOBER 1, 1993

APPENDIX B
COUNTY/CITY WETLAND BUFFER COMPARISON*

Buffer Width	Wetland Class I Type/Category A	II Type/Category B	III Type/Category C	IV
300′	CLARK [1]JEFFERSON [2]THURSTON [3]Brier [4]Lacey [5]Olympia [6]Port Angeles [7]Tumwater Vancouver			
250′	Wenatchee			
200′	BENTON [8] [9]FERRY [10]CLALLAM [11]DOUGLAS [12]WHATCOM Bonney Lake Bremerton Bridgeport Chelan DuPont East Wenatchee Issaquah [13]Mansfield Nooksack North Bend [14]Rock Island Sequim Tacoma [15]Waterville	CLARK [16]JEFFERSON [17]THURSTON [18]Brier [19]Lacey [20]Olympia [21]Port Angeles [22]Tumwater Vancouver		
150′	[23]CHELAN [24]KITTITAS [25]PEND OREILLE PIERCE SAN JUAN Bainbridge Island [26]Bothell Forks Gig Harbor [27]Lake Stevens [28]Mill Creek Orting [29]Redmond [30]Shelton Sumner	Wenatchee		
100′	ISLAND KING MASON PACIFIC Bellingham Carnation Des Moines	BENTON [32]CHELAN [33]FERRY [34]CLALLAM [35]DOUGLAS [36]KITTITAS [37]PEND OREILLE	CLARK [46]JEFFERSON [47]THURSTON [48]Brier Federal Way [49]Lacey [50]Olympia	Federal Way

	Duvall	PIERCE	[51]Port Angeles	
	Edmonds	[38]WHATCOM	[52]Tumwater	
	Enumclaw	Bainbridge	Vancouver	
	Everett	Bonney Lake		
	Everson	[39]Bothell		
	Federal Way	Bremerton		
	Kent	Bridgeport		
	Lake Forest Park	Chelan		
	Langley	DuPont		
	Lynnwood	East Wenatchee		
	Marysville	Federal Way		
	Mukilteo	Gig Harbor		
	Normandy Park	Issaquah		
	Pacific	[40]Mansfield		
	[31]Puyallup	[41]Mill Creek		
	Renton	Nooksack		
	SeaTac	North Bend		
	Snohomish	Port Townsend		
	Snoqualmie	[42]Redmond		
	Tukwila	[43]Rock Island		
		Sequim		
		[44]Shelton		
		Sumner		
		Tacoma		
		[45]Waterville		
90′	Battle Ground			
85′	Algona			
75′	KITSAP	KITSAP	KITSAP	KITSAP
	Blaine	MASON	[54]Shelton	
	Monroe	SAN JUAN	Wenatchee	
		Enumclaw		
		Everett		
		Forks		
		[55]Puyallup		
65′		[55]Lake Stevens		
60′		Marysville		
50′	GRANT	KING	BENTON	CLARK
	Bellevue	PACIFIC	[56]CHELAN	[69]JEFFERSON
	Black Diamond	Bellevue	[57]CLALLAM	[70]THURSTON
	Kirkland	Black Diamond	[58]DOUGLAS	Black Diamond
	Seattle	Blaine	[59]FERRY	[71]Brier
	Sedro Woolley	Carnation	[60]KITTITAS	[72]Lacey
		Duvall	MASON	[73]Olympia
		Edmonds	SAN JUAN	Seattle
		Kent	[61]WHATCOM	[75]Shelton
		Lake Forest Park	Bainbridge	[76]Tumwater
		Langley	Black Diamond	Vancouver
		Lynnwood	Bonney Lake	Wenatchee
		Mukilteo	[62]Bothell	
		Orting	Bremerton	
		Pacific	Bridgeport	
		Renton	Chelan	
		SeaTac	East Wenatchee	
		Seattle	Enumclaw	
		Snohomish	Everett	
		Snoqualmie	Forks	
		Tukwila	Gig Harbor	
			[63]Lake Stevens	
			[64]Mansfield	

			[65]Mill Creek Nooksack North Bend Port Townsend [66]Redmond [67]Rock Island Seattle Sequim Sumner Tacoma [68]Waterville	
40′			Marysville	
35′		Algona Des Moines Monroe Normandy Park	[77]Puyallup	SAN JUAN
30′		Sedro Woolley		
25′	Anacortes Burlington Hunts Point LaConnor Medina Mercer Island Mt. Vernon	GRANT ISLAND Anacortes Bellevue Burlington Hunts Point LaConnor Kirkland Medina Mercer Island Mt. Vernon	KING PACIFIC Anacortes Bellingham Blaine Burlington Carnation Duvall Edmonds Everson Hunts Point Kent LaConnor Lake Forest Park Langley Lynnwood Medina Mercer Island Monroe Mt. Vernon Mukilteo Orting Pacific Renton SeaTac Sedro Woolley Snohomish Snoqualmie Tukwila	BENTON [78]CHELAN [79]CLALLAM [80]DOUGLAS [81]FERRY MASON PIERCE [82]WHATCOM Anacortes Bainbridge Bonney Lake Bridgeport Burlington East Wenatchee Enumclaw Everett Everson Forks Gig Harbor Hunts Point Issaquah LaConnor Mansfield Marysville Medina Mercer Island [83]Mill Creek Mt. Vernon Port Townsend Rock Island Sequim Sumner Tacoma Waterville
20′			GRANT	Chelan
10′			Algona	GRANT Lynnwood [84]Puyallup
NOT AVAILABLE (no regulations or drafts)	SKAGIT SNOHOMISH WALLA WALLA YAKIMA	SKAGIT SNOHOMISH WALLA WALLA YAKIMA	SKAGIT SNOHOMISH WALLA WALLA YAKIMA	SKAGIT SNOHOMISH WALLA WALLA YAKIMA

	Grandview	Grandview	Grandview	Grandview
NOT ADDRESSED (category not defined or buffer width not addressed)	FRANKLIN Clyde Hill Pasco Oak Harbor	FRANKLIN Clyde Hill Pasco Oak Harbor	FRANKLIN ISLAND PEND OREILLE Battle Ground Clyde Hill Des Moines DuPont Kirkland Normandy Park Oak Harbor Pasco	FRANKLIN ISLAND KING PACIFIC PEND OREILLE Algona Battle Ground Bellevue Bellingham Blaine Bothell Carnation Clyde Hill Des Moines DuPont Duvall Edmonds Kent Kirkland Lake Forest Park Langley Monroe Mukilteo Normandy Park North Bend Oak Harbor Orting Pacific Pasco Renton SeaTac Sedro Woolley Snohomish Snoqualmie Tukwila
ZERO (no buffers required)		Battle Ground	Bellevue	KITTITAS Lake Stevens Nooksack Redmond
CASE BY CASE (each project evaluated separately)	Auburn Camas Ellensburg Mountlake Terrace Sultan	Auburn Camas Ellensburg Mountlake Terrace Sultan	Auburn Camas Ellensburg Mountlake Terrace Sultan	Auburn Camas Ellensburg Mountlake Terrace Sultan

SURVEY: 24 COUNTIES . . . 80 CITIES
* DATE CHART PREPARED: OCTOBER 1, 1993

NOTES TO APPENDIX B

1. 300' high intensity, 200' low intensity
2. 300' high intensity, 200' low intensity
3. 300' high intensity, 200' low intensity
4. 300' high intensity, 200' low intensity
5. 300' high intensity, 200' low intensity
6. 300' high intensity, 200' low intensity
7. 300' high intensity, 200' low intensity

8. 0-150' high Intensity, 0-125' low intensity
9. 200' high intensity, 100' low intensity
10. 200' major development, 100' minor development
11. 200' high intensity, 100' low intensity
12. 200' high intensity, 100' low intensity
13. 200' high intensity, 100' low intensity
14. 200' high intensity, 100' low intensity
15. 200' high intensity, 100' low intensity
16. 200' high intensity, 100' low intensity
17. 200' high intensity, 100' low intensity
18. 200' high intensity, 100' low intensity
19. 200' high intensity, 100' low intensity
20. 200' high intensity, 100' low intensity
21. 200' high intensity, 100' low intensity
22. 200' high intensity, 100' low intensity
23. 150'-25' high intensity, 125'-25' low intensity
24. 150' high impact, 75' low impact
25. 150' high intensity, 50' low intensity
26. 150' maximum, 75' minimum
27. 150' high intensity, 100' low intensity
28. 150' high impact, 75' low impact
29. 150' maximum, 100' minimum
30. 150' high intensity, 100' low intensity
31. Standard, 75' Enhancement
32. 100'-25' high intensity, 75'-25' low intensity
33. 100' high intensity, 50' low intensity
34. 100' major development, 50' minor development
35. 100' high intensity, 50' low intensity
36. 100' high intensity, 50' low intensity
36. 100' high impact, 50' low impact
37. 100' high intensity, 50' low intensity
38. 100' high intensity, 50' low intensity
39. 100' maximum, 50' minimum
40. 100' high intensity, 50' low intensity
41. 100' high impact, 50' low impact
42. 100' maximum, 75 minimum
43. 100' high intensity, 50' low intensity
44. 100' high intensity, 75' low intensity
45. 100' high intensity, 50' low intensity
46. 100' high intensity, 50' low intensity
47. 100' high intensity, 50' low intensity
48. 100' high intensity, 50' low intensity
49. 100' high intensity, 50' low intensity
50. 100' high intensity, 50' low intensity
51. 100' high intensity, 50' low intensity
52. 100' high intensity, 50' low intensity
53. 75' standard, 50' enhancement
54. 75' high intensity, 50' low intensity
55. 65' high intensity, 35' low intensity
56. 25-50' high or low intensity
57. 50' both major and minor development
58. 50' high intensity, 25' low intensity
59. 50' high intensity, 25' low intensity
60. 50' high impact, 25' low impact
61. 50' high intensity, 25' low intensity
62. 50' maximum, 25' minimum
63. 50' high intensity, 25' low intensity
64. 50' high intensity, 25' low intensity
65. 50' high impact, 25' low impact
66. 50' maximum, 25' minimum
67. 50' high intensity, 25' low intensity
68. 50' high intensity, 25' low intensity

69. 50' high intensity, 25' low intensity
70. 50' high intensity, 25' low intensity
71. 50' high intensity, 25' low intensity
72. 50' high intensity, 25' low intensity
73. 50' high intensity, 25' low intensity
74. 50' high intensity, 25' low intensity
75. 50' high intensity, 25' low intensity
76. 50' high intensity, 25' low intensity
77. 35' standard, 25' enhancement
78. 25' high intensity, exempt low intensity
79. 25' from both major and minor development
80. 25' both high and low intensity
81. 25' both high and low intensity
82. 25' both high and low intensity
83. 25' high impact, 0-10' low impact
84. 10' standard, 5' enhancement

From:	Wiser, Sonja
To:	Hermen, Matt
Subject:	FW: CPZ20019-00023
Date:	Friday, July 05, 2019 5:54:33 PM
Attachments:	Regulation of Wetlands in Western Washington Under the Growth Management Act.pdf Hinton.pptx

---

From: Greg Huggins [driveserv@hotmail.com]
Sent: Friday, July 05, 2019 4:17 PM
To: Wiser, Sonja
Subject: CPZ20019-00023

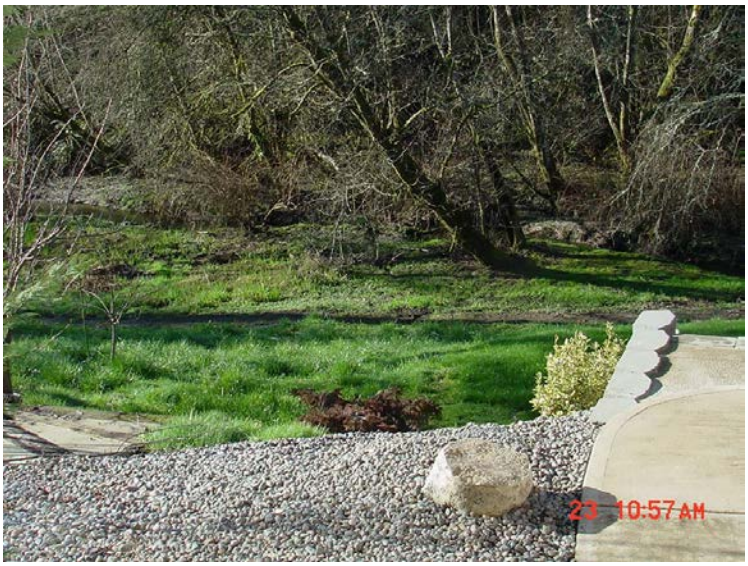
Sonja,

We sent this power point to Matt Hermen as our testimony on this proposal. After sending it we found a couple things we wanted to clarify. First, the plan on Page 2 of the power point for development shows 109 lots at 7000 sq. ft. but it does not take in to account county code 40.250.60 which mandates 9000 sq. ft. minimum. The map shows as many lots as possible put on the this size property. Doing the math 7/9 of 109 = 84 lots minus 2 for the increased lot size on the adjacent lots leaves 82. We don't know how that affects the calculations but it should be noted.

We are also attaching "Regulation of Wetlands in Western Washington Under the Growth management Act". The GMA repeatedly states the goal of the GMA is to limit damage to wetlands by decreasing urban sprawl and increasing infill. The Hinton property is 11 driving miles from downtown Vancouver. Mill Creek Forest PUD is strongly opposed to lifting the urban holding on this property until we can be assured our properties won't be damaged by flooding, sink holes or land slides; all of which we have experienced in the past. With the large wet lands area on this property we would be living with a ticking time bomb next door. If you want to see our documentation, we have a lot of it, just call my cell phone and we can discuss this. if no answer leave a message or text me to call you.

Greg Huggins
Cell 360 609 2431

Mill Creek Forest HOA is opposed to the lifting of the urban holding overlay proposed in CPZ20019-00023. We worked extensively with the county on the Mill Creek Sub Area plan in 2009. Our concerns ,at that time, were the hard surface increase around Mill Creek would increase flooding in our PUD and cause increased property damage to our homes. Since then the development up 29th street has added hundreds of houses on the other side of the creek that runs through our property. This has turned the creek into a raging river during rain storms



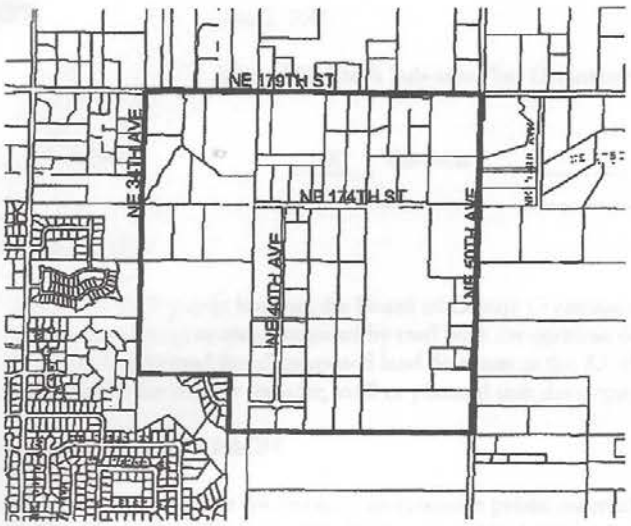
We received this from the planning department who said it came from Hinton development. Lifting urban holding makes this is one step closer.

This area is part of the Mill Creek Sub Area Plan covered by county code 40.250.060 which states the lot size shall be 9000 Sq. Ft. minimum. The lots on this drawing are only 7000 Sq. Ft. Another stipulation of the code is the adjacent lot to Mill Creek Forest must be either 200 feet from our HOA or the lots sizes must be at least the size of the adjacent lots from Mill Creek Forest 17550 Sq. Ft. This drawing shows 7000 Sq. Ft. and no setback from our HOA.

Figure 1 is from the county website. Most of the Hinton property is classified by the county as unstable slopes, Hydric soils, and **wetlands.** Hydric soil is soil which is permanently or seasonally saturated by water, resulting in anaerobic conditions, as found in wetlands. In the winter I have walked into the field in spring and the water was over 6" up on my boots. This is the ground water that keeps the water flowing for the salmon, various fish and eels found in the stream.

Since 2009 not much has happened on this side of the creek that would make it more desirable for development. The road system has gotten much more congested. Most of the properties are still on wells and septic's. The sewer line that was supposed to service this property has been compromised by a land slide. We still have only one way in and one way out, 50th Ave. which has large dips in both directions that can be very dangerous if you are not paying attention. The closest retail business is the John Deere dealer on 72nd Ave.

Figure 40.250.060-1

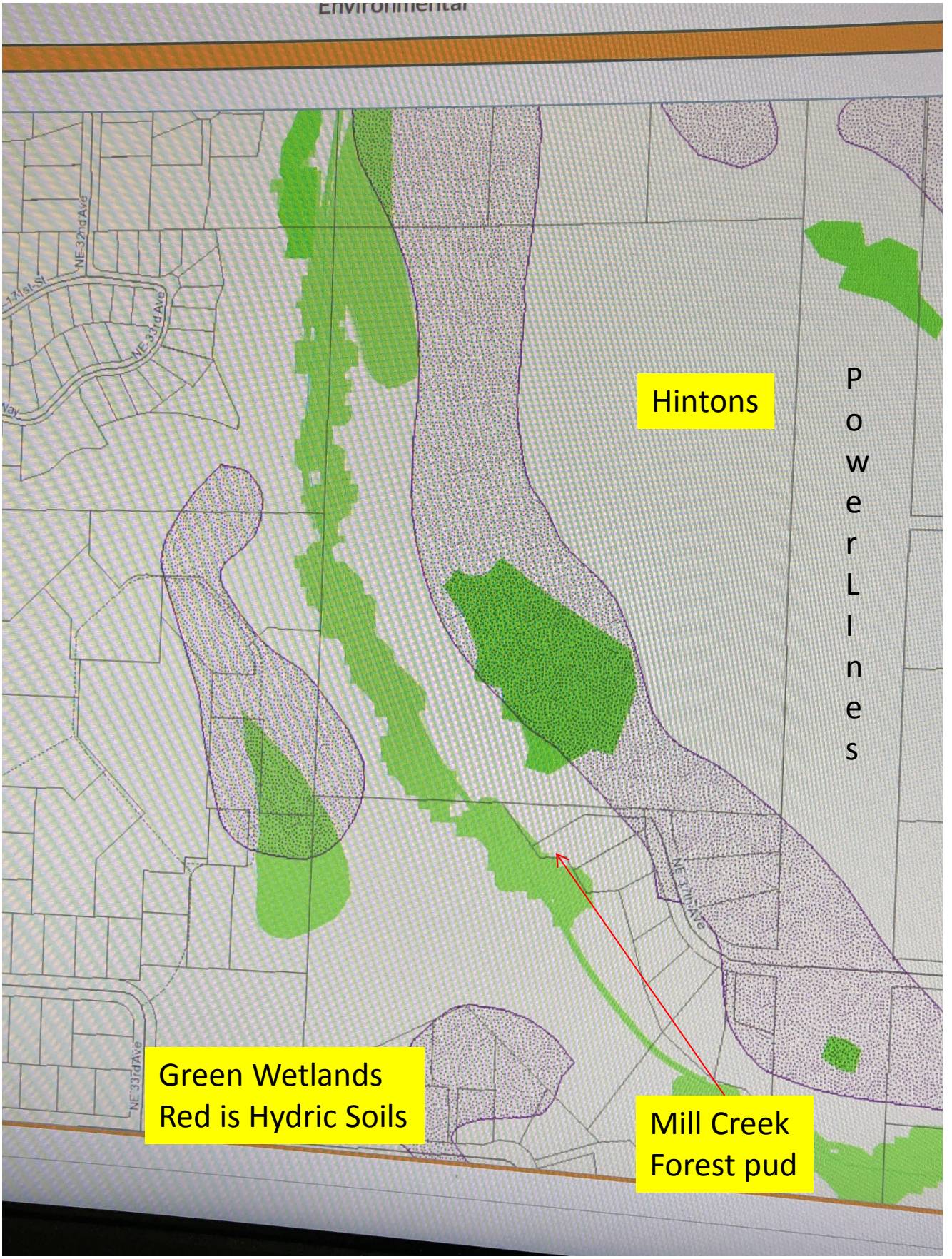


C. Standards.

The following additional standards apply in the overlay district:

1. New lots created adjacent to urban subdivision lots existing at the time of the adoption of the Mill Creek Overlay District shall meet or exceed the average lot size of the abutting subdivision lots unless there is at least two hundred (200) feet of open space between the existing and proposed lots.
2. Prior to approval of any development that would add traffic to NE 37th Avenue, additional access via a public road connection to NE 40th Avenue or NE 174th Street must be assured.
3. A minimum lot size of nine thousand (9,000) square feet is required for all land divisions in the R1-10 and R1-20 districts proposing to develop under the density transfer provisions of 40.220.110(C)(5), the infill provisions of 40.260.110 or the Planned Unit Development provisions of 40.520.080. The exceptions to lot sizes in 40.200.050 shall still apply.

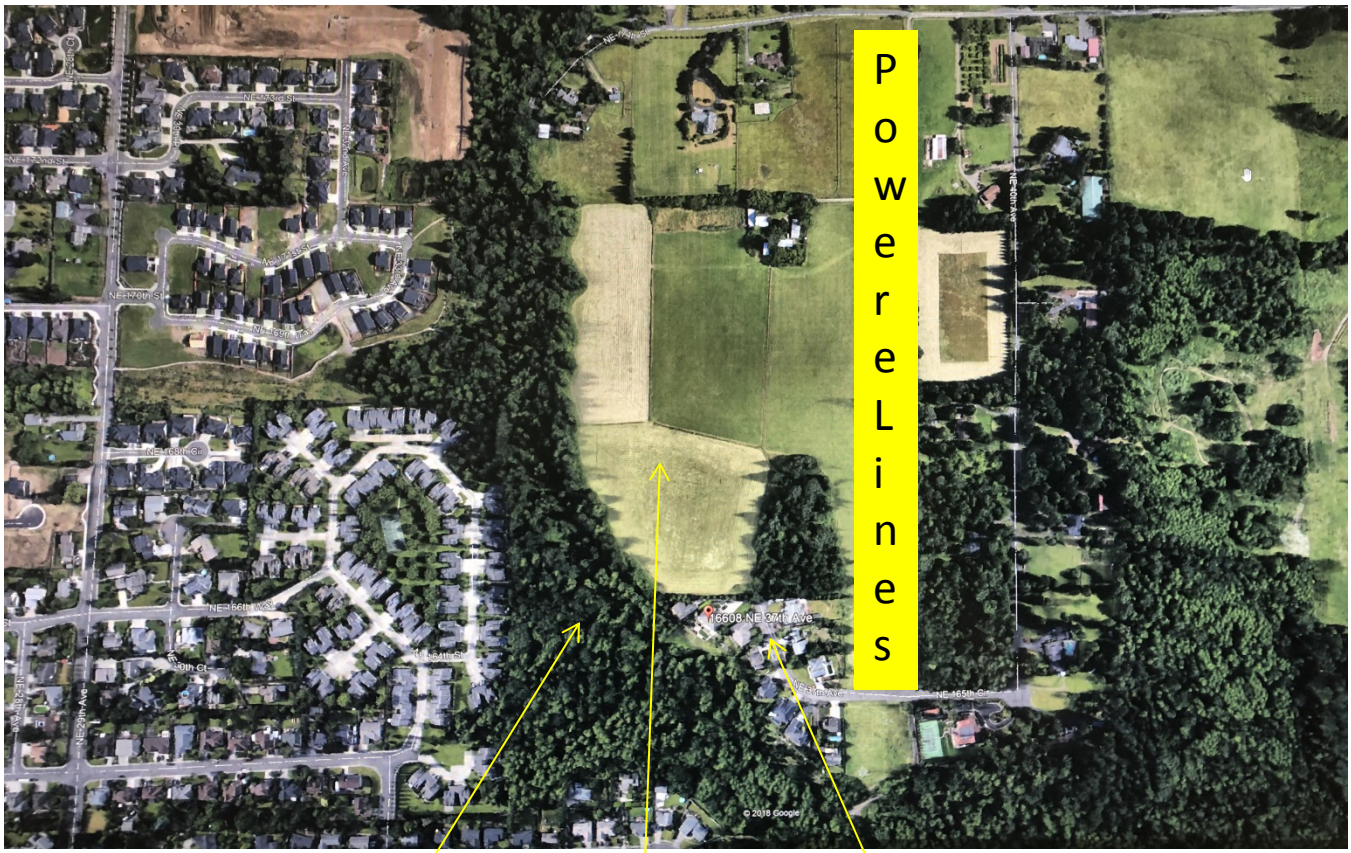
Figure 1



From county website

Our HOA is not opposed to lifting the urban holding where needed but lifting it on this particular property will be the first step for them starting the development process with very bad consequence for us.

We are also including portions of the power point presentation we use to document the flooding, Sink holes, and the slope of Hinton's property in 2009.



The west fork of Mill Creek is in the trees west of Hintons and the back of Mount Vista about 4 miles driving distance. Notice the west side of the creek is all low density with settling ponds. One washed out into the creek and very badly silted up the creek and had to get federal fund to rebuild it. The brown area at the top of the west side is now developed. The only natural recharge is the east side of the creek which is under consideration for dense packing. Sheet 5 of this presentation shows wetlands and hydic soils over most of this land

David T. McDonald
2212 NW 209th Street
Ridgefield, Washington 98642

July 5, 2019

Dr. Oliver Orjiako
Director
Clark County Department of Community Planning
Public Services Building
Vancouver, Washington 98660

RE: Determination of Non-Significance Amend Comprehensive Plan to remove Urban Holding Overlay near the I5/179th Street interchange (Hinton Phase III and Wollam Phase IV)

Sent via e-mail pdf to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

I am submitting these comments as an individual and not on behalf of any particular group, political party or organization. These comments assert that a checklist and DNS is an inadequate environmental review in these cases for the reasons stated below. "Non-project" proposals are subject to SEPA, the lead agency cannot conduct an environmental review of a non-project proposal under the assumption that there will be no direct and/or indirect environmental impacts, including potential cumulative impacts from the "non-project" action. When actions such as these are proposed, it should still be subject to a comprehensive review of potential environmental impacts from reasonably foreseeable developments, especially where the action to be taken will increase the intensity of developments in areas that specifically restricted developments until certain prerequisites for removal of the overlay have been met.

There are several issues that arise with the piecemeal SEPA review process being conducted by the County and the Clark Regional Wastewater District. I am adopting by reference the letter dated August 14, 2018, a copy of which is attached and incorporated by this reference, which sets forth some of the concerns that are now compounded by the fact that these projects can no longer be considered "non-projects" and should include, at a minimum, the combined environmental impacts of all of the

current projects (Wollam, Hinton, Mill Creek (Holt)[1] and Three Creeks (Killian) at build-out as those projects are a reality despite the "non-project" designation. In addition, I am adopting by reference the records from various planning commission hearings, and Council Hearings/Council Time meetings and Work Sessions on Amending the Comprehensive Plan to remove Urban Holding Overlay near the I5/179th Street interchange including but not limited to all of the documents and audio records posted on the Grid on or between January 1, 2018 and the date of this letter. In addition, these environmental review should also incorporate the proposed annexation of properties into the Clark Regional Wastewater District (a copy of that document is filed concomitantly with this document and is incorporated by this reference).

At the outset, these projects are not properly defined as required by WAC 197-11-060(3) as they are not described in a way that encourages "considering and comparing alternatives" and does not describe the proposal in terms of "objectives rather than preferred solutions". *See* WAC 197-11-060(3)(a)(iii). In addition, these proposals violate WAC 197-11-060(3)(b). Under that provision, "proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action, shall be evaluated ***in the same environmental document***. *Id.* Although "phased review" is allowed in some circumstances [*See* WAC 197-11-060(5)]. In this case, §§ 5 is inapplicable because all of these projects are inextricably intertwined by the need for the universal removal of the urban holding and the expenditure of a minimum of $66.2[2] million dollars to meet concurrency standards under GMA and the projects:

> (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or
> (ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.
>
> WAC 197-11-060(3)(b)(i) and (ii).

In addition to failing to include all the projects in the area under one comprehensive "project" (as opposed to "non-project") environmental review, the documents fail to address all of the impacts as defined by WAC 197-110-060(4)(c)(a

---

1 https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q3/071619_MillCreekMasterPlanNarrative%3B%20Ex_BtoDA.pdf, and https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q3/071619_MillCreekMasterPlanNarrative%3B%20Ex_BtoDA.pdf

2 In addition, there is information that the Council is no considering expanding the project area and adding an additional 97 million dollars worth of infrastructure, predominantly roads, to the current project. *See* https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q2/061219WS_179St_I5_FinancialOptions.pdf. at p 14.

copy of which is attached and incorporated by this reference) in that they fail to address impacts).

The areas in Urban Holding subject to these reviews are in Urban Holding due to lack of infrastructure available for development of the underlying zoning. The current overlay covers a large swath of area surrounding the 179th Street/I5 interchange. *See* PPTs dated June 12, 2019. https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q2/061219WS_179St_I5_FinancialOptions.pdf

It appears that this "non-project" action is the County's effort to do an end around a comprehensive review and instead make a strong effort to remove the current overlay in a piecemeal fashion with no comprehensive plan for the entire area subjected to the Urban Holding Overlay. These documents even designate this "non-project" action as "Phase IV" (The Three Creeks Development that was the subject of the SEPA comments dated August 14, 2018 was designated as Phase I). Therefore, it is clear that the County anticipates specific growth, and specific cumulative actions and impacts, that are inevitably going to occur as preconditions to the lifting of the Overlay as the lifting will be conditioned upon specific Development Agreements being signed and in effect. *See generally* https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2018/2018_Q4/121818_Hearing_AnnualReviewDockets_179thSt_I5_DA.pdf and https://www.clark.wa.gov/sites/default/files/dept/files/council-meetings/2019/2019_Q3/071619_HoltMillCreekDADRAFT.pdf.

It is also assumed that the County seeks to allow certain developers, pursuant to development agreements that may or may not be subject to public review, the ability to consume any existing capacities that may exist for smaller "cut-out" projects without considering the overlay as a whole. Such a false narrative would selectively allow some development while excluding other developments leading to disparate treatment of landowners in the area and could cause greater expense to landowners who are forced into plans previously approved by the Council pursuant to the piecemeal development agreements.

Second, these "non-project" actions involve a modification of an existing environment designated under the Growth Management Act planning process by a proposal to amend the comprehensive plans and to, at least partially (and maybe totally as the Council's actions have remained a moving target throughout this process regarding the scope of their desires to remove the Urban Holding and/or the scope of the work and the cost of the work), remove the overlay on this area but does not discuss the development of new transportation plans along with potential new ordinances, rules, and regulations and environmental impacts that will be concomitant to the piecemeal implementation of these development agreements.

Third, according to the checklist, this SEPA (which claims no impacts to the environment) fails to consider the impacts of the the proposed development but states that the action is conditioned on "the execution of a development agreement" that, at this stage, does not exist or has not been put into the public record. Thus, it is clear that there will be impacts and it is impossible for the public to comment on the proposal's impact on the environment if there is no discussion of the development under the propose and it being done in conjunction with the full infrastructure analysis of the area, including but not limited to:

1. Diversion of the money by the County to these projects when the County has a current Road Fund Deficit of $158 million dollars (or at least that is the deficit set forth in the 2015 Comprehensive Plan update;
2. Diversion of money from repairing existing infrastructure in the County including but not limited to Bridges that need repair and upgrading. *See* https://www.clark.wa.gov/sites/default/files/dept/files/public-works/bridges/BridgeReport.pdf and the 7 bridges listed here https://www.clark.wa.gov/public-works/restricted-bridges;

In addition, the Document itself does not discuss in any fashion the following:

The lack of substantial public benefit to use of public funds for market rate residential construction and that residential is a net tax loser, which costs $1.16 in services per tax dollar received. *See* Columbian 5/26/19. In addition, any of the beneficiaries of this proposed County spending who are not currently Clark County residents/taxpayers would unjustifiably benefit by the use of public funds without public benefit can be considered an unconstitutional gift under WA and US Constitutions.

Therefore, the SEPA document(s) should consider an alternative that prohibits the use of public funds in order to lift urban holding designation. Assuming *argumento*, that the County wishes to pursue the use of public funds for lifting the urban holding, the public's % share of the costs should be reserved for road capacity for family wage jobs and affordable housing in a Growth Allocation Plan. *See* Growth Allocation Plan used by the City of Vancouver to reserve Mill Plain/192nd Ave road capacity for jobs. If the public pays for 25% of the costs, then 25% of the road capacity should be reserved for jobs and affordable housing. Jobs reservations should be for pure commercial/industrial uses and not for added residential or retain in "Mixed use". "Affordable Housing" should be homes that are priced so that they can be afforded by people making 60% of the County's average income.

Thank you for your consideration of these comments. Please submit them for the record.

Best Regards,

David T. McDonald

DETERMINATION OF NON-SIGNIFICANCE

Description of Proposal: *Amend Comprehensive Plan to remove Urban Holding Overlay near the I-5/179th St. Interchange, CPZ2019-00023 (Hinton), Phase III*

Proponent: *Clark County Community Planning*

Location of proposal, including street address, if any: *3801 NE 174th St., Vancouver, WA 98686*

Lead Agency: *Clark County, Washington*

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. In 2007, the Vancouver Urban Growth Area was expanded to include the properties affected in this proposal. An Environmental Impact Analysis was completed in 2007 that was associated with this urban land. In 2016 a supplemental Environmental Impact Statement was completed in association with the 2016 Comprehensive Plan update. A new environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below.

Comments must be submitted by: July 5, 2019

Responsible Official: Oliver Orjiako
Position/title: Director
Address: **RE: SEPA Comments**
Clark County Community Planning
1300 Franklin Street; 3rd Floor
P.O. Box 9810
Vancouver, WA 98666-9810

Date: 6-12-19 **Signature:** Oliver Orjiako

The staff contact person and telephone number for any questions on this review is Matt Hermen, Planner III, (564) 397-4343.

For other formats, contact the Clark County ADA Office at ADA@clark.wa.gov.

DETERMINATION OF NON-SIGNIFICANCE

Description of Proposal: *Amend Comprehensive Plan to remove Urban Holding Overlay near the I-5/179th St. Interchange, CPZ2019-00024 (Wollam), Phase 4*

Proponent: *Clark County Community Planning*

Location of proposal, including street address, if any: *807 NW 179th St., Ridgefield, WA 98642*

Lead Agency: *Clark County, Washington*

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. In 2007, the Vancouver Urban Growth Area was expanded to include the properties affected in this proposal. An Environmental Impact Analysis was completed in 2007 that was associated with this urban land. In 2016 a supplemental Environmental Impact Statement was completed in association with the 2016 Comprehensive Plan update. A new environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below.

Comments must be submitted by: July 5, 2019

Responsible Official: Oliver Orjiako
Position/title: Director
Address: **RE: SEPA Comments**
Clark County Community Planning
1300 Franklin Street; 3rd Floor
P.O. Box 9810
Vancouver, WA 98666-9810

Date: 6-12-19 **Signature:** Oliver Orjiako

The staff contact person and telephone number for any questions on this review is Matt Hermen, Planner III, (564) 397-4343.

For other formats, contact the Clark County ADA Office at ADA@clark.wa.gov.

August 14, 2018

Dr. Oliver Orjiako
Director
Clark County Department of Community Planning
Public Services Building
Vancouver, Washington 98660

RE: Determination of Non-Significance Amend Comprehensive Plan to remove Urban Holding Overlay near the I5/179th Street interchange Phase I

Sent via e-mail pdf to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

I am submitting these comments as an individual and not on behalf of any particular group, political party or organization. These comments assert that a checklist and DNS is an inadequate environmental review in this case for the reasons stated below. "Non-project" proposals are subject to SEPA, the lead agency cannot conduct an environmental review of a non-project proposal under the assumption that there will be no direct and/or indirect environmental impacts, including potential cumulative impacts from the "non-project" action. When a action such as this one is proposed, it should still be subject to a comprehensive review of potential environmental impacts from reasonably foreseeable developments, especially where the action to be taken will increase the intensity of developments in areas that specifically restricted developments until certain prerequisites for removal of the overlay have been met.

First, the area in Urban Holding subject to this review is in Urban Holding due to lack of infrastructure available for development of the underlying zoning, in this case Mixed Use zoning. I believe, and can supplement the record, that this holding was put in place as part of the original comprehensive plan from 1994. The current overlay covers a large swath of area surrounding the 179th Street/I5 interchange.

It appears that this "non-project" action is the County's initial attempt to remove the current overlay in a piecemeal fashion with no comprehensive plan for the

entire area subjected to the Urban Holding Overlay. It even designates this "non-project" action as "Phase I" and therefore, it is clear that the County anticipates specific growth, and specific cumulative actions, but anticipates them occurring in a piecemeal basis. It is assumed that the County seeks to allow certain developers, pursuant to development agreements that may or may not be subject to public review, the ability to consume any existing capacities that may exist for smaller "cut-out" projects without considering the overlay as a whole, which would selectively allow some development while excluding other developments leading to disparate treatment of landowners in the area and could cause greater expense to landowners who are forced into plans previously approved by the Council pursuant to the piecemeal development agreements.

Second, this "non-project" action involves a modification of an existing environment designated under the Growth Management Act planning process by a proposal to amend the comprehensive plans and to, at least partially, remove the overlay on this area but does not discuss the development of new transportation plans along with potential new ordinances, rules, and regulations and environmental impacts that will be concomitant to the piecemeal implementation of these development agreements.

Third, according to the checklist, this SEPA (which claims no impacts to the environment) fails to consider the impacts of the the proposed development but states that the action is based upon "the execution of a development agreement" that, at this stage, does not exist or has not been put into the public record. Thus, it is clear that there will be impacts (at least a minimum of 402 trips per day) and it is impossible for the public to comment on the proposal's impact on the environment if there is no discussion of the development under the propose

Moreover, a recent work session with the Council exhibited that there were many other possible projects and development agreements being proposed in the impacted area around the 179th street interchange. Based upon a review of the materials presented to the county, the following have/are being proposed:

Killian 60,000 Sq. Ft. Retail (DA Approved Phase 1)

- Killian Three Creeks North Phase 1– (DA in progress)
- Killian remainder Phase 2 - NE 179th Street Commercial Center (DA Approved Phase 2)
- Holt Mill Plain PUD (606 homes/99 townhomes)
- Hinton Property (129 homes)
- Wollam Property (220 homes)

See The Grid Materials from 7/11/18 WS and audio of that work session all of which are incorporated into these comments by reference[1].

However, there has been no comprehensive analysis of traffic impacts or the impacts of the contemplated infrastructure and developments on the existing environment as required by SEPA and, if one has been completed, it has not been adopted by the County and is not incorporated into this SEPA document.

Therefore, this SEPA review for this non-project actions fails in many ways including failing to consider conduct a comprehensive analysis of the reasonably foreseeable impacts, failing to address the cumulative impacts of all of these developments that are being proposed, failing to consider any possible alternatives and failing to outline any potentially successful mitigation measures.

Fourth, the DNS/Checklist lists no other actions that have been taken by the County regarding the Urban Holding in general and this parcel specifically. Presumably, there have been other determinations, and reviews of those determinations by the Growth Management Hearings Board(s). If other decisions, papers, determinations, environmental reviews etc have been completed by the County regarding this parcel specifically, and the overlay in general, then those documents should be made a part of and/or referenced in the environmental review for this proposed Comprehensive Plan amendment. If those do exist, the DNS/Checklist does not, but should, list the other relevant environmental documents/studies/models that have been done regarding the Urban Holding area since it was placed under the Urban Holding overlay. For example, a county's EIS for its comprehensive plan may have information relevant to the Urban Holding Overlay. In addition, there should be other county, Growth Board and/or appellate court references to the Urban Holding Overlay and the reason(s) that it has not been removed over the years.

Fifth, there is no description of any alternatives much less a range of alternative or preferred alternative or any description of if a particular alternative was fully implemented (including full build-out development, redevelopment, changes in land use, density of uses, management practices, etc.), any description of where and how it would direct or encourage demand on or changes within elements of the human or built environment, as well as the likely affects on the natural environment. In addition, the document fails to identify where the change or affect or increased demand might or could constitute a likely adverse impact, or any description of any further or additional adverse impacts that are likely to occur as a result of those changes and affects.

Sixth, this checklist cannot serve as an environmental analysis for later project reviews because it has been created in a way that does not anticipate any such

---

[1] It is unclear to me at this point if this current SEPA is for one of those proposed developments.

projects where, in contrast, the county definitely is contemplating such projects. The more detailed and complete the environmental analysis is during the "non-project" stage, the less review will needed during project review and, therefore, any project review can focus on those environmental issues not adequately addressed during the "non-project" stage. The current checklist and DNS fails to provide any analysis that could be utilized later at a proposed project phase and fails to give notice to the citizen of the real potential environmental impacts that will occur once the Urban Holding Overlay is lifted and projects can proceed.

Currently, given the potential development agreements listed above, along with others that may not be in the public realm, there is ample ability for the lead agency to anticipate and analyze the likely environmental impacts of taking this action and the failure to do so creates an inadequate SEPA document (for example a minimum of 2500 peak hour trips if the developers' numbers are to be believed in the documents that they submitted in the July work session). Failure to conduct a full environmental review at this juncture allows for the removal of the overlay while precluding the public to speak to the removal of the overlay at all. Plus, once this overlay is removed, the question arises as to whether the removal of all the other portions of the overlay must be removed either piecemeal or as a whole through this "non-project" action that has no real environmental review or input from the public.

Although an environmental checklist can act as a first step in an environmental process, including Part D, Supplemental Sheet for "non-project" activities it should not stand in the way of a more comprehensive environmental impact statement, especially in this case given the large areas under the urban holding overlay that are obviously intended to be subject to removal only upon meeting specific prerequisites. Further, there has been no analysis of the traffic impacts on 179th street, 15th Avenue and/or the 179th street intersection by the current proposal(s) by the lead agency. A full environmental review, that includes all known proposed projects, along with the impact of full build-out should the entire overlay be removed, should be conducted prior to the removal of any portion of the overlay.

These comments assert that this "non-project" SEPA proposal review should also 1) consider all existing regulations, 2) set forth the underlying rational behind the fact that there is an Urban Holding Overlay in existence, 3) the reason for the overlay being placed on the area, 4) remove it from the overlay and 5) the requirements that are required to remove the overlay as well as and 6) any other development under consideration. Plus the environmental review should include an analysis of the potential impacts of the entire area once the overlay is lifted in the larger area surrounding the 179th Street interchange, there will be a plethora of impacts, including but not limited to traffic impacts.

Therefore, this "nonproject" action involves a comprehensive plan amendment, or similar proposal governing future project development, and the probable

environmental impacts that would be allowed for the future development need to be considered. The environmental analysis should analyze the likely impacts of the of build-out of all the underlying zones covered by the overlay when determining the efficacy of allowing this one "non-project" to have the overlay removed. In addition, the proposal should be described in terms of alternative means of accomplishing an objective.

Thank you for your consideration of these comments. Please submit them for the record.

Best Regards,

David

CLARK REGIONAL WASTEWATER DISTRICT

COMMISSIONERS
Norm Harker
Denny Kiggins
Neil Kimsey
GENERAL MANAGER
John M. Peterson, P.E.

8000 NE 52 Court Vancouver, WA 98665 PO Box 8979 Vancouver, WA 98668
Phone (360) 750-5876 Fax (360) 750-7570 www.crwwd.com

File: Annexation 03-17
DNS 03-17

Date Published:
June 21, 2019

June 17, 2019

Please find enclosed an environmental Determination of Non-Significance issued pursuant to the State Environmental Policy Act (SEPA) Rules (Chapter 197-11), Washington Administrative Code.

You may comment on this DNS by submitting written comments within Fifteen (15) days of this notice as provided for by WAC 197-11-340.

Please address all correspondence to: Clark Regional Wastewater District
PO Box 8979
Vancouver, WA 98668-8979
Attn: Steve Bacon

DISTRIBUTION LIST

Federal Agencies:
US Army Corps of Engineers, Seattle District
US Fish and Wildlife Service
National Marine Fisheries Service
Northwest Power & Conservation Council
Bonneville Power Administration

Native American Interests:
Yakima Indian Nation
Cowlitz Indian Tribe
Chinook Indian Tribe

State Agencies:
Department of Ecology
Department of Fish and Wildlife
Department of Community Development
Department of Commerce
Department of Health
Department of Natural Resources – SEPA Center
Department of Transportation
Office of Archaeology and Historic Preservation

Regional Agencies:
Fort Vancouver Regional Library
Southwest Clean Air Agency
Southwest Washington Regional Transportation Council

ACCREDITED AGENCY A•P•W•A

Local Agencies:

Clark County
- Administration
- Building
- Community Planning
- Public Works
- Auditor
- Public Health

Vancouver/Clark Parks and Recreation
City of Battle Ground
City of Vancouver
- Administration
- Community Preservation & Development
- Public Works

Other Agencies:

Clark Public Utilities
CRESA
C-Tran
Battle Ground School District
Fire Protection District 5
Clark County Sheriff

Interest Groups:

Building Industry Association of Clark County
Clark County Natural Resources Council
Vancouver Housing Authority
Columbia River Economic Development Council
Vancouver Chamber of Commerce
Fairgrounds Neighborhood Association
Pleasant Highlands Neighborhood Association
North Salmon Creek Neighborhood Association

Interested Parties:

David T. McDonald

DETERMINATION OF NONSIGNIFICANCE

Description of proposal:

Annexation of properties into the District boundary. Said properties are located in NE ¼ Section 13 T3N R1E WM; NE & NW ¼ of the SE ¼ Section 13 T3N R1E WM, NE & SE ¼ of the NW ¼ Section 13 T3N R1E WM.

Proponent:

Clark Regional Wastewater District

Location of proposal, including street address, if any.

The proposed annexation includes all properties within the following described areas:

- ***The SE ¼ of Section 12 T.3N., R.1E., W.M.,***
- ***The NE ¼ of Section 13 T.3N., R.1E., W.M.,***
- ***The E ½ of the NW ¼ of Section 13 T.3N., R.1E., W.M.,***
- ***The N ½ of the SE ¼ of Section 13 T.3N., R.1E., W.M.,***
- ***The N ½ of the NE ¼ of the SW ¼ of Section 13 T.3N., R.1E., W.M.,***
- ***19002 NE 50th Ave 181440-000***
- ***19100 NE 50th Ave 181449-000***
- ***19020 NE 50th Ave 181517-000***

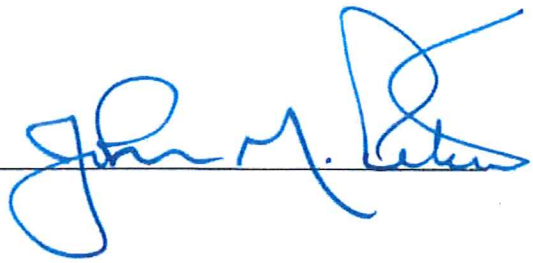
Lead Agency: ***Clark Regional Wastewater District***

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. The environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

___ There is no comment period for this DNS.

_X_ This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 15 days from the date below. Comments must be submitted by July 8, 2019.

Responsible Official: ***John Peterson***
Position/Title: ***General Manager***
Telephone: ***(360) 750-5876***
Fax: ***(360) 750-7570***
Address: ***8000 NE 52nd Court***
PO Box 8979
Vancouver, WA 98668-8979

Date: 18 JUNE 2019 Signature 

ENVIRONMENTAL CHECKLIST

Purpose of Checklist:

The State Environmental Policy Act (SEPA), Chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probably significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for Applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or given the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply". Complete answers to the questions may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of Checklist of Non-Project Proposals:

Complete this checklist for non-project proposals, even though questions may be answered "does not apply". IN ADDITION, complete the SUPPLEMENTAL SHEET FOR Non-project ACTIONS (part D).

For non-project actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of Proposed Project, if applicable:

   Annexation #03-17, Mill Creek

2. Name of Applicant:

   Clark Regional Wastewater District

3. Address and Phone Number of Applicant and Contact Person:

   8000 NE 52nd Court
   PO Box 8979
   Vancouver, WA 98668-8979
   (360) 750-5876
   Attn: Steve Bacon, P.E., Development Program Manager

4. Date Checklist Prepared:

   June 14, 2019

5. Agency Requesting Checklist:

   Clark Regional Wastewater District

6. Proposed Timing or Schedule (including phasing, if applicable):

   The annexation will proceed following the completion of this SEPA process.

7. Do you have any plans for future additions, expansions, or further activity related to or connected with this proposal? If yes, please explain.

   This action will allow for future extensions of sanitary sewer service into the area.

8. List any environmental information you know about that has been or will be prepared related to this proposal:

   None known.

9. Are other applications pending for governmental approvals affecting the property covered by your proposal? If yes, please explain.

   None known.

10. List any government approvals or permits that will be needed for your proposal.

    Approval of the proposed annexation by the Board of Commissioners of Clark Regional Wastewater District and the Board of County Councilors.

11. Give a brief, complete description of your proposal, including the proposed uses and size of the project and site. There are several questions addressed later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page (Lead agencies may modify this form to include additional specific information on project description).

    This action amends the service boundary of the District to include an additional area of approximately 491 acres within Clark County's urban growth boundary.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including street address, section, township, and range. If this proposal occurs over a wide area, please provide the range or boundaries of the site. Also, a legal description, site plan, vicinity map, and topographic map. You are required to submit any plans required by the agency, but not required to submit duplicate maps or plans submitted with permit applications related to this checklist.

    This action proposes to add 82 parcels into the Clark Regional Wastewater District service area. The area is generally described as north of NE 164th Street, east of NE 34th Avenue, west of NE 50th Avenue, and south of NE 192nd Street.

B. ENVIRONMENTAL ELEMENTS

1. EARTH

A. General description of the site (circle one): flat, rolling, **hilly**, steep slopes, mountainous, other.

B. What is the steepest slope on the site and the approximate percentage of the slope?

The steepest slope is 60% primary along the banks of Mill Creek.

C. What general types of soils are found on the site (e.g., clay, sand, gravel, peat, muck)? Please specify the classification of agricultural soils and note any prime farmland.

The soils are classified as Gee silt loam, with the specific classification of GeB, GeD, GeE, and GeF, and Hillsboro silt loam, with the specific classification of HoA, HoB, HoC.

D. Are there surface indications or history of unstable soils in the immediate vicinity? If so, please describe.

There are areas of potential instability along Mill Creek.

E. Describe the purpose, type, and approximate quantities of any filling or proposed grading. Also, indicate the source of fill.

No grading activities are proposed.

F. Could erosion occur as a result of clearing, construction, or use? If so, please describe.

This non-project action will not propose any activities that could cause erosion.

G. What percentage of the site will be covered with impervious surfaces after the project construction (e.g., asphalt or buildings)?

No improvements are being proposed.

H. Proposed measures to reduce or control erosion, or other impacts to the earth include:

No erosion causing activities are proposed.

2. **AIR**

A. What types of emissions to the air would result from the proposal (e.g., dust, automobile, odors, industrial wood smoke) during construction and after completion? If yes, describe and give approximate quantities.

No emissions will be associated with this non-project action.

B. Are there any off-site sources of emissions or odor that may affect your proposal? If so, please describe:

No.

C. Proposed measures to reduce or control emissions or other impacts to air:

None.

3. **WATER**

A. Surface

1. Is there any surface water body on or in the vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names and into which stream or river it flows into.

There are known surface waters within the area. There is a mapped year-round stream, Mill Creek, within the annexation boundary. The area is within the Salmon Creek watershed.

2. Will the project require any work within 200 feet the described waters? If yes, please describe and attach available plans.

No.

3. Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

None.

4. Will the proposal require surface water withdrawals or diversions? Please provide description, purpose, and approximate quantities:

No.

5. Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

   There is an area classified as floodway fringe, located along the banks of Mill Creek.

6. Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

   No.

B. Ground

1. Will ground water be withdrawn, or will water be discharged to ground water? Please give description, purpose, and approximate quantities.

   No.

2. Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (e.g., domestic sewage; industrial, containing the following chemicals…; agricultural; etc.). Describe the size and number of the systems, houses to be served; or, the number of animals or humans the system are expected to serve.

   None.

C. Water Runoff (including storm water):

1. Describe the source of runoff (including storm water) and the method of collection and disposal. Include quantities, if known. Describe where water will flow, and if it will flow into other water.

   Does not apply.

2. Could waste materials enter ground or surface waters? If so, please describe.

   No.

D. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

   None.

4. **PLANTS**

A. Check or circle types of vegetation found on the site:
__x__ Deciduous tree: alder, maple, aspen, other
__x__ Evergreen tree: fir, cedar, pine, other
__x__ Shrubs
__x__ Grass
__x__ Pasture
___ Crop or grain
___ Wet soil plants: cattail, buttercup, bulrush, skunk cabbage, other
___ Water plants: water lily, eelgrass, milfoil, other
___ Other types of vegetation

B. What kind and amount of vegetation will be removed or altered?

   None.

C. List any threatened or endangered species known to be on or near the site.

   None known.

D. List proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site:

None.

5. **ANIMALS**

A. Circle any birds and animals which have been observed on or near the site:

Birds: **hawk**, heron, eagle, **songbirds**, other:
Mammals: **deer**, bear, elk, beaver, other: **coyotes**, **rabbits**, **squirrels, and small rodents.**
Fish: bass, **salmon**, trout, herring, shellfish, other:

B. List any threatened or endangered species known to be on or near the site.

The Washington Department of Fish & Wildlife classifies Coho and Summer Steelhead as threatened, accessible in the area.

C. Is the site part of a migration route? If so, please explain.

The entire region is part of the Pacific Flyway.

D. List proposed measures to preserve or enhance wildlife:

None.

6. **ENERGY AND NATURAL RESOURCES**

A. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

None.

B. Would your project affect the potential use of solar energy by adjacent properties? If so, please describe.

No.

C. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts:

None.

7. **ENVIRONMENTAL HEALTH**

A. Are there any environmental hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, please describe.

No.

1. Describe special emergency services that might be required.

None.

2. Proposed measures to reduce or control environmental health hazards, if any?

   None.

B. Noise

1. What types of noise exist in the area which may affect your project (e.g., traffic, equipment operation, other)?

   None.

2. What types and levels of noise are associated with the project on a short-term or a long-term basis (e.g., traffic, construction, operation, other)? Indicate what hours the noise would come from the site.

   None.

3. Proposed measures to reduce or control noise impacts:

   None.

8. **LAND AND SHORELINE USE**

A. What is the current use of the site and adjacent properties?

The current use of the area is single family residences, agricultural and forest land.

B. Has the site been used for agriculture? If so, describe.

There are parcels in the area that have been used as farmland.

C. Describe any structures on the site.

There are residential structures and associated outbuildings on the site.

D. Will any structures be demolished? If so, please describe.

No.

E. What is the current zoning classification of the site?

Current zoning in the area includes, R1-7.5, R1-10, R1-20 and MX.

F. What is the current comprehensive plan designation of the site?

The current comprehensive plan designation of the site is Urban Low Density Residential and Mixed Use.

G. What is the current shoreline master program designation of the site?

Does not apply.

H. Has any part of the site been classified as an "environmentally sensitive" area? If so, please specify.

Does not apply.

I. How many people would reside or work in the completed project?

This non-project action will not change the current number of people who reside or work in the area.

J. How many people would the completed project displace?

None.

K. Please list proposed measures to avoid or reduce displacement impacts:

None.

L. List proposed measures to ensure the proposal is compatible with existing and projected land uses and plans:

The proposed non-project action will allow the current urban zoned properties to obtain sanitary sewer service, as well as allow future developments to extend and connect to sewer as required by County Code.

9. **HOUSING**

A. Approximately how many units would be provided? Indicate whether it's high, middle, or low-income housing.

Does not apply.

B. Approximately how many units, if any, would be eliminated? Indicate whether it's high, middle, or low-income housing.

None.

C. List proposed measures to reduce or control housing impacts:

Does not apply.

10. **AESTHETICS**

A. What is the tallest height of any proposed structure(s), not including antennas? What is proposed as the principal exterior building materials?

None proposed.

B. What views in the immediate vicinity would be altered or obstructed?

None.

C. Proposed measures to reduce or control aesthetic impacts:

Does not apply.

11. **LIGHT AND GLARE**

A. What type of light or glare will be proposal produce? What time of day would it mainly occur?

None.

B. Could light or glare from the finished project be a safety hazard or interfere with views?
Does not apply.

C. What existing off-site sources of light or glare may affect your proposal?

None.

D. Proposed measures to reduce or control light and glare impacts:

None.

12. **RECREATION**

A. What designated and informal recreational opportunities are in the immediate vicinity?

There are public hiking trails located on the Washington State University campus, south of the annexation area at NE 159th Street and NE 50th Avenue.

B. Would the project displace any existing recreational uses? If so, please describe.

No.

C. Proposed measures to reduce or control impacts on recreation, including recreational opportunities to be provided by the project or applicant:

None.

13. **HISTORIC AND CULTURAL PRESERVATION**

A. Are there any places or objects listed on or near the site which are listed or proposed for national, state, or local preservation registers? If so, please describe.

None known.

B. Please describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

None.

C. Proposed measures to reduce or control impacts:

None.

14. **TRANSPORTATION**

A. Identify public streets and highways serving the site and describe proposed access to the existing street system. Show on site plans, if any.

The area is served by NE 50th Avenue, NE 179th Street, NE 174th Street and NE 40th Avenue. Private roads lie within the annexation area.

B. Is the site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

No, the nearest transit stop is located approximately 3 miles west, at NE 29th Avenue and WSU, C-Tran #19 Salmon Creek from 99th Street Transit Center to WSU.

C. How many parking spaces would the completed project have? How many would the project eliminate?

Does not apply.

D. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, please describe and indicate whether it's public or private.

No.

E. Will the project use water, rail, or air transportation? If so, please describe.

No.

F. How many vehicular trips per day would be generated by the completed project? Indicate when peak traffic volumes would occur.

None.

G. Proposed measures to reduce or control transportation impacts:

None.

15. **PUBLIC SERVICES**

A. Would the project result in an increased need for public services (e.g., fire protection, police protection, health care, schools, other)? If so, please describe.

No.

B. Proposed measures to reduce or control direct impacts on public services.

None.

16. **UTILITIES**

A. Circle the utilities currently available at the site: **Electricity**, natural gas, **water**, **refuse service**, **telephone**, sanitary sewer, **septic system**, other.

B. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on or near the site.

None.

17. **SIGNATURE**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature _____

Steve Bacon, P.E., Development Program Manager
Clark Regional Wastewater District

Date Submitted: 06/17/19

D. SEPA SUPPLEMENTAL SHEET FOR NON-PROJECT ACTIONS

INSTRUCTIONS:

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment. When answering these questions, be aware of the extent of the proposal and the types of activities likely to result from this proposal. Please respond briefly and in general terms.

1. How would the proposal increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

   The proposal would not increase these elements.

   Proposed measures to avoid or reduce such increases are:

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

   The proposal would not affect plants, animals, fish, or marine life.

   Proposed measures to protect or conserve plants, animals, fish, or marine life are:

3. How would the proposal be likely to deplete energy or natural resources?

   The proposal would not deplete energy or natural resources.

   Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal use or affect environmentally sensitive areas or those designated (or eligible or under study) for governmental protection such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

   The proposal would not affect environmentally sensitive areas.

   Proposed measures to protect such resources or to avoid or reduce impacts are:

5. How would the proposal be likely to affect land and shoreline use? Will it allow or encourage land or shoreline uses incompatible with existing plans?

   The proposal would not affect land and shoreline use.

   Proposed measures to avoid or reduce shoreline and land use impacts are:

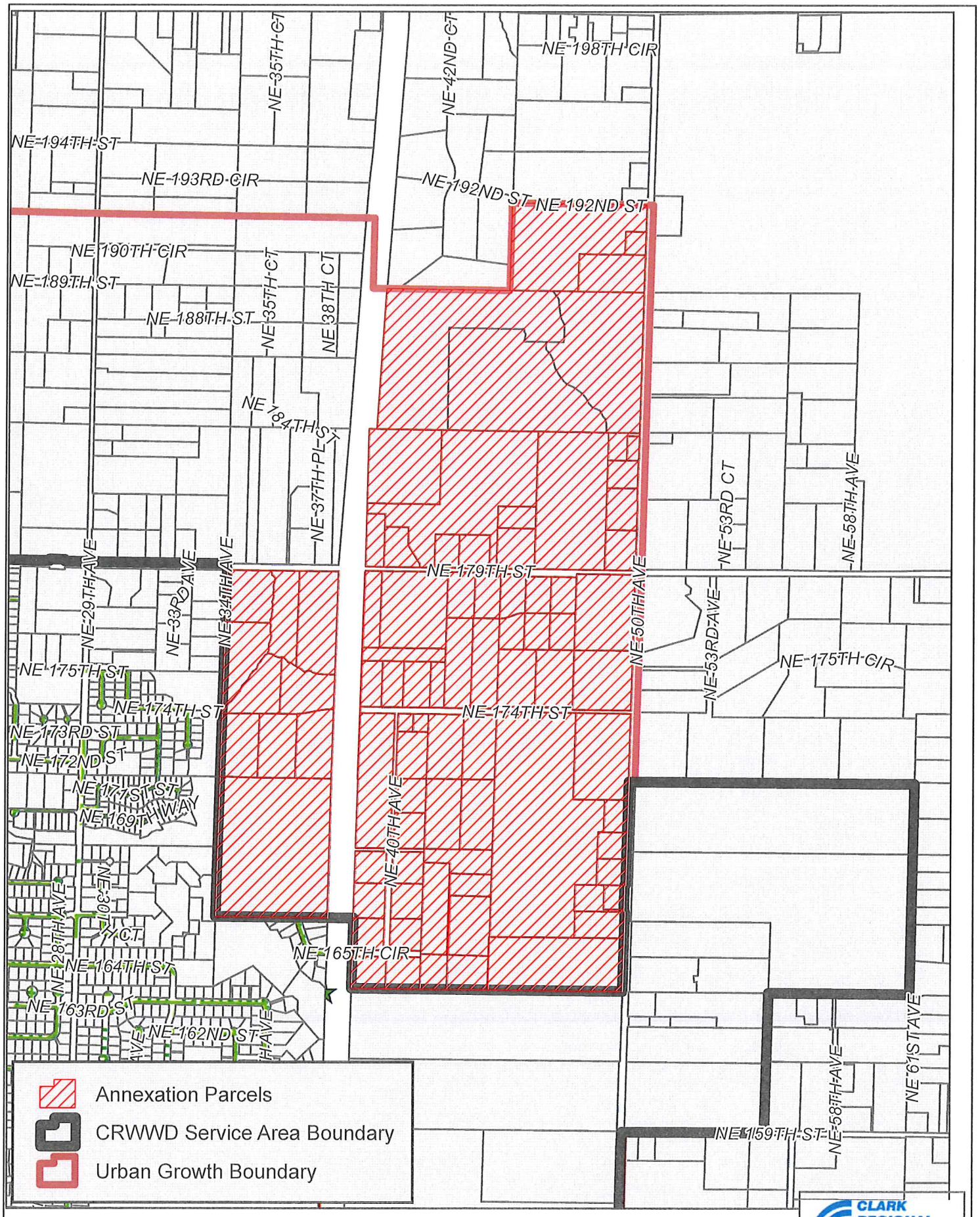
6. How would the proposal be likely to increase demands on transportation or public services and utilities?

   The proposal would not increase demands on transportation or public services and utilities.

Proposed measures to reduce or respond to such demand(s) are:

7. Identify whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

The proposal would not cause conflict with local, state, or federal laws or requirements for the protection of the environment.



Annexation 03-17
Vicinity Map

CLARK REGIONAL WASTEWATER DISTRICT

RIDGEFIELD
SCHOOL DISTRICT
unlimited possibilities

SUPERINTENDENT
DR NATHAN MCCANN

BOARD OF DIRECTORS
DISTRICT 1 EMILY ENQUIST
DISTRICT 2 JOSEPH VANCE
DISTRICT 3 BRETT JONES
DISTRICT 4 BECKY GREENWALD
DISTRICT 5 SCOTT GULLICKSON

July 3, 2019

Oliver Orjiako, Director
SEPA Comments
Clark County Community Planning
1300 Franklin Street, 3rd Floor
PO Box 9810
Vancouver, WA 98666-9810

RE: DNS for CPZ2019-00023-Amendment to Comp Plan to remove Urban Holding (Hinton) Phase III

Dear Mr. Orjiako:

The Ridgefield School District received the Determination of Non Significance (DNS) that was issued in the above referenced matter and appreciates the opportunity to submit the following comments.

Removing Urban Holding from the 32.45 acres of property that is the subject of the DNS will open the way for development of approximately 129 single family homes. The SEPA Checklist that was included with the DNS describes the County's plans to enter into a development agreement "that funds critical infrastructure," presumably to serve the anticipated development. Public schools are part of the infrastructure that is needed. Contrary to the answer "none" to question 15a regarding increased needs for public services, allowing residential development will increase the need for public schools.

The Ridgefield School District will provide public education to the students residing in the homes that will be built if Urban Holding is removed. If recent housing demographics continue, approximately 38 students will reside in the 129 homes. The District does not have unused capacity in existing schools. To serve the 38 students from this development, and students from other pending and planned developments, the District needs to build a new elementary, middle and high school.

The costs to build new schools is significant. The District's 2015 Capital Facility Plan, which the County has adopted, forecast the cost to build needed schools at over $90,000,000. Construction costs have increased since then. A bond, state construction assistance, and school impact fees are all needed to pay the costs to build the needed schools. The District calculated school impact fees using the County and City formula is $11,289.80 for single family homes.

If a bond is not approved, and school impact fees are not assessed in the full amount, removing Urban Holding will have a significant adverse impact on schools. That impact can be mitigated by imposing a requirement that future development pay the District's $11,289.80 school impact fee.

The District respectfully requests that any actions the County takes that will open the way for new development include a requirement that the developers pay the full $11,289.80 school impact fee. Thank you for considering these comments and sharing them with the County Council as they deliberate and decide whether to remove Urban Holding.

Sincerely,

Dr. Nathan McCann
Superintendent

August 14, 2018

Dr. Oliver Orjiako
Director
Clark County Department of Community Planning
Public Services Building
Vancouver, Washington 98660

RE: Determination of Non-Significance Amend Comprehensive Plan to remove Urban Holding Overlay near the I5/179th Street interchange Phase I

Sent via e-mail pdf to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

I am submitting these comments as an individual and not on behalf of any particular group, political party or organization. These comments assert that a checklist and DNS is an inadequate environmental review in this case for the reasons stated below. "Non-project" proposals are subject to SEPA, the lead agency cannot conduct an environmental review of a non-project proposal under the assumption that there will be no direct and/or indirect environmental impacts, including potential cumulative impacts from the "non-project" action. When a action such as this one is proposed, it should still be subject to a comprehensive review of potential environmental impacts from reasonably foreseeable developments, especially where the action to be taken will increase the intensity of developments in areas that specifically restricted developments until certain prerequisites for removal of the overlay have been met.

First, the area in Urban Holding subject to this review is in Urban Holding due to lack of infrastructure available for development of the underlying zoning, in this case Mixed Use zoning. I believe, and can supplement the record, that this holding was put in place as part of the original comprehensive plan from 1994. The current overlay covers a large swath of area surrounding the 179th Street/I5 interchange.

It appears that this "non-project" action is the County's initial attempt to remove the current overlay in a piecemeal fashion with no comprehensive plan for the entire area subjected to the Urban Holding Overlay. It even designates this "non-project" action as "Phase I" and therefore, it is clear that the County anticipates specific growth, and specific cumulative actions, but anticipates them occurring in a piecemeal basis. It is

assumed that the County seeks to allow certain developers, pursuant to development agreements that may or may not be subject to public review, the ability to consume any existing capacities that may exist for smaller "cut-out" projects without considering the overlay as a whole, which would selectively allow some development while excluding other developments leading to disparate treatment of landowners in the area and could cause greater expense to landowners who are forced into plans previously approved by the Council pursuant to the piecemeal development agreements.

Second, this "non-project" action involves a modification of an existing environment designated under the Growth Management Act planning process by a proposal to amend the comprehensive plans and to, at least partially, remove the overlay on this area but does not discuss the development of new transportation plans along with potential new ordinances, rules, and regulations and environmental impacts that will be concomitant to the piecemeal implementation of these development agreements.

Third, according to the checklist, this SEPA (which claims no impacts to the environment) fails to consider the impacts of the the proposed development but states that the action is based upon "the execution of a development agreement" that, at this stage, does not exist or has not been put into the public record. Thus, it is clear that there will be impacts (at least a minimum of 402 trips per day) and it is impossible for the public to comment on the proposal's impact on the environment if there is no discussion of the development under the propose

Moreover, a recent work session with the Council exhibited that there were many other possible projects and development agreements being proposed in the impacted area around the 179th street interchange. Based upon a review of the materials presented to the county, the following have/are being proposed:

Killian 60,000 Sq. Ft. Retail (DA Approved Phase 1)

- Killian Three Creeks North Phase 1– (DA in progress)
- Killian remainder Phase 2 - NE 179th Street Commercial Center (DA Approved Phase 2)
- Holt Mill Plain PUD (606 homes/99 townhomes)
- Hinton Property (129 homes)
- Wollam Property (220 homes)

See The Grid Materials from 7/11/18 WS and audio of that work session all of which are incorporated into these comments by reference[1].

[1] It is unclear to me at this point if this current SEPA is for one of those proposed developments.

However, there has been no comprehensive analysis of traffic impacts or the impacts of the contemplated infrastructure and developments on the existing environment as required by SEPA and, if one has been completed, it has not been adopted by the County and is not incorporated into this SEPA document.

Therefore, this SEPA review for this non-project actions fails in many ways including failing to consider conduct a comprehensive analysis of the reasonably foreseeable impacts, failing to address the cumulative impacts of all of these developments that are being proposed, failing to consider any possible alternatives and failing to outline any potentially successful mitigation measures.

Fourth, the DNS/Checklist lists no other actions that have been taken by the County regarding the Urban Holding in general and this parcel specifically. Presumably, there have been other determinations, and reviews of those determinations by the Growth Management Hearings Board(s). If other decisions, papers, determinations, environmental reviews etc. have been completed by the County regarding this parcel specifically, and the overlay in general, then those documents should be made a part of and/or referenced in the environmental review for this proposed Comprehensive Plan amendment. If those do exist, the DNS/Checklist does not, but should, list the other relevant environmental documents/studies/models that have been done regarding the Urban Holding area since it was placed under the Urban Holding overlay. For example, a county's EIS for its comprehensive plan may have information relevant to the Urban Holding Overlay. In addition, there should be other county, Growth Board and/or appellate court references to the Urban Holding Overlay and the reason(s) that it has not been removed over the years.

Fifth, there is no description of any alternatives much less a range of alternative or preferred alternative or any description of if a particular alternative was fully implemented (including full build-out development, redevelopment, changes in land use, density of uses, management practices, etc.), any description of where and how it would direct or encourage demand on or changes within elements of the human or built environment, as well as the likely affects on the natural environment. In addition, the document fails to identify where the change or affect or increased demand might or could constitute a likely adverse impact, or any description of any further or additional adverse impacts that are likely to occur as a result of those changes and affects.

Sixth, this checklist cannot serve as an environmental analysis for later project reviews because it has been created in a way that does not anticipate any such projects where, in contrast, the county definitely is contemplating such projects. The more detailed and complete the environmental analysis is during the "non-project" stage, the less review will needed during project review and, therefore, any project review can focus on those environmental issues not adequately addressed during the "non-project" stage. The current checklist and DNS fails to provide any analysis that could be utilized later at a proposed project phase and fails to give notice to the citizen of the real potential

environmental impacts that will occur once the Urban Holding Overlay is lifted and projects can proceed.

Currently, given the potential development agreements listed above, along with others that may not be in the public realm, there is ample ability for the lead agency to anticipate and analyze the likely environmental impacts of taking this action and the failure to do so creates an inadequate SEPA document (for example a minimum of 2500 peak hour trips if the developers' numbers are to be believed in the documents that they submitted in the July work session). Failure to conduct a full environmental review at this juncture allows for the removal of the overlay while precluding the public to speak to the removal of the overlay at all. Plus, once this overlay is removed, the question arises as to whether the removal of all the other portions of the overlay must be removed either piecemeal or as a whole through this "non-project" action that has no real environmental review or input from the public.

Although an environmental checklist can act as a first step in an environmental process, including Part D, Supplemental Sheet for "non-project" activities it should not stand in the way of a more comprehensive environmental impact statement, especially in this case given the large areas under the urban holding overlay that are obviously intended to be subject to removal only upon meeting specific prerequisites. Further, there has been no analysis of the traffic impacts on 179th street, 15th Avenue and/or the 179th street intersection by the current proposal(s) by the lead agency. A full environmental review, that includes all known proposed projects, along with the impact of full build-out should the entire overlay be removed, should be conducted prior to the removal of any portion of the overlay.

These comments assert that this "non-project" SEPA proposal review should also 1) consider all existing regulations, 2) set forth the underlying rational behind the fact that there is an Urban Holding Overlay in existence, 3) the reason for the overlay being placed on the area, 4) remove it from the overlay and 5) the requirements that are required to remove the overlay as well as and 6) any other development under consideration. Plus the environmental review should include an analysis of the potential impacts of the entire area once the overlay is lifted in the larger area surrounding the 179th Street interchange, there will be a plethora of impacts, including but not limited to traffic impacts.

Therefore, this "nonproject" action involves a comprehensive plan amendment, or similar proposal governing future project development, and the probable environmental impacts that would be allowed for the future development need to be considered. The environmental analysis should analyze the likely impacts of the of build-out of all the underlying zones covered by the overlay when determining the efficacy of allowing this one "non-project" to have the overlay removed. In addition, the proposal should be described in terms of alternative means of accomplishing an objective.

Thank you for your consideration of these comments. Please submit them for the record.

Best Regards,

David McDonald

From:	Lyle Nielsen
To:	Wiser, Sonja; Messinger, Rebecca; Lyle Nielsen
Subject:	public comment in objection to CPZ2019-00023
Date:	Friday, July 12, 2019 4:19:24 PM

Hello Sonja and Rebecca,

Please accept my written objections to the proposed zoning change CPZ2019-00023.

I may be contacted at 971-409-9758 if there are any questions.

Thank you,

Lyle Nielsen

Dear All,

In terms of your proposal to amend the comprehensive and zoning maps for this 40 acre parcel, I would like to state that I can't see the rational to release this parcel in such an uncomprehensive way. I am not without conflicting interest, as I own a 5 acre parcel on 179th across from the fire station on that street. I have owned it for about 20 years, and there has been talk for at least 15 years of removing these parcels from the urban reserve. I have been told repeatedly that no further development is appropriate along that stretch of 179th until the road is upgraded. The road seems to function for large events at the events center, but seems to be inadequate for additional daily traffic. How would this additional traffic strain from this release be accommodated without that road upgrade? To be above board, all of the urban reserve property on 179th should be released at the same time. I object to this piecemeal approach.

Yours truly,

Douglas Runckel