From: David McDonald
To: Wiser, Sonja
Cc: Orjiako, Oliver
Subject: [Contains External Hyperlinks] Re: Planning Commission Hearing on 7/18/19
Date: Monday, July 15, 2019 7:24:37 AM
Attachments: 179th Street Comments-Ltr-190507.pdf

Here ya go!

thanks

> On Jul 15, 2019, at 7:22 AM, Wiser, Sonja <Sonja.Wiser@clark.wa.gov> wrote:
>
> Hello David, can you submit the comments of 5/7/2019 sent to the Council. I will post on the PC Grid this morning. Thanks again !
>
> -----Original Message-----
> From: David McDonald [mailto:david@mcdonaldpc.com]
> Sent: Sunday, July 14, 2019 8:40 AM
> To: Orjiako, Oliver; Wiser, Sonja
> Subject: Re: Planning Commission Hearing on 7/18/19
>
>
>
> Dr. Orjiako:
>
> One more thing, and please excuse the multiple e-mails, could you please include my comments to the County Council submitted on May 7, 2019 regarding the UH removal in the PC packet and also post in the public comment submitted to date section on the PC grid? I believe that those comments should be a part of the record on all of the issues related to the removal of the UH. Please let me know if you need for me to resubmit the letter.
>
> Thanks in advance,
>
> David

On Jul 14, 2019, at 8:36 AM, David McDonald <david@mcdonaldpc.com> wrote:

Dr. Orijako:

Please include my comments on the DNS for the Hinton and Wollam proposals in the Planning commission packets and post on the grid under public comments received to date. I saw my August 2018 letter on the PC grid but not the updated comments on the DNS that I filed on July 5, 2019. Please accept my apologies if I missed it.

Thank you for your attention to this matter.

Best Regards,

David

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May 7, 2019

County Councilors
% Dr. Oliver Orjiako
Public Services Building
1300 Franklin Street
Vancouver, Washington 98660

Dear Councilors:

This matter comes before the Council on May 7, 2019. At that time it appears the Council is going to review several (7?)[1] different "funding" options and attempt to agree on one of the options, or some combination of the options, to "reasonably fund" infrastructure in the 179th Street/I5 area of the County that currently is not available for development due to lack of required infrastructure.

INTRODUCTION

The Council's actions are in response to the infrastructure concurrency requirement of the Growth Management Act, which requires that development pay for it its own impact on urban services. In this case, the preliminary evidence indicates that the traffic infrastructure is inadequate to support the 4 proposed developments, much less the entire area under Urban Holding and none of the funding proposals that are likely to be before the Council will attain the "reasonably funded" goal of the GMA.

Therefore, these comments are to 1) request that the County ***defer*** this vote until a number of outstanding questions are answered, the documents are posted on the Grid in final form sufficient for the public to weigh in on the issues involved and, at least until all of the four entities have cleared (and been fully vetted) by the Planning Commission and provided the County with proposed developer agreements that satisfy the Council, 2) outline a history of the UH in this area along with suggestions that the Council consider and provide comments on the information that has been posted on the County's website (both audio and documents) regarding the issue of lifting the Urban Holding on the 179th St./I5 area and 3) suggest that the Council consider an "option 8" which allows for the Developers, in conjunction with the County Public Works and WSDOT, to pay for and construct the improvements right now and receive immediate TIF credits and/or "surcharges" which will defray the cost of construction.[2]

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[1] *See* March 13, 2019 PPT at slide 20

[2] As the attorneys for these development entities frequently comment, they have worked together (and cooperatively) for years and

This request that the Council defer any decisions is based on the conflicting information in the record and the fact that there is no comprehensive document that outlines all of the issues such that the public can make an informed decision—much less comment—on the proposals that may be before the Council on Tuesday.

In addition, it is based upon the somewhat troubling fact that the Council already seems to be recording votes for specific options before the numbers are finalized or, more importantly, the public has been allowed to weigh in on the proposals. All of these proposed options involving the imposition of additional taxes, the use of "bank capacity (in Option #1 that is a total of 2.176 increase in taxes *solely dedicated to these infrastructure* improvements). According to the March 13, 2019 Work Session, Councilors have already been asking each other to weigh in on what Option that they want to support before there have been any public hearing on these issues[3]. So before the matter has even been brought before the public in any comprehensive way, a "committee"[4] has determined what is the best option (they selected Option #1) and the Council basically voted on the committee's recommendations in a work session[5]. To use a well-worn phrase, it appears that the Council has put the cart (their decision) before the horse (the public's right to a hearing and input)[6].

In reviewing all the documents published since July 1, 2018 on the PC and Councilor Grids, as well as listening to all of the audio portions of the PC meeting and the Councilors' Board Time and Work Sessions, one thing is clear, there is no agreement on what information is currently in front of the Councilors as of May 6, 2019.

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[3] (Councilor Olson stated she favored #1, Councilor Medgivy stated he favored #7, Councilor Lentz suggesting she preferred #1 but had not fully made up her mind, Councilor Quiring stating she was not sure and it was not possible to hear Councilor Blom clearly but it seemed he favored Option #1).

[4] Killian Pacific, Holt Group, Inc., Wollam & Associates, Hinton Development, WSDOT, Eileen Quiring, Chair, Julie Olson, Councilor and Shawn Henessee, County Manager. Of note is the lack of any citizen group or neighborhood association. The full list of the committee (staff and "stakeholders") can be found on page 4 of the March 13, 2019 PPT that is posted on the Councilor's Grid and is incorporated by this reference. I will note that the selection of this committee seems consistent with the selection of the FRDU committee that ended up being stacked with the proponents of the overlay and had the owner of the PVJR serve as an ex-officio member. Ironically, in the case of the FRDU, Mr. Temple, the man the Council wanted in the "huddle", is now involved in a lawsuit with the County over the lease and the County has hired outside legal counsel.

[5] Of note, is that the Developers lawyers all were at the work session and had plenty of "mike" time to express their views but, of course, they had already voted in a "secret ballot" so no developer would know what the other developer was going to say.

[6] Or, as the Red Queen famously suggested—"Sentence first-verdict afterwards"

Specifically, there is no definitive information on whether the "funding" that the County is intending to vote on for the purposes of traffic "infrastructure" is to facilitate the immediate lifting of the entire Urban Holding overlay OR if the mitigation proposed is only sufficient to lift the overlay on land owned by four specific parties (Killian, Holt Homes, Hinton and Wollam). *See* Audio of Council Time May 1, 2019.

The above assertion is exacerbated by the fact that as of the May 1, 2019 Work Session, the County Manager stated that several of the 7 options were subject to change before the May 7th hearing and, as of May 5, 2019, there was no staff report, or any documents whatsoever, posted on the Grid related to this hearing for the public to review prior to the hearing. Given the fact that every proposal involves the raising and expenditure of revenue PLUS bonding PLUS how to possibly finance that bonding, the tradition of this Council has been to make sure everyone is involved in the process when revenues are going to be increased via taxes or levies and indebtedness is going to be incurred.

BACKGROUND

During the original GMA Comprehensive planning process in the early 1990s, the County stretched its UGAs and added density to the areas around 179th street even though they had no concurrency funds to provide for services for that area. In order to be compliant with GMA, the county put the area in contingent zones with the potential for large scale, and higher density, development as soon as they could reasonably fund the infrastructure and serve the development.

Both Clark County Natural Resources Council and a local developer who claimed to own land in the area both appealed to the GMHB. The Board ruled as follows in its original Final Decision and Order:

> Urban Holdings/Contingency Zoning
>
> As part of its concurrency requirement, Clark County adopted policies in its comprehensive plan for "urban holding districts" and "contingent zoning" provisions. At page 12.4 of the CP, these concepts were explained as follows:
>
> "The comprehensive plan map contemplates two land use methods to assure the adequacy of public facilities needed to support urban development within urban growth areas (1) Contingent Zoning which applies an "X" suffix with the

urban zone and (2) applying an Urban Holding District combined with urban zoning."

The stated goal of these two concepts was to prohibit urban growth within the urban growth area until sufficient infrastructure was in place or assured, or until annexation took place. Clark County used these two concepts within the UGA to support the concurrency goals and requirements of the Act and to provide a mechanism for tiering of urban growth.

Petitioner CCNRC contended that the urban holding district was invalid because the Act prohibits allowing an area to be included in the UGB that is not able to be served with public facilities and services in the 20-year planning period. Secondly, CCNRC pointed out, annexation of these urban holding areas would not necessarily resolve the problem of lack of concurrent public facilities and services. Petitioner Holsinger contended that the contingent zoning area was applied in an "arbitrary and discriminatory" manner to the 179th Street/I-5 area where his property is located.

The urban holding residential areas have minimum lot sizes of 1 du/10 acres. Industrial urban holding zones have minimum lot sizes of 1 du/20 acres. Unlike the urban reserve areas, which are located outside the UGA, the urban holding areas are definitionally located within the boundary. Each holding area is identified in the CP at page 12.5 and 6 for each individual city. Each area is required to maintain the "holding" designation until the city can assure adequate provisions are in place or will be made if the area is to be annexed. While we are unsure of how the County could enforce such a requirement if annexation did occur, we do not find a violation of the GMA on the basis of that possibility alone. The concept of the urban holding area within an urban growth area furthers the concurrency goals and requirements of the Act. The use of such a concept is in the discretion afforded to local decision makers.

It is accurate to say that the CP provides for contingent zoning restrictions only in the 179th

> Street/I-5 area as petitioner Holsinger claims. It is also true that that area provides the most significant reason for the adoption of the contingent zoning concept. In order to show a violation of Goal 6, a petitioner must first show that a "right" of a landowner has been violated. This has not been done by Holsinger. We do not perceive that there exists a recognizable "right" to develop property for the maximum profit regardless of the short-term and/or long-term impact to the taxpayer. Nor has petitioner shown that even if such a "right" existed that the mere fact this area is the only one burdened by the contingent zone concept is in and of itself an arbitrary and discriminatory decision. The record is clear that the area in question, of which petitioner owns but a small portion, has significant inadequacies in public facilities. The correction of these deficiencies prior to further urbanization follows exactly what GMA requires. We find no violation.

In September 7, 2004, Clark County expanded the Urban Growth Boundary in the Vancouver Urban Growth Area and applied the Urban Holding overlays to the subject area. Then again, on September 25, 2007, Clark County approved the Urban Growth Boundary in the Vancouver Urban Growth Area and applied the Urban Holding overlays in the subject area. It is all of these urban holding overlays that the County is now seeking to remove.

In July 2018, Kittelson and Associates presented "Developer's Materials" to the County that addressed the traffic issues in the area regarding the development of the 4 projects at issue. The report is in the record. It does not include all of the projects that are now listed in the Staff Reports and sets a 20 million dollar budget for the improvements ("mitigation") that will be required to accommodate the traffic for these 4 projects.

In that report, Kittelson notes several things of import:

1. Conclusion that there will be less than one vehicle trip per PM Peak Hour for all of the dwelling units going through the area from I5 and 179th east to 15^{th7} BUT shows that the area will be almost at

[7] As will be noted later in these comments, it is hard to believe that an area so far from any employment center that has no public transportation whatsoever will generate less than one vehicle trip at the PM Peak hour. It is only common sense that most residences have two workers per household (some with more if they have teenagers or young adults still living at home) and to assume less than one vehicle trip for either AM or PM peak hour seems to defy common sense.

capacity for those trips at PM Peak..*See* Developer's Materials posted to the Grid July 11, 2018 at page ;

2. There is no roundabout at 15th and 179th;

3. It does not include any improvements at 29th and 179th or 50th and 179th.

However, according to staff reports, and multiple conversations at the Work Sessions held over the past year, the total cost for the required projects in this area[8] is $66 million PLUS the $50 million from the State for the interchange (2023-2025). In addition, this $66 million does not seem to provide any funds for the creation of, or possible expansion of, public transportation facilities in the area. There does not appear to be any plans for a public transit center, creation of kiosks for buses along the roads that are designated for improvement and certainly C-Tran has not been at the table (and had no member on the committee). In addition, C-Tran currently does not serve the area and so the area will be served predominantly, if not solely, by personal vehicles, likely Single Occupancy Vehicles.

Originally the County listed the shortfall as $38,721,000, which left approximately $28 million as fully funded. *See* PPT 179th Transportation Funding listed on the Grid on 12/4/2018 at page 4. At that hearing, staff proposed four options that purported to fully fund the entire $66 million outlay required for the infrastructure requirements. Those "options" included $7.5 million in TIF money and $6.8 million from developers in "additional money"[9] for "funding". *See* PPT 179th Transportation Funding 12/4/18 at pp 5-8.

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I-5/NE 179th Street (NE Delfel Road to NE 15th Avenue)	$ 10,352,000	$ 15,579,000
NE 15th Avenue (NE 179th Street to NE 10th Avenue)	$ 11,348,000	$ 3,642,000
NE 179th Intersections at NE 29th Av. & NE 50th Av.	$0	$ 15,000,000
NE 10th Avenue (NE 149th Street to NE 154th Street	$ 5,987,000	$ 4,500,000
Subtotals:	**$ 27,687,000**	**$ 38,721,000**

[9] TIF funds are to be charged for new development so it is not clear where this 6 million in TIF funding is coming because, as of the March 13, 2019 work session, the Council and the staff were asserting that the money that is being "paid" by the developer is just some form of pre-payments of the developer's TIF obligations based upon hitting specific "triggers". Audio of March 13, 2019 Councilor Work Session. Therefore, under the "Holt Development Agreement", they only pay 25% ($750,000 when the UH is lifted, another 25% at preliminary plat (whenever that happens) and the remainder over time as the homes are "phased in" after the final plat approval.

On January 23, 2019, the Council decided it wanted to appoint a "committee[10]" to look at various options for funding. The committee did not include any citizens, citizen groups, representatives of the various school districts to be impacted or other individual residents of the area familiar except the developers and their lawyers, two members of Council, staff and three representatives from the Cities. However, the only voting members of the large committee were the developers and/or their legal representatives, a WSDOT Representative, Shawn Henessee, Councilor Olson and Chair Quiring.

The Council held a Work Session on March 13, 2019 at which time the staff presented an updated PPT that included the "7 options" for funding and during which the lawyers for the developers were allowed to present to the Council as "members of the committee". No other members of the public were invited to speak. It was at the end of this Work Session that the Councilors were asked to state a position on the options.

The Council also discussed the matter at length on April 10, 2019 and May 1, 2019 Council Time. It does not appear that those sessions resolved the issues of a) when and how the UH should be lifted, b) the use of Development Agreements or c) the finalization of the what "funding package" means in at least some of the 7 options presented to the Council.

ISSUES

A. Capacity

The materials provided by the developers in July 2018 (Kittelson Study)[11], contain the only "traffic study" that I have been able to find in the record [I surely could have missed others in the documents and, if I am incorrect, please ask Staff to direct me to the other study(ies)]. According to the Kittleson Study (which is actually a "summary", not a copy of the entire report), it ***only*** addressed the traffic impacts of the 4 projects (Three Creeks, Mill Creek PUD, Hinton and Wollam) that have been proposed. There is nothing in Kittelson Study, or any other document that I have seen that is publicly available on the Grids (Council or PC), that addresses traffic impacts of these projects, much less traffic impacts on the build out of the entire area. If such a study or studies exist, then they should be made a part of the public record on the grid.

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[10] This Committee has the same fatal flaw as the "committee" put together for the FRDU implementation in that it has an inherent bias (both explicit and implicit) to not challenge basic assumptions due to the personal and professional views and objectives of the committee members.

[11] On Councilor's Grid for July 11, 2019 and marked as "Developer's Materials"

According to the Kittelson Study, considering all of the trips that will be generated by ***only*** these four developments, at least 3 areas in the study will be very close to capacity at the PM Peak Hour (PH). *See* Kittelson Study at slide 7. That slide shows that at the PM PH, the NB off ramp of I5 onto 179th will be at 88% capacity, the new roundabout at NE 12th will be at 92% capacity and the intersection at NE 15th will be at 84% capacity[12]. Also, of the four projects studied, the Kittelson study found that the new residences would generate < 1 car trip at the PM PH traffic time. As previously stated, using a number of < one car per day at PM seems to underestimate by as much as one half, or more, the number of trips that will be generated by these four projects.

Also, nothing that has been found in the record that states that any of the 7 options would fund infrastructure sufficient to handle the "trips" not associated with these 4 developments even if all of the improvements are put in place ($66 million). If the areas shown on the Kittelson study will be near capacity upon completion based solely on the trips generated by these 4 projects, how will the new infrastructure be able to handle the number of trips that will be generated in the entire 2200 acre overlay? If there is nothing that shows that the expenditure of the full $66 million will create improvements to handle all of the potential trips to be generated by these 4 projects ***PLUS*** all of the other projects that have yet to be brought before the County, then how can the county contemplate lifting the Urban Holding for the entire 2200 acre designated area?

Thus, it is not clear how the Council could lift the Urban Holding overlay in its entirety when there is no traffic impact study for all of the land that is not owned, and proposed for development, by these four entities. Plus, if the studies show that the areas are already almost at capacity once built (at least during PM PH), how is the County going to increase capacity at all of these areas along 179th corridor to bring the other properties out from under the UH designation?

The County needs to make clear that the capacity, which they intend to serve will be served by infrastructure that is proposed. It seems that the County is underestimating the capacity of these 4 projects (especially by considering less than one trip per dwelling unit)

B. Scope of the Project and Funding

There is some inconsistency with the scope of the project and the various funding proposals in the record and, before the Council votes, I think it would be helpful to clarify.

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[12] It is unknown, but a question worth asking, what will these intersections look like during high traffic volume events such as concerts at the Sunlight, the Clark County Fairgrounds activities and events at the Clark County event center. Imagine the PH PM traffic queues when an event occurs at the same time as the PH PM hour.

It is clear that the projects outlined below are proposed to cost $66 million dollars:

I-5/NE 179th Street (NE Delfel Road to NE 15th Avenue)	$ 10,352,000	$ 15,579,000
NE 15th Avenue (NE 179th Street to NE 10th Avenue)	$ 11,348,000	$ 3,642,000
NE 179th Intersections at NE 29th Av. & NE 50th Av.	$0	$ 15,000,000
NE 10th Avenue (NE 149th Street to NE 154th Street	$ 5,987,000	$ 4,500,000
Subtotals:	**$ 27,687,000**	**$ 38,721,000**

This is different from what is proposed in the 2019-2024 County TIP. *See* "Project 3 2019-2024 Transportation Improvement Program (project number 390222). In # 390222, the County shows improvements from NE Delfel south to 179th and then east to 15th Avenue. It lists the total cost as $27,367,000, of which $10,387,000 is listed as "unfunded".

The above table is also different from the Kittelson Study, which has some different improvements but a cost of only 20 million excluding ROW costs. *See* Kittelson Study at slide #6; *But See*, Exhibit D to proposed Mill Creek PUD Draft Development Agreement which sets forth proposals from March 2018 that do not seem to be the same as the Kittelson Study PPT on the July 2018 Councilor Grid. There is also a separate and distinct plan in the PPT presentation made to the Planning commission on September 6, 2018 as part of the Three Creeks approval process that puts the total cost of the projects at $43-45 million but clearly does not include improvements to 179th and NE 29th and 179th and NE 50th.

In addition, Killian Pacific has signed 2 development agreements. According to the Staff Report dated September 6, 2019 to the Planning Commission, the one signed in 2012 utilized all the existing capacity at the 179th/I5 interchange and the report specifically described the interplay of the executed agreement and the proposed draft agreement as follows:

> The draft development agreement associated with this proposal, ***seeks to remove the urban holding overlays, reserve transportation capacity for the future development of the three specific parcels, and to provide certain improvements to increase the transportation capacity in the area.*** In the 2012 development agreement, Three Creeks LLC consumed the transportation capacity and all available trips in the I-5/179th St interchange area, making further development of that area essentially infeasible. The ***draft development agreement proposes to re-allocate the***

trips reserved by the 2012 development agreement and apply the trips to the proposed residential development, currently designated with the urban holding overlays. The reallocation of trips is permitted pursuant to CCC 40.350.050(M), which stipulates that the trips calculated for the commercial development south of 1 will not be available until 5 years after the agreement to reallocate trips is recorded. Additionally, ***the draft development agreement would require the construction and dedication of an eastbound to southbound right turn lane on NE 179th Street at NE 15th Avenue***. This required construction and dedication mitigates the direct impacts of the contemplated residential development, as determined by the Developer's traffic study and confirmed by County Public Works staff.

The 2012 development agreement required the "design and construction of two continuous eastbound lanes, a raised median and a bicycle lane on the southside of NE 179th Street from the I5 Northbound off ramp to NE 15th Ave." [Auditor File No. 5321604, Page 26] That development agreement also required the "design and construction of one continuous westbound lane and a center median from NE 15th Avenue to the proposed new signalized intersection at approximately the westernmost property line of Phase 2 179th Street Commercial Center development site." [Auditor File No. 5321604, Page 26] These requirements mitigated the impacts from the conceptual commercial center. The reallocation of the reserved trips from the commercial center to the residential development (on the land currently under urban holding) defers these requirements until the commercial center is developed. This deferral may impact future development east of NE, along NE 179th Street. ***The improvements listed above in this paragraph will be required for any future development in this area to the east, but the neither the county nor the owners of those properties own the property for right-of-way on which to construct the necessary improvements.***

Staff Report 9/6/18 at pp 2-3 (emphasis supplied)

The "Draft Development Agreement" that went before the County Council in December 2018[13] states the following requirements for road improvements:

1. County and Developer will continue to work together;
2. Developer shall transfer sufficient property to the County from each of the eastbound and westbound sides of 179th street[14] east of Interstate 5, between the Interstate 5 ramps and NE 15th Avenue to constitute 50 feet of half-width right of way on each side of 179th Street;
3. Construction of a two lane minor arterial across UH and Developer property that will ultimately connect 15th Avenue at 179th Street to 10th Avenue;
4. Construction and dedication of an eastbound to southbound right turn lane, along with required attendant infrastructure for the lane, on NE 179th Street at NE 15th Avenue; and
5. County agrees to allow Developer to develop circulation plan within Developer's property located on the north side of 179th street and Developer will pay for cost of construction of this plan

There are no costs associated with these mitigation measures set forth in Recital H of the DA, or listed anywhere on the Grid. There is nothing to indicate what, if any, costs that are included in the $66 million are eliminated based upon the work being proposed to be completed by Developer Three Creeks and/or the dedication of right of ways. It is also unclear how much of what is being agreed to in this DA was also previously agreed to in the 2012 DA. However, there appears to be road improvements that are set forth in the 2012 DA that developer proposed that will be moot (unnecessary) based upon the scale of the current project, which means the County will be foregoing what it had bargained for in that DA and there is no analysis that they got it all back in the new DA.

From a layman's reading of these two agreements, Three Creeks is absolved of doing any of the work required by the 2012 agreement, agrees to do some new work as part of the new DA, gets to transfer its "reserved" trips as credits to the new property even though it is no longer required to any of the required improvements set forth in the 2012 DA, and still gets those trips back in 5 years on the original project (assuming that they do not get sooner if the County finds "capacity" for those trips in its final project as completed).

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[13] Killian/Three Creeks DA.

[14] I think this should read "the north side and the south of 179th street" as there are no eastbound and westbound "sides" of 179th but there are eastbound and westbound lanes so maybe this means on the side of the westbound and the side of the eastbound lanes. It is a bit unclear.

In addition under #4.1 of the new DA, Three Creeks can get full credits from the County for all the work that is completed by them under the new DA, which means that they may not be out of pocket any money for those improvements. Again, one must ask, if the approved DA requires certain work, does that work defray any of the $66 million and, if not, and they get credit back for that work, then the cost is going to be greater than $66 million. Therefore, although it appears that the DA provides some benefit to the County, it also appears that the DA may not cost the Developer any money, absolves the Developer of work promised under the 2012 DA, allows the Developer to keep its "reserved" trips by transferring to new project area under UH and then still allows them to double dip and use those same trips for the South project in 5 years.

Thus, the scope of the 179th St/I5 project seems to still be limited to the 4 projects set forth in the table above at a cost of $66 million, even with this DA with Three Creeks that has now been approved by the County. I also note, this DA does not contain any payment by the developer to the County as set forth in the 7 options of any money, much less payments for TIF and/or surcharges and, therefore, it is assumed that there will have to be a new DA approved (or an addendum to this one) that will cover this anticipated contributions.

Over the past year, the records reflect that there have been multiple other funding proposals, but they all seem to agree on a cost of $66 million. *See* 12/4/18 PPT at slides 4-10; Urban Holding Pipeline Projects on the 12/4/2018 Grid; 1/23/19 PPT at 10-13 (note the pie charts in this scenario list TIF at $7,500,000 and Developers Contribution at $6,8455,222 but later hearings have made clear that the developer's "contribution" is simply paying their TIF obligation in a staggered manner over an unspecified period of time so it is unclear if this is a "double dip" or not). It is important to note here that the County has already approved one new tax to be dedicated to this project for the next six years that does not show in the "option" charts. At the December 2018 hearing, the County approved a 1% levy for the Road Fund that will be dedicated to the 179th Street/1% interchange for the next 6 years.

The March 13, 2019 chart shows 7 potential "funding" scenarios that claim to "reasonably fund" the traffic impacts in that area so that the Council can "remove" the Urban Holding overlay. Each option requires increased taxes on all of the citizens of the County (but does not mention the tax passed in December 2018), AND annual payments on debt service of between $394,000 and $946,000 per year[15]. All 7

[15] For example, should the Councilors select option #7 as the preferred option, the repayment on the 12,300,000 bond would exceed 18,000,000 in total repayment costs of principal and interest. It is unclear if the "surcharge" or "TIF" increase would cover the entire amount bonded, including interest, or just the initial 12,300,000. It is also unclear when those payments would be made to the county as reimbursement. If the "surcharge" and/or "TIF" payments are not "upfront" or "contemporaneous" with construction then where is the money going to come from to pay the debt payment (i.e. there is a question as to when the surcharge(s) or the TIF(s) will come in to

options include an evanescent hope that the developers will come forward and pay their TIF obligations "in advance" and, potentially, be responsible for "surcharges".

The March 13, 2019 PPT shows $19,100,000 to be the "unfunded" amount of the $66 million. Yet, that number is inconsistent with all of the prior staff reports re: "unfunded". The March 13, 2019 PPT does not contain a chart that highlights what sources of funding guarantee the other $47 million dollars. The charts listed in the prior PPTs only show that, at most, $30 million is funded and the rest ($36 million) remains unfunded. *See* 1/23/19 PPT at slides 10-13. Therefore, it is impossible to reconcile what the County's numbers were in January 2019 with the County's numbers in March 2019.

There is a continual claim throughout this process, the most recent in the March 13, 2019 PPT, that $8.8 is being contributed from the Road Fund to this project. However, the PPT presentations also show that $4.5 million of that $8.8 million is "diverted" to the Sheriff. If $4.5 million is diverted, then only 4.3 million remains as a Road Fund contribution, which leaves a deficit of $4.5 million in the "funded" part of the equation[16].

Another PPT slide shows $7.5 million in TIF will be utilized to defray the costs of the proposed infrastructure. However, the "7 option" charts also count $6.8 million in funds that they are proposing would be paid by the 4 developments as the "developer's contribution". It appears that the $7.5 million and the "developer's contribution" are the same money. According to the draft Mill Creek PUD DA, and the statements by staff at the work sessions/council time, the "developer's contribution" is simply their required TIF contribution but requires them to pay it on a slightly advanced schedule than code requires. Staff needs to clarify whether the $7.5 million TIF payment comes from a different source than the developers[17].

The March 13, 2019 PPT slides claim an additional "funded" amount of $12 million in REET 2 funds over 5 years in addition to the $3.4 million that the Council voted to use for 2019. This means that, in addition to the dedication of the full Road

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cover the payments on the bond and there is no indication from which fund(s) those debt service payments will be made if the surcharges and/or TIFs from Mt. Vista are unavailable)? Obviously, if there are no payments to the County, the County will be still required to make those payments on the debt service from some fund but it is not clear which fund.

[16] It is unclear, but possible that these funds will be used for the Sheriff's 4.5 million diversion and thus the 8.8 million from the road funds will not be affected but that is unknown.

[17] At one point, Public Works Director Ahmad Qayoumi and Matt Hermen agreed that the original intent had been for the Developers to pay for their TIFs and an additional share. But at the meetings in March, April and May, it appears that the "committee" agreed that they were the same. If they are the same then there is a 7.5 million shortfall in the County's calculus.

Fund levy to the project, the County is going to dedicate ***all*** REET 2 funds ($15.4 million) to this project.[18] There is also a reference to $2 million as a one-time contribution from the Road Preservation fund and also 11 million for grants. The grants are unknown, not applied for and given only given an 80% chance of getting them—80% does not make "reasonably funded. Does the County intend to make the lifting of the UH for these for projects contingent upon the grants being issued? If so, is there a timeline for such and, if not, why is the Council including this $11 million in the "funded" section?

Finally, adding the numbers of "funded" money from the various PPT slides, the actual number still only comes to $26.2 million:

$4.3 million (Road Fund)[19] + $7.5 million (TIF) + $3.4 million REET 2[20] + $11 million (grants) = $26.2 million

If only $26.2 million is funded, then almost $40 million is unfunded.

The County adds money to the "funded" column that has not been obtained or authorized. For example, the County's "funded" assumptions include that the grant money comes in at the $11 million level (see discussion of that issue above). In addition, the charts suggest that Council will dedicate an additional $12 million from REET 2 above and beyond the previous $3.4 million authorized, ***to go to this specific area only*** even though there has been no vote on dedicating that amount. If that happens, then the total is about $38.2 million of "funded" money. If $38.2 is funded, that leaves $28 million as "unfunded" not $19,100,000 ($66.6 million – $38.2 Million = $28.4). Again, this $28.4 number could be reduced by $4.5 million if the Sheriff's money is NOT diverted and by $2 million if the Council agrees to yet another contribution, this time from the Road Preservation fund. If those reductions occur, then the amount still to fund is $21.9 million, not 19.1 million.

More importantly, the charts show what the "tax" will be to the median HH but that number is flat wrong if the County includes "dedicated" road fund dollars and "dedicated" REET 2 dollars and Road Fund Preservation (2 million) for a total of $26.2 million dollars—then the taxes paid by the citizen for these road infrastructure far exceed the $7 per median HH set forth in Options 1. I think it is incumbent upon the county to show citizens the true tax cost per median HH.

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[18] The Council has not approved the additional 5 years of REET 2 funds and there has been no hearing on using 6 years of REET 2 funds solely to fund this 179th/I5 corridor project.
[19] If the Road Fund is actually $8.8, then add $4.5 million for a total of $30.5 million.
[20] (only REET 2 authorized for one year-the County is including the other $12 million in this package even though there has been no presentation to the Council, much less approval)

Since the 7 options only list a need to "fund" $19.1 million the County's 7 funding options are all short in some amount of what the County needs to fund the improvements. In fact, in ALL the options laid out in the January 2019 PPT presentation, the most money that was "funded" was $30 million, and that included the full $8.8 million from the RF[21] despite staff saying that, of that $8.8 million, 4.5 has to be diverted to the Sheriff.

Finally, as to the 7 options, each option contemplates bonding. The Council believes that bonding payment can be covered by issuing a surcharge or adjusting the TIF assessment upwards for the Mt. Vista TIF sub area.

1. Surcharge

The surcharge is calculated based upon the number of trips assigned to a development dwelling unit x a specific dollar amount (i.e. 10 trips per day per dwelling unit x $167/trip would be $1670 for one dwelling unit to be paid by the Developer). The surcharge dollar amount is different in each of the 7 options because the surcharge amount is correlated to the yearly repayment requirements on the bond and each option contemplates a different bond amount (it is unclear whether the proposed surcharge would cover both principal and interest or just principal).

There is no agreement in any DA, or draft DA, that a Developer is willing to pay a surcharge, much less a specific dollar amount as a surcharge[22]. The County only has 1 DA in place and that agreement does not have any money being provided to the County. The Draft DA (Mill Creek) does not have any provisions for payment of extra money including surcharges. There are no draft developer agreements between Hinton and Wollam and the County.

In addition, the County could only impose a surcharge (or any other conditions) as part of a Developer Agreement and, therefore, if developers, ***other than these first 4***, come to develop later, there is no way to enforce a surcharge (or any other requirement that is generally found in a DA) without a developer/landowner ***voluntary*** entering into a Developer Agreement. Obtaining a voluntary DA, regardless of what is included therein, would be extremely unlikely if the UH is lifted as to the whole 2200 acres as there would be no incentive for a "late comer" to come to any agreement regarding extra payments, much less the addition of any other conditions. If the Council decides to only lift the UH as to the current properties, then could the other landowners in

[21] According to staff the Road Fund is at its lowest point ever—approximately $10 million as of December 2018.

[22] There have been statements during work sessions that some of these developer's attorneys believe that the surcharge is best. Therefore, if the Council agrees with the surcharge method, it should require that the surcharge for the entire developments be paid at the lifting of the UH.

the UH sue to have the UH lifted on their properties by claiming that the Council is saying that the area is "reasonably funded" and, if so, will they be exempt from the higher TIFs and/or surcharges or other conditions that could be put into a DA?

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2. TIFs

The alternative to paying off the bond is to raise the TIFs in the Mt. Vista District and, thus, those TIF funds could be used to pay off the bond as those TIFs are paid into the County. This is the simplest method, even though it would take an out of cycle Comprehensive Plan Amendment. Staff prefers this model. The issue here would, again, be that TIFs taken in throughout an entire Sub-Area would only be available to fund the 179th/I5 improvements.

3. Issues with Bond, Surcharge and TIFs

If the County chooses to bond, irrespective of whether they choose a surcharge or to raise the TIF in the Mt. Vista sub area, the Developers should be required as part of their DAs to pay the amounts up front or, at a minimum on a pro rata annual basis, to cover the County's annual payment. If not, where is there money in the budget the annual bond payment? Will the County pay the money for the annual bond payment out of the General Fund and, if so, to the detriment of what other sources that deserve funding? Unless the Developers make annual payments equal to the amount that the County has to pay on the Bond, then the County does not have money to make those payments unless they take money from some other "budgeted" source. Thus, the project, again, is not "reasonably funded" because no source of funding has been identified to pay the annual bond payments in the absence of the Developers making payments. Basically, if the Developers wait to pay the surcharge until full build out, however many years that could take, how will the County address that annual deficit?

C. Development Agreements

Development Agreements (DAs) are advantageous to developers because it gives them some certainty as to moving forward with a business model. The advantage of a DA to the Development community cannot be overstated. In addition, it is a strong tool for the County to implement special conditions, including payment of funds and having the developer be responsible for certain construction projects and other conditions that may not be available to staff under the Code.

In this case, the negotiations regarding a DA are not really full, fair and open negotiations ***unless*** the Developers let the County know what their expected gross

and net profits are on a particular project. If the County does not know those factors, then they have to take the word of the Developers as to how much they can pay and/or how many conditions should be imposed. On the other hand, the developers know how much the County needs to fund a project, knows the County's tax base and knows the County's available resources for the projects. Thus they have a natural advantage in the negotiations. So, why does the County not require, as part of the negotiations to have the developers "show the money".

There are two executed DAs (both by Killian/Three Creeks). The problem is that the Development Agreement in place, and the proposed Mill Creek PUD are very one-sided towards the Developer. I even heard threats that they would sue the County if the County did not pass this legislation because the County would be out of compliance with GMA[23]. At this juncture, the approved DA with Three Creeks has no dollar value on it, so it is impossible for a citizen to know if the County got a good deal, a so-so deal or a bad deal. In addition, as stated, under the approved DA, the Developer gets to utilize any and all available credits, which means that the County could absorb the entire cost of all that the Developer is agreeing to do in recital H.

Another example of advantage to the Developer can be found in the Draft DA with Mill Creek PUD. The Draft DA exempts the entire Development from compliance with 40.520.080 now or in the future[24]. This exemption is total and applies even if the Developers add propose higher intensities that add capacity and/or propose changes that could affect environmental rules and regulations. This is basically a carte blanche exception to the rules because they are not committing to the exact Mill Creek PUD that is proposed and, under the DA, can change it without being subjected to county code. Seems like a generous concession on the part of the County for not much in return.

In addition, the Draft DA with Mill Creek (which ostensibly will be the template for the other developers to pay their "developer's contribution") simply requires the Developer to do what they would have to do anyway, pay the TIFs. Triggers for the developer's payment of those TIFs are 25% of "mid range" of number in Master Plan (one might ask why they are not at the high end?). Does the master plan have a high end # and, if so, why is it not being considered in the traffic counts and, if it is being

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[23]These are the same attorneys who told you it was a no brainer not to do a Comp Plan amendment for FRDU, and who also told you on FRDU that there would be no grounds for an appeal. If I had been a development attorney, and spent even half the time that I do now on Clark County projects, I would have made millions of dollars over the years.

[24] "The Master Plan provides for a variety of housing types and lot sizes. Adoption of the Master Plan and development of the Property consistent with the Master Plan shall constitute compliance with CCC 40.520.080, such that future development applications consistent with the Master Plan, shall not be required to satisfy the criteria provided for in 40.520.080, as such criteria is hereby found to be satisfied by adoption of the Master Plan"

considered in the traffic counts, why is the Developer ***not*** agreeing to pay for the "high end number"?

The triggers in the Draft DA do not favor the County as the County will still be paying for the infrastructure improvements ***now*** while the Developers will be paying their "share" later. For example, under the Mill Creek Draft DA, they will pay 725,000 when the UH is lifted (25%), $725,000 (25%) when preliminary plat approved (whenever that year is as there is nothing to say when that will happen) and then the remaining 50% after the development of the phases of the project ***after*** final plat approval. In the meantime, the County is on the hook for paying for the improvements of which, most of 6.8 million attributable to the Developers may, or may not, be paid to the County prior to the County's expenditures for the Development. The question, again, is where will that money come from that the County will have to pay out for construction if the Developers are only kicking in 25% at the time the UH is lifted.

In listening to the Work sessions and council times over the past year, it is frequent that the lawyers for the Developers are discussing how generous that they are being and how much that they are sacrificing to help the County achieve this wonderful and laudable goal in such a great public private partnership. When listening to such rhetoric, I think it is always helpful to remember that it is the job of the developer's attorneys to represent their clients zealously, which means to get them the best deal possible. In this case, it is their job to make sure to squeeze every last dime out of the County they can before putting up a penny. It is not their job to represent the County's best interests unless it is so interwoven with their Client's best interest that they are in simpatico.

These comments suggest that, given the amount of advantage that these four developers are going to receive, the public private sharing should be more of 50%/50% than the 80/20 that has been discussed. In addition, even if 80/20, lest us not forget that their 20% is what they would have to pay in event, they are just agreeing to pay on a specific schedule based upon specific triggers, triggers that they control (other than the actual vote to lift the UH overlay which has to be done by the Council).

4. Schools

According to Staff report from November 2018 to PC—the Cap Facilities plan must meet Goal 6.0 of CFP and 6.1.0. In this case, the total number of dwelling units located within the Ridgefield School District is approximately 746. Assuming the County documents are correct, the Killian Pacific (Three Creeks) development will generate 326 apartments and 200 single family residences, and the Wollam project will produce 220 SFRs. Both of those developments are in the UH area and also in the RSD.

Under Ridgefield's Impact Master Fee Schedule, all of those 746 dwelling units would require an $8883.75 per DU school impact fee (it matters not if apartment or SFR, impact fee is the same). As the County only charges ***$6530*** per dwelling unit for a school impact fee on new construction for homes constructed within the Ridgefield School District, the difference is **$2,353.75/dwelling unit. However, unless the County requires the developers to pay the same impact fee as if the dwelling unit had been built in the City, the Ridgefield School District will lose $1,755,897.50**. It is also important to note that there may other opportunities for developing dwelling units in the Urban Holding area that fall within the Ridgefield School District. If the Urban Holding overlay is completely lifted, and unless the discrepancy is eliminated, the construction of new dwelling units could lead to additional deficits in the RSD.

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5. Some Final Questions (not exhaustive list)

a. Is the Road Fund contribution $8.8 million or $4.3 million because of the Sheriff Diversion of $4.5 million? If the Sheriff's Diversion is covered, then what is the extra tax to the citizen for that $4.5 million from the RF to go to this $66 million project list?

b. What is the actual capacity that needs to be addressed with these projects as the Kittelson report makes it clear that trips generated by these for projects alone will, at least at the PM PH, bring areas to almost capacity?

c. What is the source of the $7.5 million in TIF and how is that TIF money different from the TIF money that is factored into the "Developer's Contribution"[25]?

d. What is the actual amount of Grant money that is available and reasons why the County believes $11,000 million will be provided, and on what timeline?

e. What is the County's fall back if there is no $11 million dollars in grant money (or some amount less

[25] Note, there is only 1 draft DA that agrees to pay the TIF (Mill Creek PUD) and there is no time frame for which they have to pay. The Draft DA merely agrees to pay 25% ($750,000) at the time the UH is lifted, 25% ($750,000) at the time of preliminary plat approval (whenever that occurs) and the remaining 50% at staggered stages as the developments are phased in after the final plat approval (no time frame for payment of that money).

than $11 million)? Will the County make the lifting of the UH for these 4 developers (or the UH in total) contingent upon the receipt of the grant money and, if not, why not?;

f. Where will the County get the money for payment of construction costs if the Developers are not required to make upfront payments on either the TIFs ("developer contribution") or the surcharge (i.e. will the county be using the designated funds such as the RF and REET 2 funds to pay for the bond and the construction while waiting to be repaid for those upfront costs by the developer?;

g. Is the lifting of the UH, even as to these 4 entities, contingent on all of this money, not just the grant money, being definitively arranged?;

h. Why are the developers not being asked to pay their money up front instead of paying over time? What if that money does not come in due to the fact that the market factors control and they do not submit to either a preliminary plat and/or final plat within the 6 years?

i. Should the Developer Agreements say that all money must their "contributions" must be paid up front or, at a minimum, within no less than 6 years to insure that the project is "reasonably" funded?;

j. Why is there no funding for public transportation in the area? and

k. Whether the County decides on surcharges or TIF as part of these Development Agreements, should the Developers be responsible to contribute to the County their agreed upon share as the time that the UH is lifted?

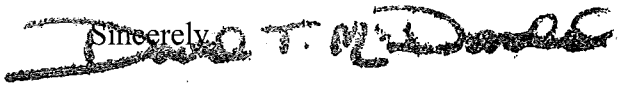
Based upon the above, it does not appear that even in a best case scenario, the County has established a way to meet concurrency, even with almost all the money coming from all the taxpayers of the County to pay for these developers to put in residential housing and some retail. It is clear that none of these developers are putting any economically beneficial developments in this area as contemplated by theory that this interchange is going to be a new "economic" engine for the county. Retail and residential development, especially residential on this scale, do not an "economic engine" make.

I am submitting these comments on my own behalf as an individual citizen who lives near the affected area and will be adversely impacted by this development. If

others wish to adopt these comments as their own, they may do so in writing or orally at the hearing. I hope to be able to attend the hearing this evening.

Thank you for your attention to this matter.

Sincerely,



David T. McDonald

From:	Greg Huggins
To:	Wiser, Sonja
Subject:	CPZ20019-00023
Date:	Friday, July 05, 2019 4:18:15 PM
Attachments:	Regulation of Wetlands in Western Washington Under the Growth Management Act.pdf Hinton.pptx

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

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

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** 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]

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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-

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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-

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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.

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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]

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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

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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

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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

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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

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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]

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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

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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]

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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

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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

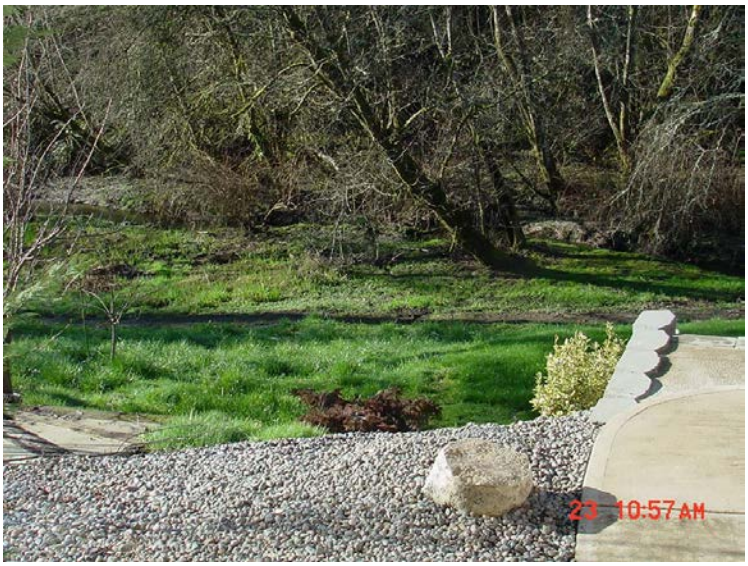
NOTES TO APPENDIX B

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

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



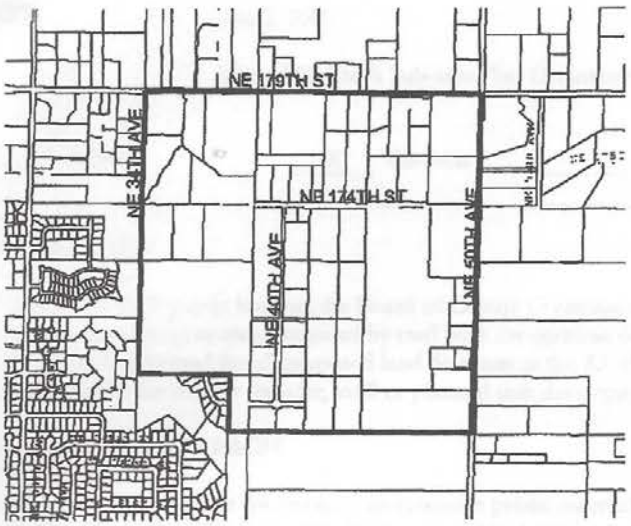
We received this from the planning department who said it came from Hinton development. Lifting urban holding makes this is one step closer.

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

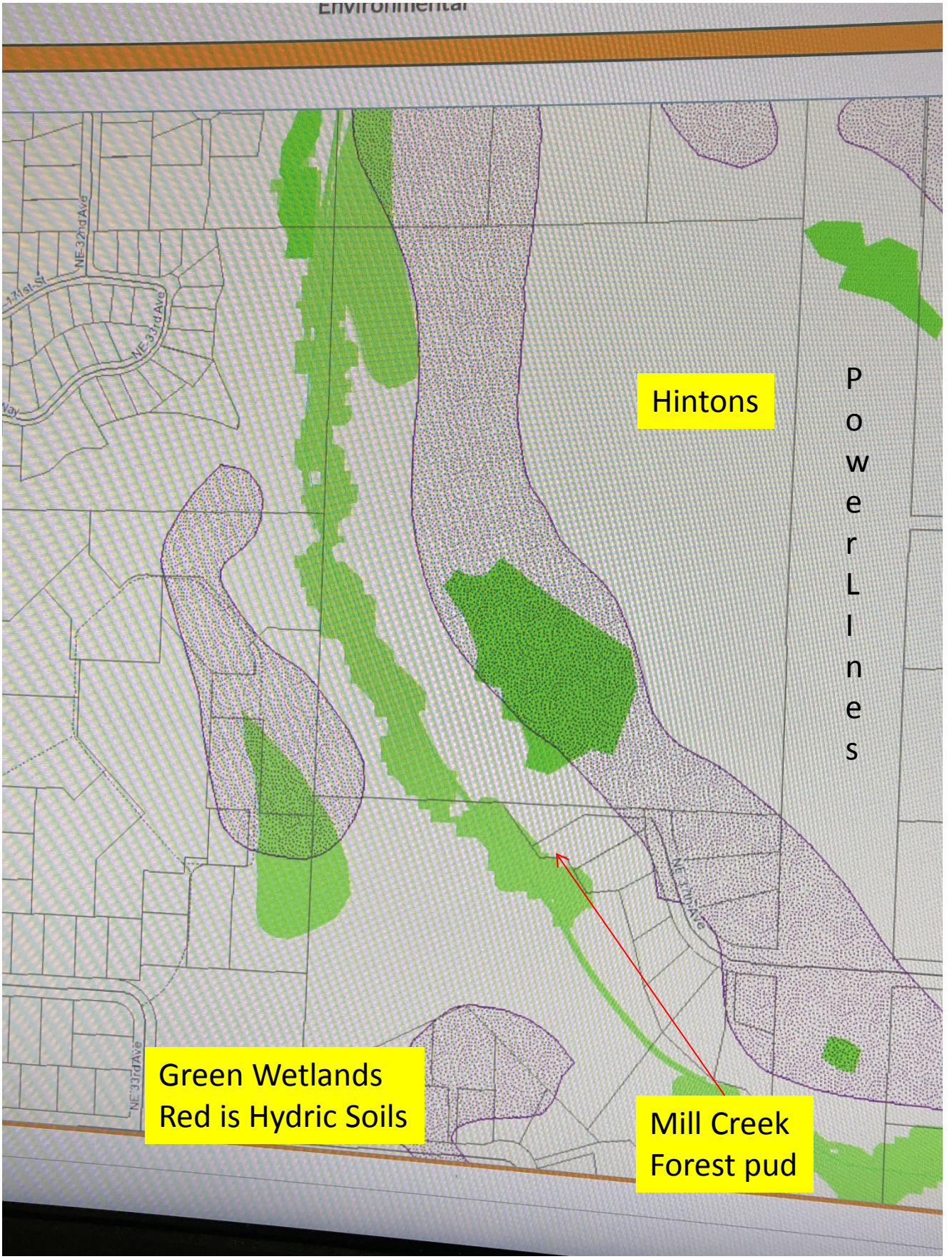


C. Standards.

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.

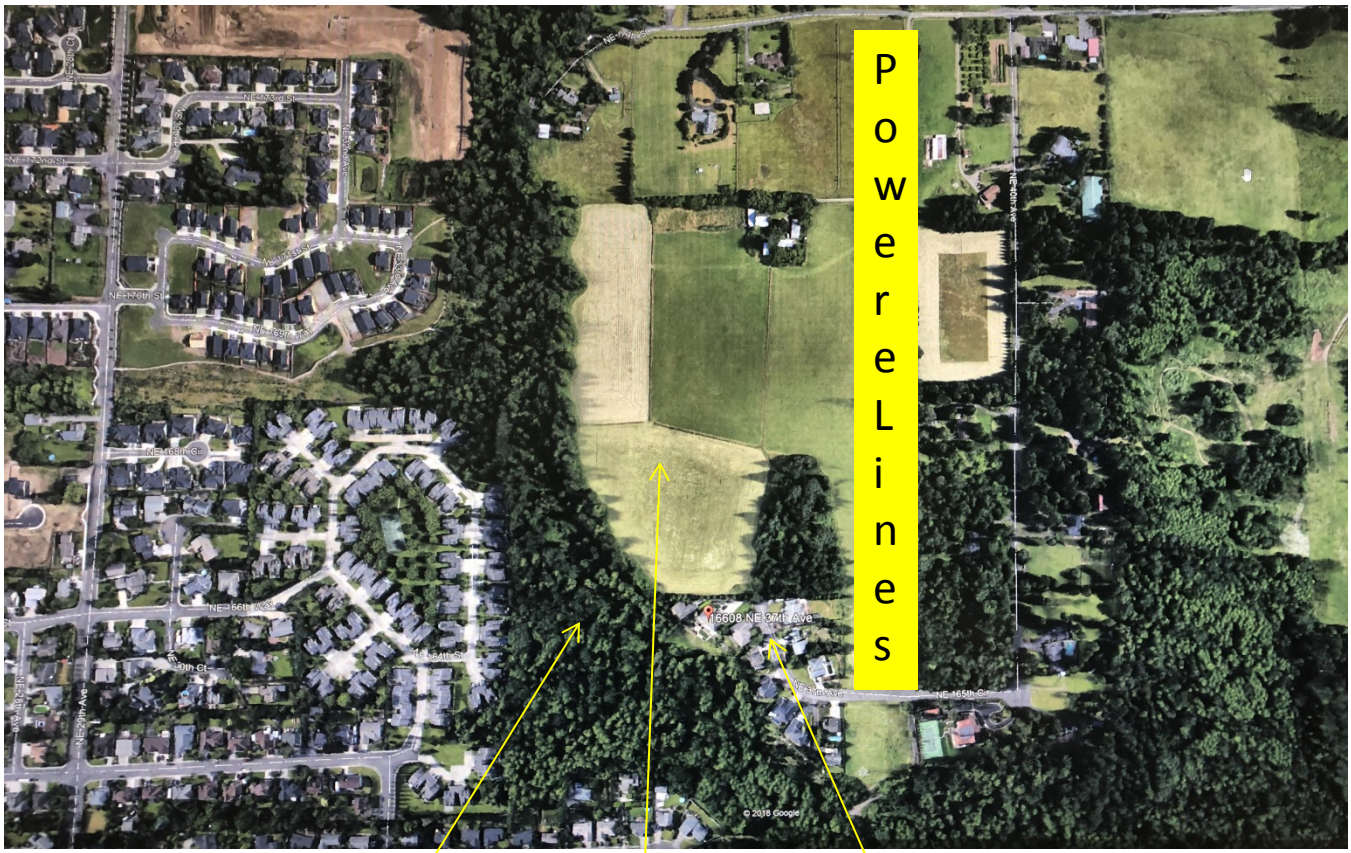
Figure 1



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

From:	David McDonald
To:	Messinger, Rebecca
Cc:	Orjiako, Oliver; Wiser, Sonja
Subject:	[Contains External Hyperlinks] Amendment to Comment Letter dated July 15, 2019
Date:	Monday, July 15, 2019 1:52:35 PM

Dear Ms. Messinger:

When I submitted my letter this morning, I used a current TIF level of $536 for the current TIF as I took that number off of the County's website —https://www.clark.wa.gov/sites/default/files/dept/files/public-works/TIFProjectListRates.pdf.

I have been informed that the current TIF for the area is $605.00. Therefore, I would ask that you remove my letter from the record and I will submit a new letter that will have the numbers reflecting that current TIF.

I apologize for any confusion but I thought I was using the correct number based upon the number listed on the County's website. Please put this e-mail in the record if you cannot take my prior letter out of the record and I will send the amended before close of business today.

Best,

David

David T. McDonald
David T. McDonald, P.C.
Courtroom Lawyer
Suite 625
833 SW 11th
Portland, Oregon 97205
503-226-0188 (o)
503-226-1136 (f)
Admitted To Practice In Oregon and Washington
State and Federal Courts

From:	Orjiako, Oliver
To:	Wiser, Sonja
Subject:	FW: DNS Hinton Phase III and Wollam Phase IV
Date:	Monday, July 15, 2019 8:00:32 AM
Attachments:	Orjiako-Ltr-DNS-190705.pdf CRWWD-DNS-190621.pdf

Hi Sonja:

Please, include Mr. David McDonald DNS letter to materials for the PC hearing. Thanks.

Oliver

Oliver Orjiako
Director
COMMUNITY PLANNING

564.397.2280 ext 4112

From: David McDonald [mailto:david@mcdonaldpc.com]
Sent: Friday, July 05, 2019 9:34 AM
To: Orjiako, Oliver
Subject: DNS Hinton Phase III and Wollam Phase IV

Dr. Orjiako:

Please consider the attached as my comments regarding the County's DNS on the two projects listed in the Subject Line. Specifically, I believe that the County should complete a full and comprehensive updated environmental impact statement regarding the entire Urban Holding Overlay area and this e-mail and attendant and attached documents support that request.

Thank you for your time and professional courtesies.

Sincerely,

David T. McDonald
David T. McDonald, P.C.
Courtroom Lawyer
Suite 625
833 SW 11th
Portland, Oregon 97205
503-226-0188 (o)
503-226-1136 (f)
Admitted To Practice In Oregon and Washington
State and Federal Courts

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

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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

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[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***

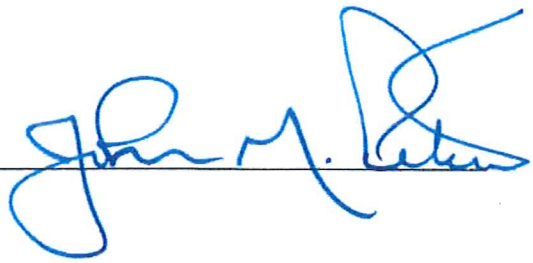
Lead Agency: ***Clark Regional Wastewater District***

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:

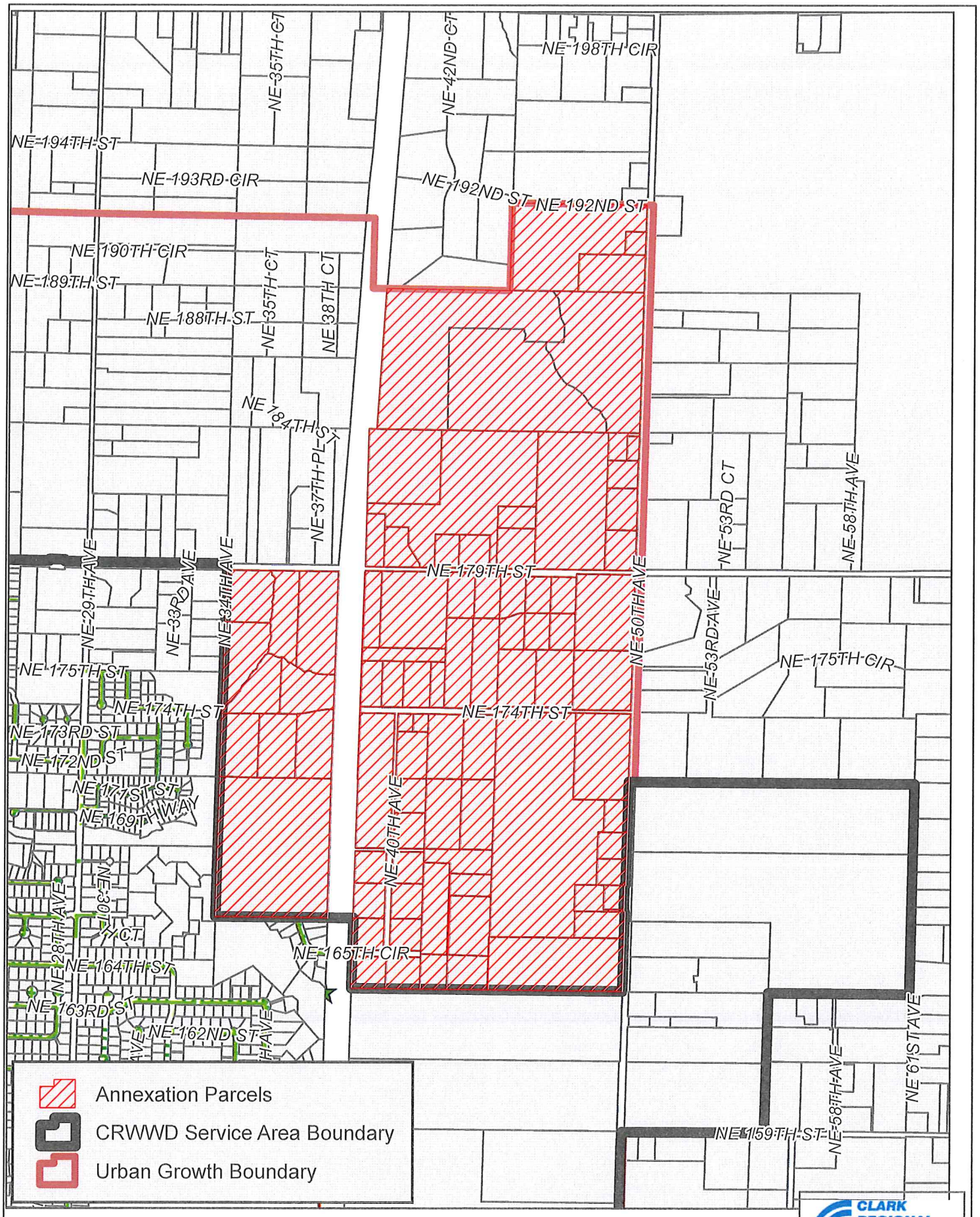
6. How would the proposal be likely to increase demands on transportation or public services and utilities?

   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

From:	Wiser, Sonja
To:	Karl Johnson; Matt Swindell; Richard Torres; Robin Grimwade; Robin Grimwade; Ron Barca-Boeing; Ron Barca-MSN; Steve Morasch (stevem@landerholm.com)
Cc:	Hermen, Matt; Cook, Christine; david@mcdonaldpc.com
Subject:	FW: Comments 179th Street Hearing
Date:	Monday, July 15, 2019 12:09:51 PM
Attachments:	Councilors-Ltr-179th Street Funding & Holt DDA#3-190715.pdf

FYI

From: David McDonald [mailto:david@mcdonaldpc.com]
Sent: Monday, July 15, 2019 12:09 PM
To: Orjiako, Oliver
Cc: Messinger, Rebecca; Wiser, Sonja
Subject: Comments 179th Street Hearing

Dr. Orjiako:

Attached please find additional comments regarding the hearing scheduled for July 16, 2019 before the Council on the 179th Street funding issues and the Holt Draft Development Agreement.

I have cc'd Ms. Messinger and Ms. Wiser so that they can put copies in the record for the Councilors (Ms. Messinger) and for the PC hearing on the issue scheduled for Thursday the 18th (Ms. Wiser).

Thank you for your assistance in making these comments a part of the record.

Best Regards,

David

David T. McDonald
David T. McDonald, P.C.
Courtroom Lawyer
Suite 625
833 SW 11th
Portland, Oregon 97205
503-226-0188 (o)
503-226-1136 (f)
Admitted To Practice In Oregon and Washington
State and Federal Courts

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

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:

This matter comes before the County on Tuesday, July 16, 2019 at 6:00 pm 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 $536/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 under Option #7.

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]

---

[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.

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%.

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.

[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.

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 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

[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.

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

Original Staff Report underestimates Holt TIF obligation by between $510,082.16 and $676,076. *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.

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 $510,082.16 and $676,076.

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 units would be $1,838,480 (343 x 536 x 10). 25% of that number is $459,620. 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 = ½ of the TOTAL TIF owed at current rate of $536.00 on each lot. The offer DOES NOT use the bumped up rate of $930 TIF listed in Option 8.**

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 $3,566,544 at the current rates ($536 per trip—10 trips per day for SFR and 6 trips per day per TH). *See* Exhibit #5.

Therefore, under DDA#3, there is NO money paid at the lifting of the UH and then 50% of the money owed at the current TIF rate, NOT the bumped up rate, will be paid at preliminary plat but for only 541 Units. Importantly, over 150 lots/units are now excluded from TIF payments (606 SFR plus 99 TH= 705 units) under the DDA #3.

DDA #3 then provides for additional TIF payments at Final Plat approval

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 the current rate of $536/trip. Total for all TIF under DDA #3 is the original $2,899,760.

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. In a best-case scenario for the County, assuming full build out of 705 lots there would be an additional $2,467,500, for a total payment of TIF and "surcharge" of $5,367,260.

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) 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 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 $536 per trip (current Mt. Vista TIF Rate), then the total TIF obligation for this development should be $3,566,544 (6,060 daily trips (SFR) plus 594 daily trips for (TH)=6654[1] daily trips x $536=$3,566,544.

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.

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[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 $3,401,456. 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 over $500,000 short of the actual number (6346 x 536=$3,401,456). If consider 6346 at $916/trip, the total is $5,812,936 and if at $930/trip is $5,901780.

From:	Richard Kubiniec
To:	Wiser, Sonja
Cc:	David Gilroy; Greg & Denise Huggins
Subject:	Public comment/testimony for CPZ2019-00023 Urban Holding removal proposal
Date:	Thursday, July 04, 2019 3:49:51 PM

Dear Ms. Wiser,

Please accept this email comment in advance of the upcoming Public Hearing on 7/18/19.
I am speaking as a local resident, currently I reside at 16519 NE 37th Ave, Vancouver WA 98686. I reviewed the posted application and the incompletely detailed SEPA checklist document and have several concerns.

1st: From a Development standpoint, removing the property identified as 181675000 from the Urban Holding Overlays at this time makes little sense to the region and the taxpayers as a whole. Isolating a single plot for development when 95% of the neighboring properties remain in a holding status due to the lack of infrastructure sets a precedent for a series of subsequent amendment requests as other developers will rush to start their projects before the necessary road, sewer, utility infrastructure projects have been roped, planned and funded. This is in direct opposition to the intent of the 20 Year Growth Management Comprehensive Plan.

2nd: Traffic Impact Fees which were waived during the previous economic downturn in order to remove disincentives for economic development need to be re-instated in the present setting where the 179th Street corridor has yet to be funded. This proposed property will be directly dependent on 179th Street and safe ingress/egress will require considerable investments and it is not fair to shift the financial burden to the developers who are waiting for the entire area serviced by the 50th Ave/179th Street intersection to be brought into the Urban Growth Plan.

3rd: The request for Amendment appears to significantly underestimate the impacts of their undefined project with repeated references to “no Impact - non-project request” but only mentions in passing on the SEPA checklist a slight 129 additional vehicular trips. The parcel in question is nominally 32 acres zoned R1-10. It is not plausible that the developer is proposing construction of 12-13 homes on the 32 acres which would be the case if only 129 additional trips are foreseen. It is far more likely that the development will try to subdivide into as small as permitted lots - possibly 7,000 sq ft - to enable construction of 120 or more housing units. A more prudent estimate of the future traffic impacts would project ~ 1200 additional trips per day.

4th: There is a branch of Mill Creek feeding into Salmon Creek on the western boundary of the property with areas of 40 degree slopes and a large number of significant trees stabilizing the riparian corridor. The SEPA checklist does not appear to adequately address the environmental impacts the undefined future project may have but seeks to establish precedent that “no additional Environmental Impact Study will be required”. I respectfully disagree and would request that language be struck as premature.

Thank you for the opportunity to comment. I hope to be present at the upcoming meeting later this month.

Richard Kubiniec

From:	Orjiako, Oliver
To:	Hermen, Matt
Cc:	Wiser, Sonja
Subject:	FW: DNS Hinton Phase III and Wollam Phase IV
Date:	Monday, July 08, 2019 1:52:44 PM
Attachments:	Orjiako-Ltr-DNS-190705.pdf CRWWD-DNS-190621.pdf

Hi Matt:

Please, include in the PC record. Sonja, please file in the urban holding index record. Thanks.

Oliver

Oliver Orjiako
Director
COMMUNITY PLANNING

564.397.2280 ext 4112

From: Orjiako, Oliver
Sent: Friday, July 05, 2019 10:16 AM
To: Cook, Christine
Cc: Hermen, Matt
Subject: FW: DNS Hinton Phase III and Wollam Phase IV

Hi Chris:

Just as FYI. I don't consider the email as an appeal of the SEPA determination issued by Clark County. Thanks.

Oliver

Oliver Orjiako
Director
COMMUNITY PLANNING

564.397.2280 ext 4112

From: David McDonald [mailto:david@mcdonaldpc.com]
Sent: Friday, July 05, 2019 9:34 AM
To: Orjiako, Oliver
Subject: DNS Hinton Phase III and Wollam Phase IV

Dr. Orjiako:

Please consider the attached as my comments regarding the County's DNS on the two projects listed in the Subject Line. Specifically, I believe that the County should complete a full and comprehensive updated environmental impact statement regarding the entire Urban Holding Overlay area and this e-mail and attendant and attached documents support that request.

Thank you for your time and professional courtesies.

Sincerely,

David T. McDonald
David T. McDonald, P.C.
Courtroom Lawyer
Suite 625
833 SW 11th
Portland, Oregon 97205
503-226-0188 (o)
503-226-1136 (f)
Admitted To Practice In Oregon and Washington
State and Federal Courts

From:	Orjiako, Oliver
To:	Wiser, Sonja
Cc:	Sidorov, Larisa; Hermen, Matt
Subject:	FW:
Date:	Monday, July 15, 2019 2:11:35 PM
Attachments:	img20190715_10560150.pdf

Hi Larisa:

Please, can you make a copy in include in the binders for the July 16 council hearing. Matt, please keep a copy in the file. Thanks

Oliver Orjiako
Director
COMMUNITY PLANNING

564.397.2280 ext 4112

From: Randall B. Printz [mailto:Randy.Printz@landerholm.com]
Sent: Monday, July 15, 2019 12:21 PM
To: Cook, Christine; Orjiako, Oliver
Subject:

Here is a copy of the SEPA from February before we went to hearing.

Randall B. Printz | Attorney at Law
LANDERHOLM
Legal advisors. Trusted advocates.
805 Broadway Street, Suite 1000
P.O. Box 1086
Vancouver, WA 98666-1086
T: 360-600-8846 | T: 360-696-3312 | F:
www.landerholm.com

SEPA Environmental Checklist

Washington Administrative Code (WAC) 197-11-960

Purpose of checklist:

The State Environmental Policy Act (SEPA), Revised Code of Washington (RCW), Chapter 43.21C, 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 significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and agencies identify impacts from your proposal and to help agencies decide whether or not an EIS is required.

Instructions for applicants:

This environmental checklist asks you to describe basic information about your proposal. Governmental agencies use this checklist to determine whether or not the environmental impacts of your proposal are significant. Please answer the questions briefly, giving the most precise information or best description known. 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 do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply."

Some questions pertain to governmental regulations such as zoning, shoreline, and landmark designations. If you have problems answering these questions, please contact the Clark County Permit Center for assistance.

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. You may be asked to explain your answers or provide additional information related to significant adverse impacts.

Use of checklist for non-project proposals:

Complete this checklist for non-project proposals (e.g., county plans and codes), even if the answer is "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.

Community Development
1300 Franklin Street, Vancouver, Washington
Phone: (360) 397-2375 Fax: (360) 397-2011
www.clark.wa.gov/development

A. Background

1. Name of proposed project, if applicable:

   Mill Creek Planned Unit Development (PUD)

2. Name of applicant:

   Holt Opportunity Fund (Parallel 1), 2013, L.P.

3. Address and phone number of applicant and contact person:

   Applicant:
   Holt Opportunity Fund (Parallel 1), 2013, L.P.
   PO Box 61426
   Vancouver, WA. 98666
   Phone: (360) 892-0514
   Fax: N/A

   Contact:
   Attn: Randy Printz
   Landerholm
   805 Broadway Street, Suite 1000
   Vancouver, WA 98666
   360-816-2524
   Randy.Printz@landerholm.com

4. Date checklist prepared:

   August 2018

5. Agency requesting checklist:

   Clark County Department of Community Development

6. Proposed timing or schedule (including phasing, if applicable):

   This SEPA Checklist is for the Development Agreement (DA) and Master Plan, when the PUD and preliminary plans are developed, some grading and development of Phase 1 will take place upon approval and procurement of all applicable reviews and permits. The remaining of portions of the site and future phases will be developed over approximately the next ten years after the PUD and subdivision plans are approved. Future off-site improvements including, but not limited to, transportation and stormwater improvements, sewer, water, utility routing to the site, etc. shall also take place upon approval and procurement of all applicable reviews and permits. Future on-site improvements may take place in up to approximately 7 phases.

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, no other plans than the phased development of the full project as described above.

8. List any environmental information that has been or will be prepared when the PUD and preliminary plans, related to this proposal.

   Traffic Study – Kittelson & Associates, Inc.
   Preliminary Stormwater Report –
   Stormwater Pollution Prevention Program –
   Archaeological Pre-determination –
   Clark County Public Health Development Review –
   Environmental Site Assesment –
   Wetland Delineation –
   Wetland and Habitat Mitigation Plan –
   Infiltration Test Results Report –
   Geotechnical Report –

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 needed for your proposal:

Development Agreement	Master Plan
Preliminary Plat Approval	Final Plat Approval
Engineering Plan Approval	Erosion Control Plan Approval
Grading Plan Approval	Grading Permit
Building Permits	Stormwater Plan Approval
NPDES Permit	SEPA Determination
Archaeological Predetermination	Legal Lot Determination
Stormwater Pollution Prevention Program	Wetland Permit
Habitat Permit	Planned Unit Development Approval

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 asking 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.)

    The applicant, Holt Opportunity Fund (Parallel 1), 2013, L.P., is currently submitting for the DA and Master Plan. When the PUD and Preliminary Plat is prepared in the future, the applicant plans to divide approximately 146 acres, zoned R1-7.5, into a maximum of 705 residential lots of varying sizes, for residential uses utilizing the density transfer provisions of CCC 40.220.010.C.5.

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, give 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.

The site is located north and south of NE 179th Street and is identified as Assessor's Parcels#181466-00, 181581-000, 181548-000, 181701-000, 181702-000, 181580-000, Tax Lots 29, 33, 145, 144, 30, 112, 32, 33 located in the Northwest quarter of Section 12 & 13, Township 3 North, Range 1 East of the Willamette Meridian.

B. Environmental Elements

Agency use only

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?

According to Clark County GIS data, the steepest slope on the site is up to 100%.

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.

According to Clark County GIS data, the soils on the site consist of:

CvA, Cove Silty Clay Loam, 0-3% slopes
OdB, Odne Silt Loam, 0-5% slopes
GeB, Gee Silt Loam, 0-8% slopes
GeD, Gee Silt Loam, 8-20% slopes
GeF, Gee Silt Loam, 30-60% slopes
HoB, Hillsboro Silt Loam, 3-8% slopes
HoC, Hillsboro Silt Loam, 8-15% slopes
HoE, Hillsboro Silt Loam, 20-30% slopes
HcB, Hesson Clay loam, 0-8% slopes

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

According to Clark County GIS data, there are areas of severe erosion hazard and landslide hazard areas within the project area. The applicant will enlist a geotechnical engineering firm to do further study on the Mill Creek PUD soils and slopes.

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

After the DA, the Master Plan and the forthcoming PUD and Master Plans are approved, site grading to construct the lots, roads, stormwater facilities and other associated improvements. Any fill will be procured from an approved site. Should material need to be hauled off site, it will be taken to an approved location.

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

Yes, erosion could occur if adequate mitigation measures were not implemented when building out the future PRD and subdivision plans. After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, Stormwater and Erosion Control Plans will be prepared and implemented by the applicant, which will meet or exceed the requirements imposed by Clark County Code.

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, approximately 60% of the site will be covered with impervious surfaces upon full build out of the site.

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, Stormwater and Erosion Control Plans will be prepared and implemented in accordance with Clark County Code. These include treating, infiltrating and detaining stormwater as well as silt fencing and other erosion control Best Management Practices. The project will also conform to the Stormwater Pollution Prevention Program. Information regarding stormwater control will be provided at the time of the preliminary plat and PUD application.

2. Air

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, construction equipment and vehicles will generate dust and particulate emissions during the construction period. Resident, visitor, delivery vehicles, mail delivery, solid waste and recycling vehicles will then generate particulate emissions in the long-term. Other emission sources include typical residential emissions from heating, ventilation and air conditioning units, as well as small power tools including, but not limited to, small gas-powered

equipment used for site and landscape maintenance, such as lawn mowers, blowers, trimmers, etc. Quantities are unknown.

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

No offsite sources of emissions or odors exist that would adversely affect the proposed development.

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, water will be utilized for dust control as needed during construction as well as the implementation of all local, state and federal regulations. The construction of the buildings will comply with standards of the Environmental Protection Agency and all other applicable local, state and federal standards.

3. Water

Agency use only

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, and wetlands)? If yes, describe the type and provide names and into which stream or river it flows into.

According to Clark County GIS data, a tributary to Mill Creek (Mill Creek is a tributary to Salmon Creek) runs in a north/east direction through a corner of the site. Clark County GIS data also shows wetlands on the property.

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

Unknown at this time. A wetland and riparian habitat report will be provided at the time of the preliminary plat and PUD application.

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.

Unknown at this time. Any impacts to the wetlands or buffers will be in compliance with Clark County, Department of Ecology and United States Army Corp of Engineering regulations and mitigated according to their requirements.

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, please note the location on the site plan.

No

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; (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 systems are expected to serve.

None

c. Water runoff (including stormwater):

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

Agency use only

Sources of runoff include building roofs, sidewalks, roads and other impervious surfaces. After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, stormwater will be treated and infiltrated. The project will comply with the Clark County Stormwater Ordinance. Calculations and information regarding the drainage facilities will be included in the Preliminary Stormwater Report.

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:

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, the proposed project will meet or exceed Clark County's water quality and quantity standards provided for by the Clark County Stormwater Ordinance. Also refer to Section B.3.c.1 above.

This project may implement Department of Ecology approved Chitosan chemical treatment of runoff during construction. At treatment levels used, any residual trace of Chitosan in the treated stormwater is negligible and results in no negative impacts for downstream fish or riparian habitats.

4. Plants

a. Check or circle types of vegetation found on the site
- Deciduous tree: alder, maple, aspen, other, Oregon white oak
- Evergreen tree: fir, cedar, pine, other
- Shrubs
- Grass
- Pasture
- Crop or grain
- Wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- Water plants: water lily, eelgrass, milfoil, other
- Other types of vegetation Blackberries

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, all vegetation will be removed from areas depicted for the future lots, roads, stormwater facilities, utilities and other improvements as shown on the upcoming Preliminary Plat.

c. List threatened or endangered species on or near the site.

None to the Applicant's knowledge.

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

After the DA and Master Plan are approved, the forthcoming PUD and Master Plans will provide a landscaping plan the site with the possible use of native plants, as well as any on-site mitigation/enhancement that might occur in critical areas.

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; and,
- Fish: bass, salmon, trout, herring, shellfish, other.

b. List any threatened or endangered species known to be on or near the site. Agency use only

After the DA and Master Plan are approved, the forthcoming PUD and Master Plans will provide a wildlife and habitat report will be provided with the ensuing preliminary plat applications.

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

The site is located within what is commonly referred to as the Pacific Flyway. This Flyway is the general migratory route for various species of ducks, geese, and other migratory waterfowl. The Flyway stretches from Alaska to Mexico and from the Pacific Ocean to the Rocky Mountains. Neotropical birds, such as Robins, may also seasonally utilize or be near the site.

d. List proposed measures to preserve or enhance wildlife:

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, landscaping, which includes trees, shrubs and groundcovers, will be installed on each lot and open spaces/park spaces that will provide some habitat for wildlife in the developed areas.

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.

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, typical residential uses of electricity and/or natural gas will be required for the completed project.

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:

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, all construction on the site will be designed to comply with the state adopted codes and policies related to energy conservation.

7. Environmental health

a. Are there any environmental health 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.

Additional police and fire/emergency may be required because of development on a previously vacant site. No special emergency services will be required.

2) Proposed measures to reduce or control environmental health hazards, if any:

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, the Applicant will comply with applicable local, state and federal regulations during construction and operation of the project. All construction will be inspected according to industry requirements and standards.

b. Noise

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

Noise from adjacent roadways and houses exist, but it should not affect the proposed project when the DA and Master Plan and the forthcoming PUD and Master Plans are approved.

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.

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, development of the site will create short-term construction noise. Resident, visitor, mail delivery and solid waste

and recycling vehicles will create some noise in the long-term. Other noise sources include typical residential noises from heating, ventilation and air conditioning units as well as small power tools including, but not limited to, small gas-powered equipment used for site and landscape maintenance, such as lawn mowers, blowers, trimmers, etc. Construction noise would take place between the hours of 7 a.m. and 10 p.m.

Agency use only

3) Proposed measures to reduce or control noise impacts:

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, construction activities will not occur after 10 p.m. or before 7 a.m.

8. Land and shoreline use

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

The site has single family houses on large parcels, with accompanying garages, shops, outbuildings. Adjacent property uses are as follows:
North – Single-family residential and some agricultural uses on acreage zoned R1-20 and R-5.
South – Single-family residential on acreage zoned R1-7.5 and MX.
East – Single-family residential uses on acreage zoned R1-7.5 and R-5.
West – BPA Easement and Single-family residential uses on acreage zoned R1-7.5.

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

It is unknown if the project site was previously used for agriculture. This property is currently zoned for single-family residential uses and is not in farm or forest tax status.

c. Describe any structures on the site.

There are existing single family homes, barns, shops, and sheds

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

After demolition permitting is completed, the existing structures will be demolished for development purposes.

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

The site is currently zoned R1-7.5.

f. What is the current comprehensive plan designation of the site?
The site has a comprehensive plan designation of UL or Urban Low.

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.

According to Clark County GIS data, there are wetlands, priority habitat and species areas and steep slopes on the site.

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, the project may house approximately 1,974 people based on 2.8 persons per household (705 units) upon full buildout.

j. How many people would the completed project displace?

Approximately 14 people (based on five existing houses).

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

After the DA and Master Plan are approved, the existing home owners will sell their property and move to other residences.

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

The proposed use is consistent with and implements the current zoning and comprehensive plan designations. Consistency with existing and projected land uses is contemplated during the creation of the comprehensive plan.

9. Housing

Agency use only

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

Up to approximately 705 units for middle-income housing.

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

The five existing single family homes.

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

None

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?

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, the height of the proposed homes will be in compliance with Clark County Code which allows homes up to 35 feet in height in this zoning district. The primary exterior building material will consist primarily of fiber cement lap siding, fiber cement panel or wood.

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, views across the site may be altered with full buildout of the project.

c. Proposed measures to reduce or control aesthetic impacts:

Landscaping and architectural elements.

11. Light and glare

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

Typical residential lighting may occur in the nighttime hours.

b. Could light or glare from the finished project be a safety hazard or interfere with views?

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, the installation of illuminated materials will be done in such a way to minimize dispersion off-site and to not constitute a safety hazard.

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

There are existing off-site light sources, however, they are unlikely to affect the proposal.

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, any streetlights installed will be shielded to

minimize dispersion and control any potential offsite impacts. Lighting will be shielded to prevent light dispersion into the wetlands.

12. Recreation

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

Whipple Creek Hollow Natural Area, Kozy Kamp Neighborhood Park and the Salmon Creek Community Club are located approximately 1-1/2 miles to the southwest.

b. Would the project displace any existing recreational uses? If so, please describe. Agency use only

No

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

The project includes a pedestrian trail network and park/open space. This project will also pay park impact fees after the PUD and subdivision plans are built.

13. Historic and cultural preservation

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

Not to the applicant's knowledge.

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

Unknown at this time. Clark County's Archaeological Predictive Model indicates the site has a moderate-high to high probability of containing cultural or archaeological findings. An Archaeological report will be provided at the time of the preliminary plat and PUD application.

c. Proposed measures to reduce or control impacts:

In the event any archaeological or historic materials are encountered during project activity, work in the immediate area must stop and the following actions taken:
1. Implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering; and

2. Take reasonable steps to ensure the confidentiality of the discovery site; and,
3. Take reasonable steps to restrict access to the site of discovery.
If human remains are uncovered, appropriate law enforcement agencies shall be notified first, and the above steps followed. If remains are determined to be Native, consultation with the effected Tribes will take place in order to mitigate the final disposition of said remains.

14. Transportation

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, vehicular access to the site is from NE 179th Street and NE 50th Avenue, which are public roads. Refer to the attached Master Plan for more information on proposed roads and access to the existing street system.

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

The site is not directly served by public transit.

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

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, the completed project would include a minimum of 2 spaces per unit or 1,400 spaces based on the current layout with 705 proposed lots. None will be eliminated.

d. Will the proposal require 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.

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, new roads and improvements will be built. Refer to the plans including the Master Plan and the Traffic Study by Kittelson & Associates, Inc. for more information on proposed roads and frontage improvements.

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

No

Agency use only

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

A traffic study was prepared by Kittelson & Associates, dated March 2018. The report estimates 6,346 daily trips (498 in AM, 657 in PM).

g. Proposed measures to reduce or control transportation impacts:

Pay traffic impact fees and the findings and recommendations found in the Traffic Study by Kittelson & Associates.

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.

After the DA and Master Plan and the forthcoming PUD and Master Plans are approved, the project will likely result in an increased need for public services due to the increase in residents.

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

Provide urban utilities, pay taxes and impact fees, after the DA and Master Plan and the forthcoming PUD and Master Plans are approved.

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:

Electricity – Clark Public Utilities
Water – Clark Public Utilities
Sanitary Sewer – Rural/Resource
Refuse Service – Waste Connections
Natural Gas – Northwest Natural
Telephone – CenturyLink

C. 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: _____ Date Submitted: 4/1/15

From: Hermen, Matt
To: "Christian Hansen"
Cc: Alvarez, Jose; Wiser, Sonja
Subject: RE: 19006 NE Defel RD, Ridgefield WA
Date: Monday, July 15, 2019 11:18:39 AM

Hello Christian,

Development on the site, currently must adhere to the requirements of the UH-20 zoning. Urban Holding must be removed from the property to allow the property to adhere to the BP zoning. The County Councilors are currently assessing financial options that would allow the urban holding overlays to be removed.

Thank you,

Matt Hermen
Planner III
PUBLIC WORKS

360.397.4343

From: Christian Hansen [mailto:Christian@sheacre.com]
Sent: Monday, July 15, 2019 10:52 AM
To: Wiser, Sonja
Cc: Hermen, Matt; Alvarez, Jose
Subject: [Contains External Hyperlinks] RE: 19006 NE Defel RD, Ridgefield WA

Thank you Sonja!

Matt as I understand this, any proposed development on site must now conform to allowed uses in the UH-20 zone? Was or Is there an allowance for BP use at all, will that only apply after UH is lifted?

Thank you,

Christian Hansen

Industrial-Commercial Specialist
Lic OR./WA.

503-522-1953 Cell
360-823-5115 Office
360-823-1115 Fax

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From: Wiser, Sonja <Sonja.Wiser@clark.wa.gov>
Sent: Monday, July 15, 2019 10:17 AM
To: Christian Hansen <Christian@sheacre.com>
Cc: Hermen, Matt <Matt.Hermen@clark.wa.gov>; Alvarez, Jose <Jose.Alvarez@clark.wa.gov>
Subject: RE: 19006 NE Defel RD, Ridgefield WA

I will email your request to Matt. Thanks

From: Christian Hansen [mailto:Christian@sheacre.com]
Sent: Monday, July 15, 2019 9:41 AM
To: Wiser, Sonja
Subject: [Contains External Hyperlinks] 19006 NE Defel RD, Ridgefield WA

Hello Sonja, I hope you had a great weekend! I have a question regarding BP zoned property usage under urban holding. The property in the subject line has been used as a residence as well as a small nursery business over the years. My questions is, under Urban Holding what are the use guidelines for a new property owner? Can or should a new owner fall in line with the BP zoning use?

We have a meeting with the current owners first thing tomorrow morning about this subject, your help will be much appreciated!

Thank you!

Christian Hansen

Industrial-Commercial Specialist
Lic OR./WA.

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From:	Nathan McCann
To:	Orjiako, Oliver
Cc:	Wiser, Sonja; Hermen, Matt
Subject:	[Contains External Hyperlinks] Re: RSD Comments on DNS for 179th urban holding
Date:	Friday, July 05, 2019 1:39:23 PM
Attachments:	RSD Comments on DNS for 179th urban holding.pdf

Good afternoon Mr. Orjiako,
??

Attached, please find my comments regarding pertaining to the DNS for 179th street urban holding.?? Please let me know if you have any questions.?? Thank you.???? ??
??

Dr. Nathan McCann??| Superintendent
Ridgefield School District | 510 Pioneer Street | Ridgefield, WA 98642
360.619.1302
360.619.1397 (f)
nathan.mccann@ridgefieldsd.org

Our Purpose:?? Ridgefield School District aspires to be the state's premier district, leveraging strong community partnerships??to provide each student personalized learning experiences, opportunities, and skills??that??ensure success and unlimited possibilities.
??

RIDGEFIELD
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unlimited possibilities

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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