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November 12, 2019

VIA EMAIL AND HAND DELIVERY

Board of Clark County Councilors  
ATTN: Rebecca Messinger, Clerk to the Board  
Public Service Center  
1300 Franklin Street  
Vancouver, WA 98660  
E-mail: [Rebecca.messinger@clark.wa.gov](mailto:Rebecca.messinger@clark.wa.gov)

Re: **CPZ2019-00029 Development Agreement Procedures**—Addition of Section  
40.550.030 to the Clark County Development Code

Dear Councilors:

Our office represents Judith Zimmerly, property owner of the Washougal Pit, and we are submitting the following comments regarding Clark County's ("County") proposed addition of Section 40.550.030 to the Clark County Development Code. We appreciate the opportunity to review and comment on the proposed code addition.

This letter addresses the applicability of the Washington Growth Management Act, RCW 36.70A, within the Columbia River Gorge National Scenic Area ("NSA") and serves as a response to the comment letter submitted by Friends of the Columbia Gorge ("FOG") on August 12, 2019. In FOG's comment letter, they stated:

"The Growth Management Act ("GMA") does not apply within the NSA so development agreements authorized under the GMA are not allowed in the NSA."

Friends of the Columbia Gorge, COMMENT LETTER (Aug. 12, 2019).

This statement misconstrues applicable law. Clark County is one of eighteen Washington counties required to "fully plan" under the GMA. See RCW 36.70A.040. Clark County is also one of the three Washington counties within the NSA. As a "gorge county," Clark County implements The Columbia River Gorge National Scenic Area Act (the "Act"), 16 U.S.C. §§ 544–544p, through its local scenic area ordinance. See CCC 40.240. It should be apparent to FOG that Clark County is a full planning county that also operates as a "gorge county," subject to both the provisions of the GMA and the Act. These two premises are not mutually exclusive.

Applicable caselaw clearly shows that the GMA applies within the NSA. Although it is true that certain Washington-specific laws, such as SEPA, do not apply to actions undertaken by the Columbia River Gorge Commission ("CRGC"), Washington gorge counties typically apply these laws in a normal manner to land use actions within the NSA, except when there is a conflict between the state law's

requirements and the Act authorities. *See Klickitat Cnty. v. Columbia River Gorge Commission*, 770 F. Supp. 1419 (E.D. Wa. 1991); *See also, Save Our Scenic Area v. Skamania Cnty.*, 183 Wash.2d 455, 352 P.3d 177 (2015). FOG overlooks this key distinction in its comment letter. In fact, FOG has alleged violations of the GMA within the NSA in the past.<sup>1</sup> The application of the GMA and SEPA within the NSA has been normal practice for gorge counties for many years. The GMA clearly applies within the NSA.

Notably, FOG failed to cite to any authority in support of their statement that the GMA does not apply within the NSA. Because CCC 40.550.030 applies development agreements authorized pursuant to the GMA, and the GMA clearly applies within the NSA, **FOG's August 12, 2019 comment letter should be disregarded.**

Thank you for providing the opportunity to comment on the proposed development agreements code addition.

Very truly yours,

JORDAN RAMIS PC



Jamie D. Howsley

cc: Oliver Orjiako, Community Planning Director  
Ahmad Qayoumi, Public Works Director  
Matt Hermen, Planner III

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<sup>1</sup> Ironically, FOG has acknowledged in the past that the GMA applies within the NSA:

“Under the GMA, all counties must designate “[n]atural resource lands.” RCW 36.70A.170. In 2005, the County adopted Resolution 2005–35, which declared “the designation of forest and agricultural land within the [Columbia River Gorge] National Scenic Area and the development regulations adopted under SCC Title 22 meets the requirements of the Growth Management Act (RCW 36.70A) for the conservation of forest, agricultural, and mineral resource lands.” For purposes of this appeal, **Friends acknowledges** that the County's adoption of Resolution 2005–35 satisfied its statutory obligation to designate natural resource lands.”

*See Save Our Scenic Area v. Skamania County*, noted at 180 Wash.App. 1017, 1 (Mar. 31, 2014) [Unpublished Opinion] (emphasis added).