



**Skamania County Planning Department
Staff Report to Planning Commission
September - 2016**

**Review of 2007 Comprehensive Plan
Conservancy Designation and UNM Zoning Designation**

The Board of County Commissioners (BOCC) may initiate any change or addition to a comprehensive plan when the BOCC deems it is the public's best interest. *See e.g.*, RCW 36.70.430. The BOCC directed the Planning Commission to review the 2007 Comprehensive Plan's Conservancy designation and the Unmapped zoning designation for consistency, and consider whether any revisions should be made.

The question arose as FOCG (Friends of the Columbia Gorge) appealed the County's 2007 Comprehensive Plan in 2012, five years after Plan adoption. The litigation has now been pending for eight years. FOCG has recently asked the superior court to devote three days of its trial calendar to determining whether or not the UNM zoning designation and the Comprehensive Plan designation are consistent. In the interest of conserving scarce resources, Skamania County is assessing whether further clarification or revision of decisions made eight years ago, in 2007, is in the public interest.

Background Information - Planning History

A Comprehensive Plan serves as a guide to development and adoption of official controls (e.g., Zoning). Skamania County adopted its first comprehensive plan in 1977. The 1977 plan covered a portion of the County, applying only to lands south of the Gifford Pinchot National Forest, or roughly the lower quarter of Skamania County. The County later amended the original 1977 Comprehensive Plan as follows:

- The National Scenic Area Subarea Plan in (1991), which covered 90,204 acres;
- The Carson Subarea Plan (1994), which included 1,921 acres;
- The Westend Subarea Plan (2007), which included 68,383 acres; and,
- The Swift Subarea Plan (2007), which included 89,555 acres.

In addition, the County, although not required to do so, completely updated its 1977 Comprehensive Plan. The update process commenced in late 2005, included numerous meetings and hearings, and culminated in adoption on July 10, 2007. The 2007 Comprehensive Plan designated all lands within Skamania County borders outside of the National Scenic Area and the three subareas (Carson, Westend, and Swift).

The three land use designations in the 2007 Comprehensive Plan are Rural I, Rural II, and Conservancy. RCW 36.70.540 requires comprehensive plans and zoning regulations to be consistent. It has always been the County's position that the Comprehensive Plan's Conservancy designation and the UNM zoning classification are consistent.

Background Information - Litigation

SOSA (Save Our Scenic Area) appealed that 2007 Comprehensive Plan in 2008, but the appeal was dismissed with prejudice in 2012 for want of prosecution. SOSA subsequently coordinated efforts with FOCG (Friends of the Columbia Gorge) to re-file essentially the same appeal several years later, in 2012. In a 5-4 decision, the State Supreme Court determined that despite the five year delay in filing, the FOCG/SOSA appeal of the 2007 Comprehensive Plan could proceed. The reasoning was based on the County's adoption of a series of moratorium ordinances and whether or not those actions effectively suspended the appeal period through 2012, when the last moratorium ordinance expired.

By its nature, an "unmapped" classification serves as a placeholder, rather than permanent designation. Unlike full planning counties, the County is not obligated to set forth zoning classifications by ordinance, and unlike those counties, it retains the prerogative to leave these areas permanently "unmapped." Although it retains that prerogative, the County reiterated by way of its moratorium ordinances that it intended to update those areas so that they would no longer remain "unmapped." From 2007 to 2012, these areas effectively lacked any classification, and there was nothing for SOSA to challenge until the County made its final decision.¹

While the Court allowed the FOCG/SOSA appeal to proceed, the Court did not determine whether the 2007 Comprehensive Plan's Conservancy Designation is consistent with the County's Unmapped Zoning Designation. But, even if inconsistent, the Court also recognized that the County has no duty to engage in land use planning here, and is fully entitled to leave lands zoned as "unmapped" with that designation.

Consistency of 2007 Comprehensive Plan Conservancy Designation and Unmapped Zoning Classification

Skamania County's position as always been that the Unmapped Zoning designation is consistent with the 2007 Comprehensive Plan. This position has been held ever since Plan adoption in 2007. For example, when the Whistling Ridge Wind Project was proposed for location on land designated as Unmapped, and was reviewed for consistency with the 2007 Plan and Unmapped zoning designation, Skamania County

¹ *Save Our Scenic Area & Friends of the Columbia Gorge v. Skamania County*, 183 Wn.2d 455, 469-470, 352 P.3d 177 (2015).

determined the project was consistent with both. Although FOCG appealed, EFSEC and the Supreme Court respected the County's determination.

This consistency is documented in the plain language of both the 2007 Comprehensive Plan and the County's zoning code. Attached is Table 2-1 from the 2007 Comprehensive Plan which identifies the zoning designations which are consistent with the Unmapped or UNM zoning. Table 2-1 identifies UNM as being consistent with the Conservancy designation.

Table 2-1 shows the comprehensive plan designations and the consistency of each potential zoning classification. The Plan Designation to Zoning Classification table is provided to identify those zoning districts that are consistent with each plan designation. Those districts, which are not consistent with the plan designations, are not permitted within that plan designation. This information is necessary to determine when, where and under what circumstances these designations should be applied in the future. The table indicates consistency (C) and non-consistency (NC).²

Table 2-1 provides that the UNM designation is consistent with the Comprehensive Plan's Conservancy Designation. As with Table 2-1, the County's zoning code also provides that the UNM designation is consistent with the Comprehensive Plan's Conservancy designation. Ch. 21.24 SCC, Relationship to Comprehensive Plan, see specifically tables as SCC 21.24.021 and .031. That chapter is also attached.

If the County wished to rezone the UNM lands, Skamania County would presumably amend both Ch. 21.24 SCC and the 2007 Comprehensive Plan, Table 2-1. However, there is no requirement to do so.

Unlike full planning counties, the County is not obligated to set forth zoning classifications by ordinance, and unlike those counties, it retains the prerogative to leave these areas permanently "unmapped."³

Consistent with this holding, the County could repeal its 2007 Comprehensive Plan with respect to all areas zoned UNM. Given the effort the County has put into updating its planning, this is not desirable, but the County's resources at present are too limited to engage in the scale of planning being requested.

² 2007 Comprehensive Plan, p. 22.

³ *Save Our Scenic Area & Friends of the Columbia Gorge v. Skamania County*, 183 Wn.2d at 469-470.

County Options. The County has several options for completing this review. Five are identified here.

1. **No Action.** The County could elect to take no further action.
2. **Extensive Comprehensive Plan Amendments and Rezones.** The County could voluntarily amend its 2007 Comprehensive Plan and rezone the remaining UNM designated acreage. Given the amount of acreage involved, this would require significant time and resources, which are not available.
3. **Repeal 2007 Comprehensive Plan with Respect to Lands Zoned UNM.** The County has invested considerable resource in land use planning. The County Comprehensive Plan, before the extensive update effort, covered only a portion of the County. From a land use planning perspective, although not required, it is preferable for the Comprehensive Plan to cover the entire County.
4. **Confirm its Position.** The County could reaffirm its interpretation of the 2007 Comprehensive Plan, that as the Plan states, it is consistent with the UNM zoning classification. Draft findings on same are proposed below.

Finding 1. **The 2007 Comprehensive Plan and the Unmapped (UNM) Zoning Classification Are Consistent.** Since Skamania County updated its 1977 Comprehensive Plan in 2007, it has always been the County's position that the Unmapped zoning classification is consistent with the 2007 Comprehensive Plan, as the Comprehensive Plan clearly and unambiguously sets forth in Table 2-1, and as the zoning code sets forth in Ch. 21.24. For nearly a decade, the County's position has remained the same.

Finding 2. **The County May Address this Issue in Future, but Need not Adopt Further Revisions Now.** The fact that the 2007 Comprehensive Plan clearly and unambiguously provides for the UNM zoning designation does not mean that the County will never rezone UNM designated acreage. Indeed, the County has rezoned most of the acreage previously designated as UNM and expended significant resources in that effort. However, County resources are extraordinarily limited and the County is not in a position to embark on this effort at present. As the State Supreme Court recognized:

Economically, the area has seen a significant decline since the spotted owl was listed as an endangered species, which greatly reduced the output of the lumber industry in the region. Much of the land in the county is owned by the state and federal governments, protected under various statutes,

or used for commercial forest land. Only three percent of the county is available for residential, commercial, or industrial use.⁴

Due to these ongoing exigent circumstances, the County decided in 2012 that it was not entertaining further revisions to the UNM classification. Should the forest industry recover and tax base erosion issues be addressed, the County may be inclined to revisit the issue. However, there is no inconsistency requiring revisions now. The 2007 Comprehensive Plan clearly and unambiguously provides for the Unmapped zoning classification.

5. Amend the Comprehensive Plan. The County could add the above findings to the 2007 Comprehensive Plan as policies. The point of making such revisions would be to set forth the County's long-standing position on these issues within a readily accessible planning document.

Recommendation

Planning Staff recommends that the Planning Commission approve a motion recommending that the Board of County Commissioners adopt the above findings outlined in Option 4, regarding 2007 Comprehensive Plan Conservancy designation and UNM zoning designation consistency.

⁴ *Friends of the Columbia Gorge, Inc. v. EFSEC*, 178 Wn.2d 320, 328, 310 P.3d 780 (2013).