



60-220(1).<sup>2</sup> Since the issues presented here are primarily legal, our inquiry must determine whether the county's approval violates a provision of applicable law and is prohibited as a matter of law, or improperly construes the law, based on the record before us.

The Friends assert the county erred by approving the cluster development because the applicant did not meet all of the requirements of the ordinance. The county should not have accepted the application in the first place since, according to the Friends, it is for a parcel of property that is not separately identifiable. In addition, the Friends argue the county did not comply with the ordinance by processing the application as a land division and by failing to require permanent protection for the remaining portion

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<sup>2</sup>Rule 350-60-220(1) provides:

The Commission shall reverse or remand a land use decision for further proceedings when:

- (a) The governing body exceeded its jurisdiction;
- (b) The decision is unconstitutional;
- (c) The decision violates a provision of applicable law and is prohibited as a matter of law; or
- (d) The decision was clearly erroneous or arbitrary and capricious.
- (e) The findings are insufficient to support the decision;
- (f) The decision is not supported by substantial evidence in the whole record;
- (g) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);
- (h) The decision improperly construes the applicable law; or
- (i) A remand is required pursuant to 360-60-090(2)(d).

of the property as open space. Finally, the Friends contend the county erred by not analyzing the scenic impact of the development, by approving the application without a cultural resources survey and by not requiring a wildlife management plan.

In response, the county argues the property meets the requirements for cluster development because the nature of the action undertaken is only a land division. The county also submits the remaining open area is protected by a condition of development and, as to concerns about cultural resources and wildlife, the actual analysis of impacts may take place in the future on a site-by-site basis.

In our review, we turn to the text of the ordinance. The section entitled "Cluster Development Standard" has several requirements. First, the ordinance provides approval of a cluster development "shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land." Sec. 22.08.020(D)1.<sup>3</sup>

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<sup>3</sup>The complete text of the ordinance is set forth here:

**Cluster Development Standards (GMA only).**

1. Where authorized, land divisions in the General Management Areas may create parcels smaller than the designated minimum size and may include a bonus in order to cluster new dwellings. Approval of cluster developments shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land.
2. To approve a cluster development, the County must find that clustering new dwellings will provide a siting opportunity not available through conventional parcel-by-parcel development. These opportunities include, but are not limited to, siting new dwellings to:

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<sup>3</sup>(...continued)

- a) Be located in areas with screening vegetation or other features that reduce visibility of development from Key Viewing areas.
  - b) Avoid significant landscape features.
  - c) Protect the existing character of the landscape setting.
  - d) Reduce interference with movement of deer or elk winter range.
  - e) Avoid areas of known cultural resources.
  - f) Consolidate road access, septic drainfields, or other development features to reduce impacts associated with grading or ground disturbance.
  - g) Reduce adverse effects upon riparian areas, wetlands, natural areas, rare plants, sensitive wildlife sites or other natural resources.
  - h) Increase the likelihood of agricultural or forest management on the undeveloped land left by the cluster development.
3. Following cluster development, no further division of any resulting parcel for residential purposes shall be allowed until the subject parcel is included within the boundary of an Urban Area.
4. No parcel in a cluster development may be smaller than one acre in a 5-acre Residential or 10-acre Residential designation or two acres in a Small-Scale Agriculture or Small Woodland designation.
5. Cluster development may create up to 25 percent more parcels than otherwise allowed by the minimum parcel size on lands designated 5-acre or 10-acre Residential and up to 50 percent more on lands designated Small-Scale Agriculture or Small Woodland.
6. Any division in a cluster development may create at least one additional parcel.
7. At least 75 percent of land subject to a cluster development shall be permanently protected as undeveloped land. The County shall ensure permanent  
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Second, the ordinance directs the county to determine that the proposed cluster development will provide a siting opportunity not available through "conventional parcel-by-parcel development". Sec. 22.08.020(D)2.

Third, the ordinance requires the county ensure at least seventy-five percent of the land subject to cluster development is permanently protected in an undeveloped state. Sec. 22.08.020(D)2,7.

These standards are based on recognition of the special nature of cluster development. It is an incentive for good land use planning that provides resource protection in excess of conventional development. In complying with these additional restrictions, a property owner obtains what is, in effect, a density bonus. The economic, environmental and social advantages of cluster developments are well-documented. As a recent text expressed it, "...practical alternatives to conventional zoning do in fact exist...the special places that give our rural and semi-rural communities their distinctive character need not all be cleared, graded and paved over..." Designing Open Space Subdivisions, Randall Arendt, ii (1994). See also Land Classification Planning in Urban Land Use Planning, Edward Kaiser,

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<sup>3</sup>(...continued)  
protection for open areas created by cluster development.

8. Contiguous parcels in the same ownership or in separate ownerships may be consolidated and redivided to take advantage of cluster development bonuses.

Sec. 28.08.020(D).

David Godschalk, F. Stuart Chapin Jr., 290 (1995)<sup>4</sup>; Design With Nature, Ian McHarg, 117 (1969) (“...it is necessary to understand nature as an interacting process that represents a relative value system, and that can be interpreted as proffering opportunities for human use -- but also revealing constraints, and even prohibitions to certain of these.”); A Sand County Almanac, Aldo Leopold, 237 (1968) (“The Land Ethic”).

With these explicit requirements at hand, we address the principal issue before us: the county’s contention that “a cluster development only involves the division of land.” (Respondent’s Brief, 7) Under this view, once the parcels are created, development is not allowed and the consideration of impacts on resources will occur at a later point in time.

In our analysis, we apply basic rules of construction to the provisions of the ordinance. The words are used in accord with their plain meaning. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 828 P.2d 549 (1992). They are construed in a manner that best advances their purpose. Allison v. Housing Authority, 118 Wn.2d 79, 821 P.2d 34 (1991). They are applied so that meaning is given to each term. Clark v. Pacificorp, 188 Wn.2d 167, 822 P.2d 162 (1991).

Based on the language of the standards in the ordinance outlined above, we reject the determination that the proposal before us is a cluster development. We hold that in order to obtain approval for a cluster development, the applicant must meet all of

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<sup>4</sup>F. Stuart Chapin, Jr., Professor Emeritus, University of North Carolina, participated in drafting the Management Plan for the National Scenic Area as one of the original members of the Gorge Commission.

the requirements in the ordinance. We reverse and remand the decision below and conclude as a matter of law that the action does not meet the provisions in the ordinance for a cluster development.

In adhering to the requirements for a cluster development, we ensure consistency between the purposes and standards of the Act, the Management Plan and the ordinance. As we determined in another recent case:

To construe the requirement to mean the property includes only one twenty-acre parcel requires us to disregard the remaining portion of the provision relating to constituent parcels. We decline to do this because it conflicts with our responsibility to apply the law as it is written, in accord with its precise terms. Moreover, it is inconsistent with the purposes and standards of the Scenic Area Act.<sup>5</sup> 16 U.S.C. § 544a, 544d; See also

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<sup>5</sup>The purposes of the Act are:

- (1) to establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and
- (2) to protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1).

16 U.S.C. § 544a.

The Act also provides standards and includes the Commission shall develop land use designations that shall:

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- (3) protect and enhance open spaces;

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- (8) require that residential development outside urban areas take place without adversely affecting the scenic, cultural, recreation, and natural resources of the scenic area;

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(continued...)

Friends of the Columbia Gorge v. Skamania County, CRGC No. COA-S-95-01, 9 (November 16, 1995) ("The fidelity to the precise provisions of the National Scenic Area Act and the legislative history revealed in prior decisions of the courts of Washington and Oregon in interpreting the law underscore the standard we must adhere to in this appeal.").

Friends of the Columbia Gorge v. Skamania County, CRGC No. COA-S-95-02, 5-6 (June 27, 1996).

Moreover, the intent of the language in the ordinance is equally significant. The requirements for cluster development clearly contemplate a greater degree of planning and foresight in accommodating increased density.<sup>6</sup> To require less scrutiny and simply treat the matter as a land division is contrary to the larger public interest in comprehensive planning in the National Scenic Area. The broader conception of stewardship embodied in

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16 U.S.C. § 544d(d)(3), (8).

<sup>6</sup>One member of the Commission expressed this point in deliberations:

...preliminary work is usually done ahead of time...cluster development is a bonus option provided to a developer or property owner and certain requirements have to be met and once they are met, then they are allowed to do this. (Commissioner Reinig)

Another member of the Commission reached the same conclusion:

It is clear to me that the concept of cluster development has a certain intent and spirit about it that is an exchange. You give additional protection to resources in exchange for a density bonus in getting more buildable sites on the property. (Commissioner Southworth)

Similarly, a third member of the Commission stated as follows:

I don't think their interpretation [the county] is reasonable...it is completely contrary to our own understanding of how a cluster development works, as defined in common planning terms and our management plan lays out. (Commissioner Batson)

these requirements is a fundamental part of the regional framework for the Gorge created by Congress with the agreement of the states.

Dated this 24 day of July, 1997.

  
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ROBERT THOMPSON  
Chair