



RESOLUTION NO. 2008-01-18

1 A RESOLUTION relating to the March 2, 2004, Memorandum of Understanding
2 between Clark County and the Cowlitz Indian Tribe.

3 WHEREAS, on March 2, 2004, Clark County and the Cowlitz Indian Tribe (the Tribe)
4 entered into a Memorandum of Understanding (MOU) which becomes effective only if the
5 United States Secretary of the Interior accepts the Tribe's application for federal trust recognition
6 of approximately 152 acres owned by the Tribe and located in unincorporated Clark County
7 adjacent to the 319th Street interchange with I-5 near the City of La Center; and,

8 WHEREAS, the MOU is intended to mitigate for impacts resulting from federal
9 immunity from local or state taxing and regulatory authority should trust status be granted; and,

10 WHEREAS, citing an MOU provision requiring extension of public water service the
11 Court of Appeals on October 17, 2007 in *Alexanderson v. Board of Commissioners*, 135
12 Wn.App. 154, ruled that the MOU constituted a de facto amendment of the county
13 comprehensive plan, thus affording the Western Washington Growth Management Hearings
14 Board review jurisdiction; and,

15 WHEREAS, by Order on Motions on Remand entered on June 19, 2007, the Hearings
16 Board (1) concluded that the Court of Appeals' decision accorded it jurisdiction over the MOU as
17 a whole and that the MOU was not adopted in conformance with GMA public participation
18 requirements, (2) issued a determination of invalidity, and (3) remanded the matter to the county
19 to address GMA noncompliance; and,

20 WHEREAS, the Hearings Board June 19, 2007, Order was affirmed by the Thurston
21 County Superior Court on December 14, 2007; and,



22 WHEREAS, Clark County has sought further review of this matter by the Court of
23 Appeals; and,

24 WHEREAS, a GMA compliance hearing is pending before the Hearings Board; and,

25 WHEREAS, County eligibility for certain grant funding may hinge on the Hearings
26 Board's compliance determination; and,

27 WHEREAS, under RCW 36.70A.302, a Hearings Board "determination of invalidity" is a
28 term of art, implicating vesting issues for development applications; and,

29 WHEREAS, it is appropriate for Clark County to indicate its position generally regarding
30 the MOU given present circumstances; now, therefore,

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

33 Section 1. Unless the Hearings Board's June 19, 2007, Order on Motions on Remand is
34 overturned on further appellate court review, Clark County will not seek to implement or enforce
35 its provisions.

36 Section 2. Clark County should be found by the Hearings Board to be compliant with the
37 GMA.

ADOPTED this 29 day of January, 2008.

Attest:


Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

By 
Betty Sue Morris, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By 
Rich Lowry
Chief Civil Deputy Prosecuting Attorney

By _____
Marc Boldt, Commissioner

By _____
Steve Stuart, Commissioner