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Board of Commissioners

Clark County Board of Commissioners
P.O. Box 5000
Vancouver, Washington 98666

February 28, 2013

Re: Request for Rezoning and Defining Rural and Resource Lands in Clark County
This information is to be placed in the public record

Dear Board of Commissioners,

According to the New Webster's Dictionary, *Quality* means; *a particular property inherent in a body or substance; an essential attribute or characteristic; character or nature; degree of excellence;* and *life* means: *existence; vitality; condition of plants, animals, etc. in which they exercise functional powers.* In other words, "quality of life" is, *a particular, essential attribute or characteristic with a degree of excellence in one's existence, vitality and condition whereby they are in power.* The term is subjective and not objective, but it is a term commonly used by Clark County planners when describing what they want to preserve in the rural lands. But the question needs to be asked; *Is it proper for government to take many people's quality of life away, in order to give a few people their quality of life.?* When would this be appropriate and legal? Certainly in the case of quantified, indisputable health and safety concerns. But, is it appropriate for the purpose of land use planning? If 90% of the people say they are not in favor of a particular plan, and 10% say they are, is it proper and legal to favor the 10%?

In the **State of Washington Growth Management Act,** in **RCW 36.70A.050 Guidelines to classify agriculture, forest, and mineral lands and critical areas,** there is no mention about quality of life. In **RCW36.70.060 Natural resources lands and critical areas - Development regulations,** there is also no mention of quality of life. But, those items do say that "*The department shall consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural resources regarding forest lands and mineral resource lands and the department of ecology regarding critical areas. In addition it shall consult with interested parties..cities.. counties..developers..builders..owners of agricultural lands,..forest lands..mining lands..economic development agencies... environmental organizations..special districts..governor's office..federal and state agencies...Indian tribes.* It does not limit consultation to environmental organizations. These guidelines "*shall be minimum guidelines...*". It also says "*The guidelines....under this section regarding classification of forest land shall not be inconsistent with guidelines adopted by the department of natural resources. It goes on to say that "Counties and cities shall require that all.....permits issued for development activities on or within five hundred feet of, lands designated as agricultural lands forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands forest lands or minor resource land....* The forest, agriculture, mineral, critical and rural lands have particular GMA criteria that are to be used. These directives seem pretty straight forward and yet, Clark County has not complied. Instead, they have followed the dictations of environmental groups to preserve their "quality of life", while eliminating

"quality of life" for those affected. In doing so, they have forced over 90% of the parcels in the rural lands, affected by the GMA directives, into non-conforming lots. Most of these parcels were determined to be agriculture, forest and large lot rural with a felt pen and an aerial map, with total disregard for the specific criteria outlined and required by the GMA. Forest land was simply outlined with a felt pen, if a large lot existed and vegetation was seen on an aerial map. Then the land and surrounding area was zoned in large lot forest. The same is true for the zoning of agriculture land. There is a great deal of land on steep slopes and solid rock under the soil surface, that remain in those zones today. Large lot rural was determined if the parcel was located by a stream on an aerial map, even though most of those areas had long been established as 1, 2 1/2 or 5 acre lots. Directive was given the planning staff that nothing less than five acres could be in a rural designation, ignoring the small parcels and the rural character that had been established long before the GMA. This was not the intent of the Legislature when they adopted the new planning tool. Specific guidelines were set out by the GMA to honestly and reasonably place zones on land that is appropriate to the zone, but Clark County has yet to follow them. No where in the GMA does it say the county is to lock up as much rural land as they can, however they can, and leave it that way. For almost twenty years now, that has been the planning strategy for lands outside the urban areas in Clark County.

Rural land is not part of the GMA directives for agriculture, forest and mineral lands and critical areas. Yet, Clark County has collectively combined rural with agriculture, forest and mineral lands in the **2004 Comprehensive Plan, Chapter 3 - Rural and Natural Resource** documents. The GMA clearly separates rural from resource. There again, quality of life is not mentioned. In **RCW 36.70A070 Comprehensive plans-Mandatory elements. (5) Rural element**. It states, "*Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element: .....shall develop a written record explaining how the rural element harmonizes the planning goals...shall provide for a variety of rural densities, uses,... facilities,.... services needed to serve the permitted densities and uses...consistent with rural character.* Logic dictates that "rural character" in a particular county would be that which was in place, on the ground, prior to GMA planning. It would probably be different in each county. When rural zoning in Clark County created over 90% of the parcels in the rural area as non-conforming, rural planning was not consistent with this county's rural character. One would argue that rural character is also subjective. Webster's says *rural* is *pertinent to the country; pertinent to farming or agriculture; rustic; pastoral,* and *character* is *any distinctive mark; an essential feature;*. Therefore, rural character is distinctive rustic, pastoral country. Clark County rural character has been for decades, what was on the ground prior to the GMA planning, when there was little or no zoning. Once again, Clark County has failed to comply with the GMA.

Although there is a guideline publication called "Defining Rural Character and Planning for Rural Lands" offered by DCTED that can be useful in the planning process, there is

no GMA directives, in statute, that direct counties to draft a separate "rural plan" in their comprehensive plan. In fact, the courts direct otherwise.

In the **March 12, 1999** decision in the **Court of Appeals of the State of Washington Division II Case No. 22164-II, Clark County Natural Resources Council, Vancouver Audubon Society, Coalition For Environmental Responsibility and Economic Sustainability (CERES), Rural Clark County Preservation Association (RCCPA) and Loo-Wit Group Sierra Club** verses **Clark County Citizens United, Inc.,** the court determined that "*By operation of law, such a county designates as "rural" any land "not designated for urban growth, agriculture, forest or mineral resources". .....In doing this, a county must consider "the growth management population projection made for the county by the office of financial management (OFM)." The superior court said in part:* ***It is evident the rural land use density regulations were driven in part by earlier Growth Management Hearing Board decisions requiring urban population plus rural population to equal Office of Financial Management population forecasts. This formulaic view of the GMA requirement is fatally flawed. There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for. The Board's requirement to, in essence, require a vacant buildable lands analysis for the rural area was erroneous. This board decision, however, compelled the County to downzone substantial portions of the rural areas in order to meet the Board's apparent requirements.*** The Court of Appeals ruled that "*Based on the foregoing, we conclude that the* ***GMA does not require counties to use OFM's projections as a cap on non-urban growth****. The Board exceeded its authority, and the trial court did not err by reversing the Board's ruling.* In the **April 4, 1997** decision in the **Superior Court of Washington for Clark County, case No. 96-2-00080-2 Clark County Citizens United, Inc; Michael Achen and Catherine Achen** verses **Western Washington Growth Management Hearings Board,** the findings were even more encompassing. The court ruled that:

1. .. the Board is not above the law which gave it its existence.

2. The agri-forest resource designations violate the GMA.

3. ...the failure to solicit meaningful public input for the agri-forest resource lands violated the public participation provisions of the GMA,

4. The Comprehensive Plan EIS issued by the County violates the State Environmental Policy Act (SEPA).

5. Rural Land Densities. The County's rural and resource development regulations are inconsistent with the GMA.

6. There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those areas is provided for.

7. The County's decision to follow the Boards lead was unfortunate. The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the terms of the GMA.

While Clark County Citizens United, Inc.'s opponents provided pro-bono legal aid, the rural citizens of Clark County paid approximately $260,000.00 to be heard in court. When the remand happened for 36,000 acres and later 3,500 acres, the same lot sizes were just placed on different lots and no deference was given the court decisions. A committee was set up by the county with predominantly environmental members with a consensus vote required. If an opposing member or members were absent from the vote, the consensus formed on the environmental side with large lot zoning. This resulted in continuation of 90% of the parcels in a non-conforming status.

In addition, Judge Poyfair gave verbal conversation indicating that the agriculture designations and criteria should be reviewed again for compliance, but he couldn't make a ruling, as the public record in the case wasn't conclusive.

Other court actions by Pacific Legal Foundation, also dictate that certain criteria, language and ordinances that affect rural land, in the Clark County Comprehensive Plan, needs to be reconsidered and changed.

In the Swinomish v. Western Washington Growth Management Hearings Board, September 2007, the Washington Supreme Court ruled that the GMA requires only protection of critical areas in their current state, not additional restrictions on land use to restore or "enhance" the landscape to its previous unaltered state.

In the Biggers v. City of Bainbridge Island , September 2007, the Washington Supreme Court struck down the City of Bainbridge Island's moratorium on shoreline development as unconstitutional. .....the moratorium was a "clear violation of property owners rights"....

In Citizens Alliance for Property Rights v. Sims, July 2008, the Washington Court of Appeals ruled against a King County ordinance that forced all rural landowners to set aside 50% to 65% of their land as "resource area" and off-limits....

In Futurewise v. Anacortes, July 2008, the Washington Supreme Court ruled that the Shoreline Management Act (SMA) regulates shorelines, not the GMA.

In Thurston County v. Western Washington Growth Management Hearings Board ,

August 2008, the Washington Supreme Court ruled that the growth boards do not have the authority to set legislative policy, overturning Futurewise's claim that the county allowed more land to be developed than was needed to accommodate its projected population growth.

In Olympic Stewardship Foundation v. Jefferson County, November 2008, the growth board agreed that the board is bound by the Supreme Court's decisions in Biggers and Futurewise.

It is time for Clark County to comply with the law and follow directives given in the GMA regarding forest, agriculture, mineral, critical and rural land. There have been no meaningful changes to the rural and resource lands zoning and corresponding ordinances, since the land was improperly and illegally zoned in 1994 and 1999.

Therefore, Clark County Citizens United, Inc. requests that rural and resource zoning and land use ordinances be revisited in 2013-2014, as the original zoning occurred in 1994, and was to be reconsidered in the 20 year Comprehensive Plan in 2014. During such reconsideration and review, CCCU would expect Clark County to use the true intent and meaning of the GMA, giving deference to the court decisions and using both as planning guides.

Perhaps the "quality of life" can then be returned to the majority of landowners affected. Thank you for your time and consideration to this most serious matter. Clark County Citizens United, Inc. looks forward to hearing from you, at your earliest convenience.

Sincerely,

Carol Levanen, Secretary
Clark County Citizens United, Inc.
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