

**Schroeder, Kathy**



**From** Orjiako, Oliver  
**Sent** Thursday, September 10, 2015 3 16 PM  
**To** Alvarez, Jose  
**Cc** Schroeder, Kathy  
**Subject** FW EIS Comment Letter to Clark County Planning Commission 09-10-2015  
**Attachments** EIS Comment Letter to Clark County Planning Commission 09-10-2015 docx

**Follow Up Flag** Follow up  
**Flag Status** Flagged

FYI, and for the record Thanks

Oliver

---

**From** Steve Horenstein [<mailto:Steve@horensteinlawgroup.com>]  
**Sent** Thursday, September 10, 2015 3 07 PM  
**To** Orjiako, Oliver, Euler, Gordon  
**Cc** Karen Jones  
**Subject** EIS Comment Letter to Clark County Planning Commission 09-10-2015

Oliver and Gordy,

Comments on the Supplemental EIS

**HLG** | Stephen W Horenstein  
ATTORNEY AT LAW  
500 Broadway Suite 120  
Vancouver, WA 98660  
Direct (360) 597-0965  
Facsimile (360) 696-5859  
[LINKEDIN](#) | [WEB](#) | [FACEBOOK](#)

**CONFIDENTIALITY NOTICE** This e mail message may contain confidential or privileged information. If you have received this message by mistake please do not review, disclose, copy, or distribute the e mail. Instead, please notify us immediately by replying to this message or telephoning us. Thank you.

**IRS CIRCULAR 230 NOTICE** Unless specifically designated therein, any advice that may be expressed above (including in any attachments) as to tax matters was neither written nor intended by the sender or Horenstein Law Group PLLC to be used and cannot be used by you or anyone else for (i) the purpose of avoiding tax penalties that may be imposed under the United States Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction, plan, or arrangement. Each taxpayer should seek advice from their own independent tax adviser based on the taxpayer's particular circumstances.

attached

I will attend and testify at the hearing this evening

Best Steve



STEPHEN W HORENSTEIN  
STEVE@HORENSTEINLAWGROUP.COM  
DIRECT 360 597 0965

September 10, 2015

BUSINESS  
LAND USE  
REAL ESTATE  
GOVERNMENT STRATEGIES

Board of Clark County Councilors  
Clark County Planning Commission  
1300 Franklin St  
Vancouver, WA 98660

Re Planning Alternatives

Dear Councilors and Commissioners

The purpose of this letter is to provide comments on the supplemental Environmental Impact Statement for the 2016 Growth Management Plan update with specific reference to Alternative 4

Washington's Growth Management Act ("Act") contains 13 goals. However, the overarching fundamental policy principles behind the Act are straightforward: Urban Areas will be developed with significant density. Rural areas shall remain Rural.

Included in the environmental review very late in the GMA planning process, Alternative 4 flies in the face of maintaining the rural character of those portions of Clark County that have neither been added to Urban Growth Areas or provided with a special designation such as a Rural Commercial Center nor a Rural Industrial Land Bank, both of which are specifically provided for in the Act and allow for Urban density in the Rural areas.

Under Alternative 4, the existing R-5 zones would also contain R-1 (1du/1ac) and R-2.5 (1du/2.5ac) lots and would add up to 9880 new parcels/12,400 new lots at full build out. The transportation and other infrastructure that this creates are enormous and are required to be addressed in the Capital Facility Plans that must accompany the GMA plan update. Indeed, Alternative 4 will provide for the potential of new development on 65,500 acres!

The impact of Alternative 4 is not addressed in the Supplemental EIS in areas that include transportation, utilities and other public facilities, fish and wildlife resources, water resources and impact on soils and forested areas. If Alternative 4 were chosen, much more environmental review and capital facilities planning would need to be undertaken to be able to defend the GMA plan on appeal.

It is the case that the Act, when it became the law of land use planning in Washington, had a profound effect on rural landowners. For some it was a

500 E Broadway, Suite 120  
Vancouver Washington  
98660

Tel: (360) 696 4100  
Fax: (360) 696 5859

[horensteinlawgroup.com](http://horensteinlawgroup.com)

018269

positive, it allowed them to live in a rural environment, perhaps to maintain their farm and protected them from sprawling development. For others, the Act had the effect of eliminating all plans for creating smaller parcels for family members or sale and redevelopment of land long held for this eventual purpose.

I have been struck by the fact that for perhaps the first time since the Act became law, the experienced land use attorneys in Southwest Washington, on both the environmental side and the development side, are all of one mind. All of us know from extensive experience that Alternative 4 violates the ACT and will not be upheld.

Every major GMA plan adopted in Clark County to date has been the subject of appeals to the Western Washington Growth Management Hearings Board and sometimes beyond. The introduction of Alternative 4 has created expectations on that part of some rural landowners that will not be met. This unfortunately has become divisive and will most certainly lead to litigation, which will slow down the implementation of the new plan and inhibit growth (Jobs and homes) in Clark County.

The following summary of Washington State Growth Management Hearing Board ("Board") decisions and orders stand for the proposition that Alternative 4 is not a viable proposition under the GMA because 1) the local Circumstances do not support Alternative, 2) Alternative 4 does not reflect Clark County's existing rural landscape, and 3) Alternative 4 does not confine R-1 and R-2 5 lots to Limited Areas of More Intensive Rural Development (LAMIRDs).

#### **1 Local Circumstances Do Not Support Alternative 4**

In *Brodeur v Benton County*, (Case No. 09-1-0010c) Benton County amended its "Future Land Use Map in the Land Use Element" to allow 1,120 acres, originally having a rural maximum density of 1 du/5ac, to have a rural maximum density of 1 du/1ac— i e , the same density as R-1 lots under Alternative 4. However, the Board found the amendment to (a) be "inconsistent with the county's Rural Character" and (b) "enabl[ed] prohibited urban growth within a Rural Area," because, among other things, there was "no evidence in the record showing that Benton County considered local circumstances in determining an appropriate density on the subject property, as per RCW 36 70A 070(5)(a)." See Final Decision and Order at 14–20 (May 4, 2009). Consequently, Benton County rescinded the amendment at issue and "re-designated approximately 1,120 acres of rural lands back to RL-5 [(one dwelling unit per five acres)]" Order of Compliance at 3 (July 16, 2010).

In short, *Brodeur* suggests Alternative 4 is not a viable proposal unless local circumstances support the inclusion of R-1 and R-2.5 lots within the R-5 zones. However, the local circumstances run contrary to Alternative 4. Specifically, the 2004-2024 Clark County Comprehensive Plan (the CCCP), expressly states that “future amendments to the 20-Year Plan map must be made in a manner, which is consistent with the[] general descriptions [provided in] Tables 1.4, 1.5, and 1.6” of the CCCP (Emphasis added). Per Table 1.4 (the Rural Lands Plan Designation to Zone Consistency Chart), only rural lands that have max densities of 1 du/5 ac (i.e., R-5), 1 du/10 ac (i.e., R-10), and 1 du/20 ac (i.e., R-20) are consistent with being designated as “Rural.” In addition, Table 1.4 makes it clear that lots having densities of 1 du/2.5 ac or 1 du/1 ac must be designated as either “Commercial Rural (CR)” or “Rural Center Residential (RC-1 or RC-2.5).” See also CCCP at p. 1-15.

## **2 Alternative 4 Does Not Reflect Clark County’s Existing Rural Landscape**

In *Dry Creek v. Clallam County* (Case No. 07-20018c), Clallam County allowed “rural densities of less than one dwelling unit per five acres outside of Limited Areas of More Intensive Rural Development (LAMIRDs).” See Final Decision and Order, at 2, 53–64 (Apr. 23, 2008). Upon appeal, the Board concluded that Clallam County “failed to maintain the traditional rural lifestyles of the residents of Clallam County as required by the GMA” because the “the existing rural landscape and the rural character of Clallam County [was] a rural density of one dwelling unit per five acres (1 du/5 acre).” See *id.* In order to achieve compliance with respect to problematic R2/RW2 land designations, the county implemented a new zoning scheme that “essentially established a rural density of one dwelling unit per five acres.” See Compliance Order, at 5-11 (Nov. 3, 2009).

In short, *Dry Creek* suggests that Alternative 4 is not a viable proposal under the GMA because lot densities of 1 du/1 ac and 1 du/2.5 ac do not reflect the existing rural landscape of Clark County, i.e., a landscape characterized by 1 du/5 ac, 1 du/10 ac, and 1 du/20 ac and densities. See Table 1.4 and Table 3.1 of the CCCP.

## **3 Alternative 4 Does Not Confine R-1 and R-2.5 to LAMIRDS**

In *Futurewise v. Whatcom County & Gold Star Resorts*, Case No. 05-2-0013, the Washington State Supreme Court ordered the Board on remand to reconsider the question of whether RR1 (1 du/ac), RR2/R2A (2 du/ac), and RR3 (3 du/ac) land designations were “rural densities” without using a “bright line rule of one residence per five acres.” Order Following Remand From Supreme Court at 2 (Sept. 09, 2011). At the remand hearing, the Board concluded that with respect to the challenged RR1 (1 du/1 ac), RR2 (1 du/2 ac), and RR3 zones (1 du/3 ac), “non-compliance ha[d] been cured by including such zones in LAMIRDs.” *Id.* at 11. And in *Dry Creek*, the Board concluded Clallam County remediated similar non-compliance by “clarify[ing] that R1/RW1 [(1 du/1 ac)] lands were confined to compliant LAMIRD zones.” *Id.* at 30–31.

Board of Clark County Councilors  
Clark County Planning Commission  
September 10, 2015  
Page 4

In short, *Futurewise* and *Dry Creek* suggest that Alternative 4 is not a viable proposal under the GMA because Alternative 4 does not confine land zones having densities greater than 1du/5ac (namely R-1 and R-2 5) to LAMIRDS

It is clear from the above analysis that Alternative 4 will not withstand scrutiny or challenge. If Clark County wants to create more and smaller lots in rural Clark County it must prevail on the legislature to amend the Act to let this happen. The county does not have the authority under the ACT to adopt a plan that is so clearly violative of the ACT as it exists today.

Please contact me if you have any questions.

Very truly yours,



Stephen H. Horenstein