

Schroader, Kathy



From: Orjiako, Oliver
Sent: Monday, May 23, 2016 10:26 AM
To: Albrecht, Gary; Alvarez, Jose; Anderson, Colete; Euler, Gordon; Hermen, Matt; Kamp, Jacqueline; Lebowsky, Laurie; Lumbantobing, Sharon; Orjiako, Oliver; Schroader, Kathy; Wisner, Sonja
Cc: steve.dijulio@foster.com
Subject: FW: Second Report of Comprehensive Plan Archives of the 1994 Comprehensive Plan - For the Public Record

FYI and for the record Thanks

From: Carol Levanen [mailto:cnldental@yahoo.com]
Sent: Saturday, May 21, 2016 5:47 PM
To: Stewart, Jeanne; Mielke, Tom; Olson, Julie (Councilor); Boldt, Marc; Madore, David; Orjiako, Oliver
Subject: Second Report of Comprehensive Plan Archives of the 1994 Comprehensive Plan - For the Public Record

May 20, 2016 For the Public Record and 2016 Comprehensive Plan update

Clark County Board of Councilors
Clark County Planning Commission
P O Box 5000
Vancouver, Washington 9866

Dear Councilors and Commissioners,

It is important to note that rural lands are not lands used for the long-term commercial production of agriculture or forest products. Clark County's growth management plan is designating zoning densities in rural areas in accordance with a quantified allocation of the anticipated population growth. The Superior Court correctly determined that the GMA does not require, or authorize, this formulaic approach to growth management in rural areas.

The GMA defines urban growth, as intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agriculture products, or fiber, or the extraction of mineral resource. When allowed to spread over wide areas, urban growth typically requires urban governmental services. The GMA does not specifically define what rural areas are, but instead defines what they are not, since 1997 as lands that are not designated for urban growth, agriculture, forest or mineral resource's. The rural element shall prevent land uses that are incompatible with the rural character of such lands and provide for a variety of densities. The GMA does not otherwise define rural areas, nor dictate a particular plan or vision.

From the results of the Clark County county wide Community Framework Plan adopted on July 22, 1992, it was determined in the county wide planning policies that "The County shall recognize existing development and provide lands which allow rural development in areas which are developed or committed to development of a rural character." There was no challenge to the CPPs. The small lot residential areas help to create the character of these communities.

The hearing Board determined that the County's plan for rural areas was not restrictive enough, even though approximately 70% of all rural land had been downzoned. The Board ordered the County to downzone more rural lands and to develop mechanisms to restrict use of parcels which had previously been subdivided or segregated pursuant to the laws and regulation in effect in the County prior to adoption of the new plan.

The Board lost in the courts, and the county was ordered to reverse these directions, but those restrictions are apparent and dominate the current Clark County ordinances.

The principal focus of CCCU and its pending court challenge is to the County's decisions related to resource and rural lands and its failure to properly interpret and apply the GMA to the use of these lands.

The Hearing Board engaged in unauthorized law-making when it created a formula requiring that the OFM population projections dictate land use densities in rural areas. The GMA does not remotely suggest that OFM population projections be used in this manner, and no such use should be implied. The County and the Board confuse the purpose and use of the various tools involved in GMA planning. They fail to distinguish between the land capacity and disaggregation processes. The disaggregation process is used to allocate the OFM population projection to urban and rural areas. The land capacity analysis is then used to ensure that urban growth

areas include land and densities sufficient to permit the urban growth that is projected to occur RCW 36 70A/110 (2) The GMA does not include a land capacity analysis in rural
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areas Growth in rural areas, according to the GMA is permissible so long as it is non-urban growth, "compatible with the rural character of such lands" and providing "for a variety of rural densities and uses " Here, the statute is clear - the Growth Management Act does not require OFM population projections be used to determine land use densities in rural areas The County has erroneously interpreted unambiguous language requiring the use of OFM population projections in the designation of urban growth areas to create an unsubstantiated mandate for rural area land use planning

The Superior Court and the Court of Appeals have upheld these statements The interpretation of a statute is a question of law The trial Court correctly determined OFM population projections are not the defining element of rural land use densities The GMA only requires local governments to use OFM population projections to size UGAs

If the legislature intended the population projections to provide a cap on rural growth, one would expect to find some reference to this theory in the Act itself The absence of any reference to rural lands in the same breath as population projections is evidence of the legislature's intention not to use these forecasts as a cap on rural growth

The GMA explicitly requires counties and cities in developing growth management plans to accommodate future growth, not to impede or repress historic development activity (Central Board in Gig Harbor v Pierce County) The Rural Element of the Comprehensive Plan involves a balancing of the GMA goals and consideration of local conditions According to the GMA "Rural development refers to Property outside the urban growth area and outside agricultural, forest, and mineral resource lands Rural development can consist of a variety of uses and residential densities, that are consistent with the preservation of rural character and the requirements of the rural element RCW 36 70A030 (15)

The notion that growth can be reduced to mathematical formulas is a misnomer Land characterized as land ripe for unwanted development may not be on the market This speaks to preexisting lots which apparently have not and may not be developed at any time soon Property may be kept by owners for their own use or for transfer to family members, or may be held as a long term investment Not everyone desires or could live in rural areas, even if land was available Indeed, if the availability of land is constrained artificially by no-growth advocates, the growth that can be expected to occur across the economic strata will leapfrog to adjoining less restrictive neighboring jurisdiction like Skamania and Cowlitz Counties Those who can afford large, rural acreage will be the affluent, who in future years will constitute the fragmented ownership that will diminish the potential for sound planning Those who cannot afford "hobby farms" will seek small town lifestyles in more remote jurisdiction, leading to longer commutes to work, greater dependence on the automobile and more demand on our infrastructure

Another misconception is that reducing sprawl is the ultimate priority of the GMA This arrogance ignores the affordable housing and economic development goals, which are of no less weight or priority than containing urban growth RCW 36 78 020 - (planning goals not listed in order of priority) RCW 36 70A 030 (15) This definition means future development in rural areas will be less intensive than urban areas, but still will be economically viable and beneficial to rural property owners

Judge Poyfair determined in his unappealed rulings that the 1994 County record did not contain any evidentiary basis for resource designation of lands

CCNRC seems to believe that if it says land is resource land, it must be so There is not one shred of proof
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in the record that any of the resource land has "long term for resource production under the GMA

In Chelatchie Prairie, the majority of lots, 20 out of 32 within this small rural center, are less than five acres in size Meadow Glade consisted of one acre zoning before 1994 and now have 2.5 and 5 acre zoning Brush Prairie has all but two parcels that are less than 2.5 acres

The power of the Board to provide a remedy is strictly limited to that which is authorized by the GMA

In Redmond v Growth Hearings Board it states, "the land use on the particular parcel and the owners' intended use for the land may be considered along with other factors"

The Clark County Superior Court had conclusively determined that these resource lands were not properly designated resource lands under the GMA

Verbatim transcript from the Clark County Board of Commissioners December 14, 1994 Hearing - Greeleaf - The Planning Commissioners recommendation in terms of minimum lots size, I think was based in part on the fact that the area has a significant amount of land division activity that has historically occurred there The agriculture, forestry designation, there's been a lot of concern as to how that particular designation grew out of the process The committee originally recommended approximately 8,000 acres to be treated under an approach generally consistent with this They also identified some 3,000 acres of agricultural lands that was identified as Agriculture Tier III and those 11,000 acres formed the core of what we first identified as

Hornberger - but we have 190 requests of private property owners out there who have testified or written us about their request for their property

Burkman - First one is Beasley Construction And that's 5 acre minimum

Bohard - Rural residential, that's two and a half

Burkman - So that's - staff is suggesting agri-forest and they want two and a half

For 20 - let's see they want rural residential

Deitrich wants it to remain as rural residential So they are both asking for two and a half The next one-is Burton, they want rural residential

The next is Johnson they want to sell five, keep existing home site Bottom of that page they're requesting RS is one acre

Next is McClellan they're requesting rural farm that's 10 acres, And if you get a perc, it goes down to 5

5 Yeah, it's 5 to 10 acres out of 30 Speyer, requesting rural estate

As I look through this, I see this reoccurring theme most of the requests that I've seen drive right away to a very small acreage below what the Rural 5 would be

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Lein - The pattern that we have here is fairly consistent, They're coming in and asking to turn it into some very small lots and well below the minimum that we're even considering in the Rural 5

Koenninger - And a lot of them are two and a halves

Burkman - I've continued to thump through here and I have yet to find any that are not requesting anything above 5 acre

Risto-Robson - Well, Craig, I'm real confused then because I thought what they looked at was 11,000 acres, There's 36 here Where did the other one from?

Greenleaf - Well, clearly the rest of that came out of staff recommendations

I'm not trying to suggest to you that the committee's recommendation was 36,000 acres What I'm saying is at the completion of their work, they had identified approximately 11,000 out of the 36,000 acres that we have brought forward to you

Bohard - At the time that we looked at the 8,000 acres that was done at the full advisory committee level so it was And in fact it wasn't all the focus group members at that point because it was the advisory the focus group members encompass more individuals than what was on the full advisory committee

Burkman - Did they stop at 11,000 acres because that was the final answer or because they ran out of time?

Bohard - Because they ran out of time

Risto-Robson - the numbers are throwing me I don't like the disproportionate numbers There's a lot of them that are already under 20 acres anyway

Public - Jerri's got 5,000 acres she won't even tell you about 700 parcels that she won't even bring on to the books is 55,000 acres

Hornberger - an open space preservation any more that say yes it is And if you're talking about open space designation, that's fine let's call it that and then let's pay the people for it

Koenninger - it's a designation of lands that have the characteristics of both forestry and farm use

Risto-Robson - I think that's all the land in the county , quite honestly

WWGMHB - Many people testified and submitted written evidence that it was impossible to "make a living" from an operation of the size involved in their holding of property

The separation of the farm focus group from the forestry group had led on occasion to exclusions of some resource land from each category because those lands were neither completely agriculture nor completely forest

One week prior to the commencement of the joint Planning Commission/BOCC public hearings, a staff report recommended adoption of a third resource land category entitled "agri-forest" This category involved an addition 36,000 acres Although a minimal amount of discussion about such designation had
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taken place during the resource group meetings, the record is clear that generation of this concept was primarily by planning department staff

Various petitioners attacked this category as not allowed under GMA, unsupported by the record or violation of the public participation aspects

Various petitioners also attacked the use of aerial photographs by the County to specifically locate agriculture, forest, and gri-forest designations

the agri-forest category was first proposed by staff on September 23, 1994 Over the next 3 months

Superior Court - State's motion to intervene as party respondent - Judge James D Ladley - The state moves to intervene solely to defend the integrity and constitutionality of Washington 's Growth Management Act and to defend itself from Clark County's request for a declaration of indemnity The state as intervener takes not position on the merits of Clark County's comprehensive plan and associated development regulations

This information concludes a portion of the archives regarding the advent of the Growth Management Act Comprehensive Land Use Plan for Clark County, adopted in December 1994 Since that time, except for urban growth inclusions, nothing has changed in the rural and resource areas The lands have been frozen in time for over 20 years Now, at the 20 year mark of the 20 year planning process, rural and resource landowners ask for and expect major changes to these lands to enable them to once again realize economic prosperity and affordable housing for their family, friends and neighbors

It is clear that Clark County did it wrong in 1994, and the various courts have upheld that But, Clark County ignored and cherry picked those court orders and pushed on with the same no-growth agenda in the rural and resource areas since then This 2016 update of the Plan is no different, and even though they say something new will help the rural and resource landowners, it is just story telling In fact, the conditions for the people living and wanting to live in those areas will become far worse in the proposed Plan

Clark County Citizens United, Inc is opposed to such a Plan and reject the new Preferred Alternative that was composed behind closed doors and sprung on the citizens without notice or explanation CCCU also rejects the proposed cluster Ordinance The public had good access to a Preferred Alternative, called Alternative 4, that they accepted and understood That Alternative was combined with the original alternatives to create the adopted Preferred Alternative of November 24, 2015 CCCU, Inc and it's members and supporters ask that the previous Alternative be returned to the Plan, and corrections be made to all Rural and Resource areas to comply with the mandates of the Growth Management Act

Sincerely,

Carol Levanen, Exec Secretary
Clark County Citizens United, Inc
P O Box 5000
Battle Ground, Washington, 98604

agriculture, forestry lands, and the staff moved forward with recommendations to include additional areas within that and that that's the recommendation that was brought to the Planning Commission and was ultimately forwarded to you as their recommendation

Greenleaf - There are parcels that are potentially used for both

Lowery - Section 060 of the Growth Management Act requires that the county adopt regulations which protect resource land which has been designated pursuant to section 170. And we're here dealing with the designation issue, not the protection issue, so 170 is the critical section for purposes of your question. 170 requires that county designate agricultural and forest lands with two caveats. One, significant, commercial viability, and two they can't be already characterized by urban growth. So the issues that you need to look at in terms of designation, are first, whether there's long-term commercial viability, and second, whether the area of urban growth. Those issues obviously entail exercise of judgment, and therefore entail discretion. What we do not know, at this point, is the extent to which the hearing board is going to limit that discretion by giving judicial glosses or--to those two phases.

Sturdevant - And what's the urban growth definition, then

Greenleaf - I think, look at it, first of all, whether or not these were areas that were presently predominantly in an agriculture or forestry use, and that involved an extensive exploration into the aerial photography site visits, and trying to figure out what the main characteristics were. There were a number of photographs taken of each of those areas,

Sturdevant - Your suggestion, Rich, as I interpret it is, that we're required to designate these lands if they fit this known criteria, and there's really not a lot of choice, and that helps explain the shotgun approach.

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Greenleaf - Right

Magnano - I guess what I want to comment upon is, I think Dave's got a good idea of covering any areas of the GMA protection of private property rights.

The three of us, the three of us elected officials, charged you with the task and responsibility of pushing an envelop wherever possible to really get into the spirit of the Growth Management Act, not only critical areas, tree areas, agricultural and farming areas,

Sturdevant - as I understand it, that 5 acre minimum accomplishes the goals and are still out in describing that desired definition. So, I think that this is a balanced plan that achieves the growth management minimum goals and then some. I think it also does it with while it ends sprawl because I'm suggesting we not have 1 and 2 acre minimum lots. It also does not down zone existing properties or the existing plan quite so severely.

In fact, those techniques as they were used, have deteriorated what the original intentions were on preserving some ag and forest land originally, and I think that's hurt the farming viability in this county.

Nutley - I wouldn't support the motion. First, of all, the forest and ag lands, or resource lands, designated in the first place, by the committees and second place, where the committees didn't finish, the staff used the same criteria in which to establish those areas in resource areas.

Well, I think we should separate out the rural issue because I've indicated I think that there's support from two members for a 5 acre, and I would not support that entirely. But I would support a motion which have forest tier 2 at 40.

Sturdevant - Mr. Chairman, I motion that the rural designation be 5 acre minimum.

Sturdevant - Aye

Magnano - Aye

Clark County Planning Commission Minutes - Tuesday, November 1, 1994

Lein - Then we'll move on to ag-forest.

Minimum lot size for the parcels limited to one dwelling per 40 acres with the ability to provide a second home. There's been a lot of testimony as to whether or not many of these properties could support forestry and/or agriculture. There's been a lot of conversation as to the types of land, the sophistication of the soils and whether farming is really a viable option in this community and whether it can be done on parcels larger or smaller than 40 acres.

Hornberger - Elena made a lot of references last week to what you could or couldn't farm on which I agree with her. And then I think it's compounded by the ag/forest deal because it's one of those that it ain't ag, it ain't forest, it ain't nothing except it's a matter of preserving 36,000 acres to meet GMA's dictates. I have a problem with that and --because if it's done to maintain open space, then let's call it open space.

Risto-Robson - I'm concerned about why we have 3400 parcels that are under 19 acres are in an ag/forest designation of 40 acre minimum. I mean the majority of who is going to be the large lots involved there, meaning larger than 20 acres, there's 526. Why is there is that disproportion there. You know I have a lot of people asking these questions. I've only got 5 acres.

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I mean we had somebody talk tonight about the soil situation, This is not good farm land we, I get caught up, I think in the part of telling people that they have to farm this when, one, it's probably not good land to farm

Greenleaf - These lands in many cases are not very high-quality agricultural lands, They are however, in most cases, excellent soils for the growing of trees They have a lot higher capacity to grow trees, for the most part than they do have a capacity to grow a variety of crops And I would hope that we understand that we're not looking at lands that are in the very best condition relative to agricultural lands productivity, although, certainly agricultural productivity is possible on some portion, some percentage, of what we have proposed to be agriculture, forestry

That's so that's the origin of this recommendation in terms of the patterns of development the patterns of land uses that you see there, and certainly there are many lots existing as of today that are smaller than the proposed minimum lot size

Risto-Robson - Well, I still don't get it I'm sorry, I don't get it I know that there's 40 acre parcels out there that are surrounded by 5 acre parcels that have something built on them and those people are gonna be restricted to a 40 acre minimum in and are that already, as far as what I consider to be rural,

Greenleaf - There is no compulsory character to these regulations to say you must raise agriculture or forestry products on the property Should you choose not to engage in that, you're not compelled to engage in agriculture or forestry

Risto-Robson - Okay So this is gonna affect 3800 (lots)

Greenleaf - Uh-Huh

Risto Robson - And on those 3800 people, there's roughly 500 of them that own something 20 acres or larger And it just seems to me like you're penalizing a few people

Shafton - We know that these are the lower rung of the agriculturally suitable soils

Greenleaf - Yes

But, I don't know that the committee analyzed it from the vantage point of uses along I mean I think they looked at it primarily in terms of the presence of core areas, that is how much concentration of this is of use was present, not what is necessarily the character of the crop being grown

Risto-Robson - I didn't think that they had enough time to look at it in that kind of depth, It was my understanding from talking to the members it was like it was discussed a couple of different times by not in any kind of detail And that's only 3,000 acres of 36,000

Greenleaf - yeah

Shafton - So out of the 36,000 acres that folks who are thinkin about agri-forest, and there's about 3,000 of those acres that have some sort of use currently that is agriculture, that somebody could term agriculture,

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Greenleaf - you can see on the map in the very darkest of the colors, the darkest black, are the areas that the committee work recommended for the agri-forest designation

Risto-Robson - Now wait a minute I was under the understanding that the committee didn't know the term ag/forest

Bohard - I think it's a question of semantics what you see in the land is how far they got They didn't get thorough the whole county, they'd look at these parcels and they looked at the aenals and saw agriculture and then they saw forestry and they couldn't reconcile you on this

They didn't finish That was as far as they

Greenleaf - This is that portion that the committee worked on

Bohard - And this is approximately 8, 000 acres

8,000 (acres) the black Risto-Robson - Okay Thell me one more time How come we bounce between this three and 5,000 mark? I hear 3,000 acres and then I hear 8,000 acres

Bohard - The 3,000 acres is the Ag Tier III So in essence 11,000 acres of the 36,000 was identified through the committee process

Public - Did the committee recommend it or did they only identify it?