

**Schroader, Kathy**



**From:** Orjiako, Oliver  
**Sent:** Tuesday, July 05, 2016 8:14 AM  
**To:** David McDonald  
**Cc:** Albrecht, Gary; Alvarez, Jose; Anderson, Colete; Euler, Gordon; Hermen, Matt; Kamp, Jacqueline; Lebowsky, Laurie; Lumbantobing, Sharon; Orjiako, Oliver; Schroader, Kathy; Wiser, Sonja  
**Subject:** RE: Legal Correspondence Re: DOC comment letter dated June 20, 2016

Good morning David:

This is to acknowledge receipt of your letter. Thank you for forwarding the letter to staff. Please, let me know if you have questions. Thanks.

Best,

Oliver

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**From:** David McDonald [<mailto:david@mcdonaldpc.com>]  
**Sent:** Tuesday, July 05, 2016 6:15 AM  
**To:** Orjiako, Oliver  
**Subject:** Fwd: Legal Correspondence Re: DOC comment letter dated June 20, 2016

Dr. Orjiako:

I sent this to Mr. DiJulio and Mr. McCauley but noticed that I failed to copy you so here is your copy of my letter.

Best Regards,

David

Begin forwarded message:

**From:** David McDonald <[david@mcdonaldpc.com](mailto:david@mcdonaldpc.com)>  
**Subject:** Legal Correspondence Re: DOC comment letter dated June 20, 2016  
**Date:** July 4, 2016 at 3:52:27 PM PDT  
**To:** McCauley Mark <[mark.mccauley@clark.wa.gov](mailto:mark.mccauley@clark.wa.gov)>, [steve.dijulio@foster.com](mailto:steve.dijulio@foster.com)

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FRIENDS OF CLARK COUNTY  
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VANCOUVER, WASHINGTON 98666  
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July 3, 2016

Mr. P. Stephen DiJulio  
Acting Attorney for Clark County RE: GMA issues  
% Mark McCauley, Clark County Manager  
Public Services Building  
1300 Franklin Street  
PO Box 5000  
Vancouver, Washington 98660

Via E-mail to [mark.mccauley@clark.wa.gov](mailto:mark.mccauley@clark.wa.gov) and [steve.dijulio@foster.com](mailto:steve.dijulio@foster.com)

Dear Mr. DiJulio:

I am writing to you in my capacity as attorney for Friends of Clark County. After the final votes by the Councilors on the Comprehensive Plan update, FOCC received a copy of the Department of Commerce's letter to the County dated June 20, 2016<sup>1</sup>. The letter sets forth the Department's written opinions regarding the County's CP Plan update. Although I am certain you have had a chance to review the letter, I have attached a copy of the letter for your easy reference.

We were not aware of this letter prior to the Council's final vote and have not found anything in the record that reflects a discussion by the Councilors of the contents of the letter. Therefore, we do not even know if the Council had a chance to review this letter prior to the June 28 meeting and final adoption of the CP Update. Given that the letter casts grave doubts as to whether the resource land division policies adopted by the County are compliant with the GMA, we are assuming that the Councilors did not have a chance to seek your counsel regarding the DOC's comments. Certainly, it is true that all legislation is presumed valid upon implementation, and maintains that presumption unless or until a court or other tribunal finds to the contrary. However, it is also true that legislative bodies must strive to craft rules, ordinances and statutes that are compliant with the law. Thus when serious doubts as to the validity of a piece of legislation prior to its implementation are raised, it would seem prudent to address those doubts in a public forum.

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<sup>1</sup> We are unaware of the date this document was stamped received by the County.

Mr. P. Stephen DiJulio  
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The Department's letter clearly calls into question all of the determinations made by the Councilors regarding resource lands with a focus on the land divisions applicable to Forest and Agricultural Lands. Specifically, the letter states:

These resource lands zoning changes at full build-out would result in the addition of 1750 and 412 new parcels respectively to the rural area (FSEIS Table 1-2). *This is a major land use change and yet there is nothing in the record to justify the reduction except the "preference census of property owners" conducted by the county.* While we support innovative zoning techniques, in this case "clustering" that the plan proposes to employ in these zones, we are concerned that if all the new lots created under your new proposal take advantage of this provision, the resulting pattern of growth in the aggregate will become more intense than what normally would be expected in rural areas. There will be more traffic and a need for higher levels of public services. *Furthermore, your ability to direct growth into urban areas will be compromised and the objective of 90/10 urban rural split will not be achieved if this proposal is approved. I strongly urge the county to accept the recommendations of the planning commission and not approve this proposal.* (emphasis supplied).

Although this opinion has been shared with the Council by our membership, the opinion carries much greater weight when it comes from the lead agency in the state that administers and oversees the GMA. Based upon the record, and the Department's comments, FOCC suggests that the Council be apprised of the legal "weight" of these comments in future litigation and the legal implications of ignoring the harbinger of a finding of non-compliance or invalidity. The Department's letter is unequivocal in stating that the resource land divisions are not supported by the record and not compliant with the GMA. In fact, the letter makes the specific point that allowing these land divisions is in direct contravention to the 90/10 split planning assumption that was adopted by previous County resolutions.

We recommend, and urge in the strongest of terms, that you provide legal advice to the Council that, at a minimum, they should revisit the effective date of the ordinance authorizing these land divisions and then delay any effective date for a minimum of 240 days to allow the GMHB to review. We cannot emphasize enough that any land divisions created under this ordinance are irreversible irrespective of any subsequent finding of non-compliance and/or invalidity by the GMHB. In addition, should the GMHB find compliance, then no person will be harmed but for this short delay to allow the Board to review the decision and issue an FDO (or Order of Invalidity). To the contrary, having this knowledge, and allowing these irreversible land

Mr. P. Stephen DiJulio

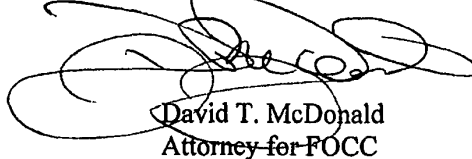
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July 3, 2016

divisions to go forward, could expose the County to later lawsuits by adjacent landowners and/or taxpayers who are damaged by the allowance of these divisions. Any claim that such land divisions "may" not occur in a "land rush" of applications is contravened by all the evidence in the record that shows how quickly parcel land divisions have occurred in this County in the face of potential rules barring such divisions.

Therefore, the most prudent action is to delay implementation to ensure that any finding of non-compliance and/or invalidity would have the desired legal effect rather than, in essence, be moot due to the fact that no ruling could reverse vested resource and rural land divisions that could occur between now and a ruling by the GMHB.

Sincerely,

A handwritten signature in black ink, appearing to read "David T. McDonald", is written over a horizontal line. The signature is stylized with loops and flourishes.

David T. McDonald  
Attorney for FOCC



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

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www.commerce.wa.gov

June 20, 2016

Mr. Oliver Orjiako  
Director of Community Planning  
Clark County  
1300 Franklin Street  
Post Office Box 9810  
Vancouver, Washington 98660

RE: Proposed amendments to the comprehensive plan in support of the 2016 Comprehensive Plan update

Dear Mr. Orjiako:

Thank you for sending Growth Management Services the proposed amendments to Clark County's comprehensive plan and development regulations that we received on April 28, 2016, and processed with Material ID No. 22340.

We especially like the following:

- The plan update seeks to bring in new and recently approved reports – your award winning “*Aging Readiness*”, *Growing Healthier* and Sustainability reports and policies into the comprehensive plan. Incorporating these policies and strategies into your plan will add new and important components to Clark County's planning efforts in the areas of health, aging, physical activity and sustainability.
- The Land Use Element goal focusing on physical activity has several policies focusing on compact, mixed use development with bicycle and pedestrian infrastructure that provides access and connectivity. This document also references the bike and pedestrian plan that focuses on how the built environment impacts health. This focus on promoting active transportation is a prominent factor in the Land Use Element.
- The extensive public process conducted by the county is noteworthy. The plan update website contains lots of materials to help the public understand the decisions in front of the County Board of Councilors. The use of new technology such as “Peak Democracy” allowed staff to reach out for broad and frequent public involvement in the plan update. Your staff has done exceptional

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work in your public participation plan to highlight the importance of public participation while also showing innovative public participation techniques and strategies to ensure opportunities for meaningful input

- The plan goes beyond the Growth Management Act (GMA) requirement for concurrency for transportation services to include other critical public facilities such as water and sanitary sewer (Capital Facilities Plan, page 2) Table 6 1 clearly shows which public services are subject to concurrency and which are not
- The plan's intent to promote more compact development patterns which allow for more efficient delivery of services, and promotes a better balance of jobs and housing to minimize the distance people need to travel between home, workplace, and shopping Capital Facilities Policy 6 10 7 encourages maximum use of existing public facilities and services, new and infill development in the urban area to occur at the maximum densities envisioned by the 20-Year Plan
- The plan addresses fair housing issues by using "household", rather than "family", as the basic definition for an assemblage of persons in a dwelling unit Household is a broader term that allows for non-nuclear families, unrelated individuals, domestic partnerships, caregivers and other arrangements

While your plan advances Growth Management goals and requirements in many important ways, there are a few items, however, that should be addressed before you adopt your plan and development regulation amendments

- We would especially like to register our concern about your proposal to adopt the rural industrial land bank (RILB) into your comprehensive plan We expressed some concerns when it was first proposed and those concerns have not been addressed The subject properties contain some of the best agricultural land in the county, 99 percent of which is considered prime farm land with significant percentage of the land being Class 1 and 3 soils, has excellent access to rail and highway transportation facilities and is within close proximity to local markets The fact that the current dairy operation does not sell milk locally does not discount the importance of this farm land to the county's future food security The RILB report stated that the existing dairy operation would like to relocate to Eastern Washington and that the dairy industry is declining GMA rules clearly state that "the intent of the landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production" (WAC 365-190-050(3)(i)) We strongly urge Clark County to consider other sites preferably in the urban growth area for industrial land development and save these 600 acres of prime agricultural land
- The county is commended for including an objective in the plan to reduce future growth rates in rural areas and resource lands of the county – including specific policies to allocate no more than ten percent of countywide growth to the rural area However, the plan is proposing to alter some zoning designations in the county's resource lands that would reduce minimum lot area and provide more parcels This proposal indicates that 2,584 parcels currently zoned Agriculture-20 will be rezoned AG-10; and 2499 parcels currently zoned Forestry 40 will be rezoned FR-20



These resource lands zoning changes at full build-out would result in the addition of 1750 and 412 new parcels respectively to the rural area (FSEIS Table 1-2). This is a major land use change and yet there is nothing in the record to justify the reduction except the “preference census of property owners” conducted by the county. While we support innovative zoning techniques, in this case “clustering” that the plan proposes to employ in these zones, we are concerned that if all the new lots created under your new proposal take advantage of this provision, the resulting pattern of growth in the aggregate will become more intense than what normally would be expected in rural areas. There will be more traffic and a need for higher levels of public services. Furthermore, your ability to direct growth into urban areas will be compromised and the objective of 90/10 urban rural split will not be achieved if this proposal is approved. I strongly urge the county to accept the recommendations of the planning commission and not approve this proposal.

- The plan update also proposes to expand the urban growth areas (UGAs) of the cities of Ridgefield, La Center and Battleground to better support residential and employment growth. Ridgefield is asking to de-designate 111 acres of agricultural lands for residential development and La Center is looking to bring in 56 acres of agricultural lands into their UGA for urban development. The Washington State Legislature amended the “Buildable Lands” legislation to require counties subject to the Buildable Lands requirements to complete their Buildable Lands Report (BLR) no later than one year prior to the deadline for review and update of comprehensive plans and development regulations [RCW 36 70A 215(2)(b)]. The reason for this legislative amendment was to ensure that jurisdictions had the needed data for use in their update work. Clark County completed their BLR as required. That report concluded that the county has enough capacity for residential and employment growth for the twenty year planning horizon. (See Table 4 pg 10) for residential land need. We would like to express our concern specifically on the proposal to de-designate agricultural parcels near Ridgefield and La Center in order to expand their UGAs. Based on the BLR conclusions that the county has enough capacity for growth for the twenty year planning horizon, we do not see any need for any UGA expansion at this time in Clark County.

We have some suggestions for strengthening your plan and development regulation amendments that we encourage you to consider either in these or future amendments.

- The Land Use Element does not include a future land use map as required by the GMA. The document describes the details and components of the future land use plan categories in tables and throughout the text, but does not present a map. The county probably has a future land use map but did not include it in the document sent to Commerce. We recommend you include this essential map before you adopt your update plan.
- Additionally, the capital facilities plan should clearly show where facilities exist, where they are planned, and whether there is adequate capacity for the 20-year population projection. Your capital facilities plan provide inventory of existing services and facilities including their general location, forecast of future needs, a six year capital improvement plan (CIP) and funding sources. However, nowhere in the plan were proposed locations of expanded or new capital facilities addressed. The Capital Facilities Element of your plan should identify all capital facilities/utilities.



Mr Oliver Orjiako  
June 20, 2016  
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that are planned to be provided within the twenty year planning period, including their general location and capacity [RCW 36.70A 070(3)]

Congratulations to you and your staff for the good work these amendments represent. If you have any questions or concerns about our comments or any other growth management issues, please contact me at 360 725 3056 or [ike.nwankwo@commerce.wa.gov](mailto:ike.nwankwo@commerce.wa.gov). We extend our continued support to Clark County in achieving the goals of growth management.

Sincerely,



Ike Nwankwo  
Western Region Manager,  
Growth Management Services

IN lw

cc

Gordy Euler, Principal Planner, Clark County Community Planning  
David Andersen, AICP, Acting Managing Director, Growth Management Services