

From: [Sonja Wiser](mailto:Sonja.Wiser@clark.wa.gov)
To: mark@eriksonlaw.com; [Bart Catching](mailto:Bart.Catching@clark.wa.gov)
Cc: "[Kris Eklove](mailto:kris@eriksonlaw.com)"
Subject: RE: Clark County Comprehensive Plan Update
Date: Friday, September 8, 2023 11:26:00 AM
Attachments: [scanner@eriksonlawscan.com_20230908_084058.pdf](#)

Good morning Mark:

Thank you for your comments related to the 2025 Comp Plan. Your comments have been forwarded to staff and will be added to the 2025 Comp Plan Index of Record. Your name and email has also been added to our database to receive future communications related to the 2025 Comp Plan. Please let us know if you have further questions.

From: mark@eriksonlaw.com <mark@eriksonlaw.com>
Sent: Friday, September 8, 2023 9:06 AM
To: Bart Catching <Bart.Catching@clark.wa.gov>
Cc: 'Kris Eklove' <kris@eriksonlaw.com>; Sonja Wiser <Sonja.Wiser@clark.wa.gov>
Subject: Clark County Comprehensive Plan Update
Importance: High

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Bart:

Please see attached Property Owner Submittal.

Mark A. Erikson
Attorney at Law
ERIKSON & ASSOCIATES, PLLC
110 West 13th Street
Vancouver, Washington 98660
(360) 696-1012

From: Sonja Wiser <Sonja.Wiser@clark.wa.gov>
Sent: Thursday, September 7, 2023 7:17 AM
To: mark@eriksonlaw.com; Bart Catching <Bart.Catching@clark.wa.gov>; Oliver Orjiako

<Oliver.Orjiako@clark.wa.gov>

Cc: Kris Eklove <kris@eriksonlaw.com>

Subject: RE: Clark County Comprehensive Plan Update

Good morning Mark; I will refer your email to Bart Catching who oversees our site specific reviews.
Thank you for your inquiry

From: mark@eriksonlaw.com <mark@eriksonlaw.com>

Sent: Wednesday, September 6, 2023 3:55 PM

To: Sonja Wiser <Sonja.Wiser@clark.wa.gov>

Cc: Kris Eklove <kris@eriksonlaw.com>

Subject: Clark County Comprehensive Plan Update

Importance: High

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Mark A. Erikson
Licensed in Oregon & Washington
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September 6, 2023

Clark County
Community Planning
P.O. Box 9810
Vancouver, WA 98666-9810
E-mail: comp.plan@clark.wa.gov

RE: NCNG – PROPERTY OWNER SUBMITTAL

County Staff:

I represent NCNG, LLC, owner of Assessor's Parcel No's 180342-000, 986053-102, 986053-104; and sole owner of FYPS, LLC, which owns Assessor's Parcel No. 986053-103.

My client seeks Comprehensive Plan amendment from R-10 to R-5, and rezone from Rural 10 to Rural 5. The subject property is surrounded by R-5 designated properties along its west, south and east boundaries, and R-10 designated properties along its north boundary.

The subject property comprises 3,584,988 square feet, or 82.3 acres, in four contiguous parcels.

An application for Cano-Glavin Early Grading Permit (OLR 2020-00147) has been withdrawn.

* * *

Criteria for All Map Changes:

1. The proponent shall demonstrate that the proposed amendment is consistent with the applicable requirements of the GMA and the WAC, the county comprehensive plan, the county code, and official population growth forecasts; [¹]

Criteria 1 is discussed under "GMA Requirements" on pages five and six.

¹CCC 40.560.010(F).

2. The proponent shall demonstrate that the designation is in conformance with the appropriate locational criteria identified in the plan; [²]

Location criteria are specified for subject property’s current designation and zone, R-10, as follows:

The Rural (R-5, R-10, R-20) designations are intended to provide lands for residential living in the rural area. [³]

This proposal provides lands for residential living in the rural area, however, the current R-10 designation and zone are inappropriate for the subject property under the applicable location criteria:

A Rural 10 designation is applied within the rural area to prevent premature subdivision of future urban areas where the lands are adjacent to designated Urban Reserves, where the predominant size is equal or greater than 10 acres, to act as a buffer to Natural Resource lands or to protect environmentally critical areas consistent with applicable county ordinance and related regulations. [⁴]

The subject property does not prevent premature subdivision of future urban areas because: (i) it is not adjacent to any designated Urban Reserve: it is 1.94 miles from the nearest Vancouver Urban Reserve as the crow flies, and 2.59 miles from the nearest Ridgefield Urban Reserve; (ii) the predominant size in the general area is not equal to nor greater than 10 acres: it is closer to 5 acres;⁵ and (iii) the subject property does not *act as a buffer to* Natural Resource lands, nor protect environmentally critical areas; rather, the subject property *is buffered from* Agricultural lands by R-5 properties to the west, south and east, and by R-10 property to the north. Hence, the present proposal complies with the Comprehensive Plan because it would the remove the inappropriate R-10 designation and zone from the subject property.

* * *

3. The map amendment or site is suitable for the proposed designation, and there is a lack of appropriately designated alternative sites within the vicinity; [⁶]

²CCC 40.560.010(F).

³Clark County Comprehensive Plan, 2015-2035, at 32.

⁴Clark County Comprehensive Plan, 2015-2035, at 36.

⁵In considering conjunct “ii,” please note that the phrase “where the predominant size is equal or greater than ten acres,” refers back to “designated Urban Reserve,” the object of the imbedded clause.

⁶CCC 40.560.010(F).

The map amendment and site are suited for the proposed R-5 designation precisely because they are unsuited for the existing R-10 designation, as discussed above. There is, by definition, no alternate site which can be amended to resolve inappropriate R-10 designation of the subject property.

* * *

4. The plan map amendment either: (a) responds to a substantial change in conditions applicable to the area within which the subject property lies; (b) better implements applicable comprehensive plan policies than the current map designation; or (c) corrects an obvious mapping error; [7]

In the context of Comprehensive Plan amendments, “substantial change” and “mapping error” constitute to two sides of the same coin: either the designation was inappropriate when the map was adopted or conditions have changed rendering the same result. Which alternative applies is irrelevant because either satisfies the judicial definition for “spot zone:”

Spot zoning has been consistently defined to be zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. [8]

In the present case, the subject property is a smaller area of R-10, inconsistent with the surrounding R-5 designation, and not in accordance with the Comprehensive Plan which specifies location criteria for R-10 that require buffering and protection of Urban Reserves, Natural Resource lands or environmentally critical areas.⁹ The subject property is inappropriately located to serve those functions. The R-5 designation and zone better implement location criteria for rural lands by increasing residential housing opportunities in the rural area,¹⁰ in realization of Community Framework Plan policies:

- 2.1.0 Communities, urban and rural, should contain a diversity of housing types to enable citizens from a wide range of economic levels and age groups to live within its boundaries and to ensure an adequate supply of affordable and attainable housing. [11]

R-5 properties provide more economical rural housing opportunities than R-10 properties.

⁷CCC 40.560.010(F).

⁸*Save Our Rural Enviroment v. Snohomish County*, 99 Wash.2d 363, 368, 662 P.2d 816 (1983).

⁹*Clark County Comprehensive Plan, 2015-2035*, at 36.

¹⁰*Clark County Comprehensive Plan, 2015-2035*, at 32; and *Infra*.

¹¹*Community Framework Plan* at 3.

5. Where applicable, the proponent shall demonstrate that the full range of urban public facilities and services can be adequately provided in an efficient and timely manner to serve the proposed designation. Such services may include water, sewage, storm drainage, transportation, fire protection, and schools. Adequacy of services applies only to the specific change site. [¹²]

As noted in the Community Framework Plan, “[u]rban levels of public services would generally not be provided in rural areas:”

Outside of urban growth areas, the land is predominantly rural with farms, forests, open space, and large lot residences. Shopping or businesses would be in rural centers. Urban levels of public services would generally not be provided in rural areas. Rural residents are provided level-of-service appropriate to their areas. These areas are, by definition, more rural in nature and residents are more self-sufficient, often relying on private wells and septic systems. [¹³]

In fact, Community Framework Plan policies recognize the inability to provide a full range of services as one of five sufficient criteria for rural areas:

- 3.2.0 Rural areas should meet **at least one** of the following criteria:
 - opportunities exist for small scale farming and forestry which do not qualify for resource land designation;
 - the area serves as buffer between designated resource land or sensitive areas;
 - environmental constraints make the area unsuitable for intensive development;
 - the area cannot be served by a full range of urban level-of-service;
 - or,**
 - the area is characterized by outstanding scenic, historic or aesthetic values which can be protected by a rural designation. [¹⁴]

Lots divided from the subject property would be served by wells and septic systems. Opportunities for small scale farming exist, which do not qualify for resource designation. Environmental constraints render the area unsuitable for intensive development: Miner Creek flows into Whipple Creek on the subject property.¹⁵ The area is characterized by scenic values.

¹²CCC 40.560.010(F).

¹³*Community Framework Plan* at 1.

¹⁴*Community Framework Plan* at 6, emphasis added.

¹⁵Exhibit 4, *Developer's Packet* at 13.

Additional Criteria for Rural Map Changes.

1. Natural Resource Land Designation.
The proponent of an amendment to the plan map for changing a natural resource land designation to a smaller lot size natural resource land designation shall demonstrate that all of the following criteria have been met:
 - a. The amendment complies with applicable provisions of GMA and the WAC;
 - b. The requested change does not impact the character of the area to the extent that further plan map amendments will be warranted in future annual reviews; and
 - c. The amendment meets the locational criteria for the requested designation. [¹⁶]

Natural Resource Lands are defined as follows in GMA:

- (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:
 - (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;
 - (b) Forestlands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;
 - (c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; . . . [¹⁷]

The subject property does not contain and Natural Resource Lands designated by the County. Neither does the subject property include regulated shorelines.

* * *

¹⁶CCC 40.560.010(G).

¹⁷RCW 36.70A.170.

GMA Requirements

[A] county should foster land use patterns and develop a local vision of rural character that will: [h]elp preserve rural-based economies and traditional rural lifestyles; . . . foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life. [¹⁸]

The present proposal will preserve rural economies, lifestyles and open space, while enhancing the rural sense of community and quality of life, in accord with the definition of “rural development:”

Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. [¹⁹]

Comprehensive Plans are required to accommodate 20-year population forecasts:

Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing . . . growth . . . consistent with the twenty-year population forecast from the office of financial management. [²⁰]

Comprehensive Plans and development regulations are “subject to continuing review and evaluation by the county or city that adopted them.”²¹ GMA requires planning counties to “identify open space corridors within and between urban growth areas. . . . includ[ing] lands useful for recreation, wildlife habitat, trails, and connection of critical areas . . .”²² The confluence of Whipple Creek and Miner Creek on the subject property provides an opportunity to comply with this requirement through the implementation of hiking trails in creek setbacks. GMA recognizes that “the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county’s or city’s future rests with that community.”²³

¹⁸RCW 36.70A.011.

¹⁹RCW 36.70A.030(24).

²⁰RCW 36.70A.115(1).

²¹RCW 36.70A.130(1)(a).

²²RCW 36.70A.160.

²³RCW 36.70A.3201.

Community Development
Re: NCNG - Property Owner Submittal
September 6, 2023
Page 7

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Erikson', written in a cursive style.

Mark A. Erikson
Attorney at Law

MAE/ke
CANN0201.L01.wpd