

From: [Kathleen Otto](#)
To: [Rebecca Messinger](#)
Subject: FW: Cluster Ordinance - new policy
Date: Monday, March 4, 2024 4:31:31 PM
Attachments: [Cluster Memo.032216.v4.docx](#)
[Document1.docx](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Monday, March 4, 2024 12:14 PM
To: Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Fw: Cluster Ordinance - new policy

EXTERNAL: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN UPDATE

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604 E-Mail cccuinc@yahoo.com

----- Forwarded Message -----

From: Madore, David <david.madore@clark.wa.gov>
To: "cccuinc@yahoo.com" <cccuinc@yahoo.com>; "sprazz@outlook.com" <sprazz@outlook.com>; "donalddmcisaac@msn.com" <donalddmcisaac@msn.com>
Sent: Wednesday, March 23, 2016 at 10:57:16 AM PDT
Subject: FW: Cluster Ordinance - new policy

From: McCauley, Mark
Sent: Wednesday, March 23, 2016 10:06 AM
To: Madore, David
Subject: RE: Cluster Ordinance - new policy

Councilor Madore, attached are two documents. The first is in response to your questions below prepared by staff. The second is the rural cluster ordinance language in Word format. The resource cluster language we are working on will be similar.

When the proposed resource cluster ordinance draft is complete and ready for the Planning Commission all councilors will be provided a copy.

Thank you.

Mark

From: Madore, David
Sent: Wednesday, March 16, 2016 1:10 PM
To: McCauley, Mark; Madore, David
Subject: Cluster Ordinance - new policy

Mark,

Following up on the Cluster Ordinance Work Session this morning, please provide the following:

Staff and our PA Office asserted that clustering for AG-10 and FR-20 zones are not optional. They stated that they are required and that those zones would not be legally defensible if clustering was not required.

Please provide the legal references to applicable RCWs, WACs, Hearing Board decisions, and case law that confirm the staff's assertion.

Staff asserts that a management plan is also required for the remainder lots of those cluster developments. Please provide the relevant specifications, examples, RCWs, WACs, Hearing Board decisions, and case law that confirm the staff's assertion.

I also ask for relevant legal references that limit the percent of the density bonus we can use for cluster developments on R, AG, and FR parcels.

Staff also asserted that the ordinance must be passed before the preferred Alternative is submitted to the state. Please confirm this. I thought that such county code amendments did not need to be finished ahead of that submission. I thought that in years past, that county code updates followed the submission of the Comp Plan Update.

Staff also asserted that they have been working very hard for some time now on the Cluster Ordinance. I was surprised because the BOCC rescinded the Cluster option in our February 16 Comp Plan Hearing. The BOCC removed the cluster ability for AG and FR zones entirely.

When did staff start working on the resource Land Cluster ordinance?

Please share the draft policy work with me. As a policy maker, I believe policy making is my responsibility. My goal as a policy maker is to create policy that not only lawful, but flexible and supported by the rural citizens. It would be inappropriate for the executive branch to create policy that the policy makers find out about just before the Planning Commission considers it. I feel that the wrong agents are driving this process in place of the policy makers. Do you agree? I ask that you open the door to my participation up front. I have specifics to incorporate into a cluster ordinance.

I look forward to your timely response to help us move forward.

Thank you,

David

This e-mail and related attachments and any response may be subject to public disclosure under state law.

MEMORANDUM

To: Councilor David Madore, Council Chair Marc Boldt, Councilors Jeanne Stewart, Julie Olson and Tom Mielke, Acting County Manager Mark McCauley

From: Planning Department Director Oliver Orjiako, Gordy Euler, Chief Civil Deputy Prosecuting Attorney Chris Horne, Senior Deputy Prosecuting Attorney Chris Cook

Re: Councilor Madore’s Questions Concerning Clustering

Date: March 22, 2016

Question: Staff and our PA Office asserted that clustering for AG-10 and FR-20 zones are not optional. They stated that they are required and that those zones would not be legally defensible if clustering was not required. Please provide the legal references to applicable RCWs, WACs, Hearing Board decisions, and case law that confirm the staff’s assertion.

Response: The Growth Management Act (GMA) requires that counties designate and protect agricultural and forest lands that are considered to have long-term commercial viability. RCW 36.70A.170; 36.70A.030(3)(a) and 36.70A.060(1). Clark County chose to do so with AG-20, FR-40 and FR-80 zoning designations. GMA and its implementing administrative code require that the county adopt development regulations “that assure the conservation of designated agricultural, forest and mineral lands of long-term commercial significance.” WAC 365-196-815(1)(a); RCW 36.70A.060(1)(a). These county regulations are found primarily in CCC 40.210.010. GMA contemplates that agricultural and forest lands are primarily for agricultural and forest uses, respectively, and that all other uses are to be accessory uses, including the building of a residence. WAC 365-196-815(1)(b)(i)-(ii).¹

The proposal for smaller minimum parcel sizes for resource lands came from the Rural Lands Task Force, and a previous Board directed that the idea be considered during the 2016 comprehensive plan update. As has been repeatedly stated, about 80% of AG-20

¹ (b) ‘Conservation’ means measures designed to assure that the natural resource lands will remain available to be used for commercial production of the natural resources designated. Counties and cities should address two components to conservation:

(i) Development regulations must prevent conversion to a use that removes land from resource production. Development regulations must not allow a primary use of agricultural resource lands that would convert those lands to nonresource purposes. Accessory uses may be allowed, consistent with subsection (3)(b) of this section.

(ii) Development regulations must assure that the use of lands adjacent to designated natural resource lands does not interfere with the continued use, in the accustomed manner and in accordance with the best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

Wash. Admin. Code 365-196-815(1).

parcels are less than 20 acres in size. BERK's previous work with the Rural Lands Study shows that more farming in Clark County is happening on smaller parcels (per the USDA Agricultural Census). These two facts, along with the results of the Rural Preference Census, led staff to propose smaller minimum parcel sizes for AG-20 and FR-40 parcels. Reduction in minimum lot size without some development restrictions is not likely to be approved by either the hearings board or the courts.

WAC 365-196-815 requires the county to prevent conversion of lands to nonresource uses and to prohibit a primary use that would convert lands to nonresource uses. See footnote 1, above. The county must also assure that uses of lands adjacent to designated resource lands do not interfere with the use of the designated lands for production of food, agricultural products, or timber. Footnote 1. Staff and the PA's Office are concerned that doubling the number of homes that can be built (increased development capacity) on agricultural and forest lands would not, by itself, pass GMA muster given GMA's emphasis on conservation and protection of resource lands. RCW 36.70A.060; WAC 365-196-815. This statute and WAC both require that counties limit nonresource uses on designated resource lands by adopting development regulations. Footnote 1.

RCW 36.70A.177 and WAC 365-196-815(3) allow the use of innovative zoning techniques, including clustering. To comply with the requirements to protect resource lands, staff proposes that the Board adopt clustering as a requirement of allowing additional residential density through creation of smaller parcels in the proposed AG-10 and FR-20 zones.² Clustering is not required by the GMA, and staff does not recommend required clustering for all residential development in Clark County's resource zones. For example, no clustering should be required to build homes on pre-existing lots in a resource zone.

Staff recommends that, when larger agricultural or forest parcels are divided pursuant to the new AG-10 or FR-20 densities, clustering be required to retain the majority of the parent parcels for resource uses. The PA's Office supports this recommendation because the clustering requirement would greatly enhance the county's argument that it is conserving resource land, which is required by statute and the Washington Administrative Code. Staff will propose regulations similar to CCC 40.210.020(D), Rural Cluster Development (currently, for Rural parcels only), except that clustering will be mandatory when resource parcels are divided to achieve the greater allowed residential density.

² Please note that staff and the PA's office *recommend* that the Board adopt clustering as a requirement for the creation of reduced sized lots in the new resource zones, for the reasons stated in this memorandum. Neither the Planning Department nor the PA's Office asserts that clustering is mandatory in the resource zones.

Question: Staff asserts that a management plan is also required for the remainder lots of those cluster developments. Please provide the relevant specifications, examples, RCWs, WACs, Hearing Board decisions, and case law that confirm the staff's assertion.

Response: To address these issues, it must be recalled that the county is proposing to modify its Comprehensive Plan to allow increased development in the resource zones. At the same time, the county is obligated to conserve designated resource areas. See discussion in prior section. Given the need to accommodate both commitments, the county must show that there is a way to allow increased development and still conserve the resource areas. Use of cluster developments is therefore critical to accomplish the county's goal of AG-20 to AG-10 and FR-40 to FR-20. Management plans required for the remainder parcels are equally critical to assure that this land is not converted to nonresource uses. RCW 36.70A.060(1)(a); WAC 365-196-815(1)(b) and (3)(a), (b)(2). Requiring management plans for remainder parcels is also consistent with portions of current county code.

At present, one choice for clustering on Rural parcels is to create cluster lots equal to the maximum allowed density. CCC 40.210.020(D)(3)(c)(2)(a). An example would be a 20-acre parcel in a five-acre zone going to four 1-acre cluster lots and a 16-acre remainder lot (which would not be buildable). Subsection (a) requires that the remainder parcel be used only for agriculture and forestry uses, or as open space. Subsection (a)(i) requires an open space, equestrian, farm or forest management plan for the remainder parcel. Requiring a management plan for a resource zone remainder would thus be consistent with the current county ordinance for the Rural zones, and would comply with state law regarding conservation of resource lands as well.

Question: I also ask for relevant legal references that limit the percent of the density bonus we can use for cluster developments on R, AG, and FR parcels.

Response: Although section 40.210.020(D)(3)(a) allows for a density bonus of 110%³, this provision is not being proposed for clustering on agricultural and forest lands. A density bonus would not assist the county in complying with state law requirements to conserve resource land.

It would be difficult to defend authorizing additional density of nonresource uses in the resource zones without also adopting measures to assure conservation of resource lands. RCW 36.70A.060; WAC 365-196-815. A density bonus for a nonresource use would go in the other direction.

Question: Staff also asserted that the ordinance must be passed before the preferred Alternative is submitted to the state. Please confirm this. I thought that such county code amendments did not need to be finished ahead of that submission. I thought that in years past, that county code updates followed the submission of the Comp Plan Update.

³ This means that with 50 acres in a five-acre zone, one extra cluster lot could be created (there could be 11 instead of 10).

Response: As detailed within this memorandum, it would not be defensible to adopt Comprehensive Plan provisions that would allow increased density of nonresource development within the agricultural and timber zones without also adopting development regulations to assure continued conservation of resource lands. Many aspects of an updated Comprehensive Plan are implemented through development regulations. In any case, state law mandates that counties update development regulations along with their plan updates. RCW 36.70A.130(1), (5).

Question: Staff also asserted that they have been working very hard for some time now on the Cluster Ordinance. I was surprised because the BOCC rescinded the Cluster option in our February 16 Comp Plan Hearing. The BOCC removed the cluster ability for AG and FR zones entirely. When did staff start working on the resource Land Cluster ordinance?

Response: Work on a cluster ordinance has gone on for some time. At Councilor Madore's suggestion, the county conducted a Rural Preference Survey in late 2013 that included a question about clustering. When the Board initially adopted alternatives for the DSEIS in the summer of 2014, Alternative 2 included the decrease in minimum parcel sizes for agricultural and forest lands. Staff suggested at that point that the chances of being successful with this change would be increased by requiring that subsequent land divisions be clustered. Staff then began research on a cluster provision so that it could be discussed, depending on the Board's decision. Councilor Madore, on more than one occasion, has requested that clustering be included in the DSEIS as a possible mitigation measure; clustering is mentioned in the DSEIS in the mitigation section on page 6-23. The Board on February 23 adopted a Preferred Alternative that did not include Alternative 4, but staff has continued to recommend clustering because the Preferred Alternative includes the residential density increases on resource lands that were proposed as part of Alternative 2.

Question: Please share the draft policy work with me. As a policy maker, I believe policy making is my responsibility. My goal as a policy maker is to create policy that not only lawful, but flexible and supported by the rural citizens. It would be inappropriate for the executive branch to create policy that the policy makers find out about just before the Planning Commission considers it. I feel that the wrong agents are driving this process in place of the policy makers. Do you agree? I ask that you open the door to my participation up front. I have specifics to incorporate into a cluster ordinance.

Response: These questions do not fall within the scope of the Planning Department's work on the comprehensive plan update.

D. Rural Cluster Development.

1. Purpose. The purpose of this section is to provide for small lot residential development in the rural zoning districts (R-5, R-10 and R-20) which maintains rural character, maintains and conserves larger remainder parcels, protects and/or enhances sensitive environmental and wildlife habitat areas, and minimizes impacts to necessary public services. These goals are achieved by allowing the placement of homes on a small portion of the property while maintaining the majority of the site in a remainder parcel. This is consistent with the goals and policies of the Growth Management Act, especially the provisions for innovative development techniques to conserve open space and resource lands.

2. Definitions. For the purposes of this section, the following definitions shall apply:

a. "Building envelope" shall mean that buildable portion of a lot or parcel (the area outside of setbacks and easements) which is designated on the final plat for the location of a structure.

b. "Critical lands," for the purposes of this section, shall mean those lands classified by Chapter [40.440](#) as habitat areas, by Chapter [40.450](#) as any wetland category and associated buffers, by Chapter [40.430](#) as landslide hazard areas, all lands subject to Shoreline Management Act jurisdiction by Chapter [40.460](#), and all lands within a designated one hundred (100) year floodplain or floodway by Chapter [40.420](#).

c. "Remainder parcel" shall mean the remainder parcel of the cluster provision that contains the majority of the land within the development and is devoted to open space, resource or other authorized use.

3. Development Standards.

a. Maximum Density. Cluster developments are allowed a maximum density equivalent to that which would be permitted by applying the otherwise applicable minimum lot size requirements of this section. The density shall be based on one hundred ten percent (110%) of the gross area of the site.

b. Cluster Lots.

(1) Cluster lots shall be sited to minimize conflicts between housing and adjacent agricultural or forest zoned property.

(2) Cluster lots and building envelopes may not include critical areas unless no other alternative exists. If no alternative is available, encroachment into these areas shall be limited to the least amount possible consistent with applicable critical areas ordinances.

c. Remainder Parcel.

(1) The remainder parcel shall be contiguous. Fragmentation of the parcel by public or private road easements and/or building sites shall not occur unless no other reasonable alternative exists. The remainder parcel shall provide a buffer for the cluster lots from adjacent lands in a resource zoning district. Remainder parcels shall also be located adjacent to other bordering remainder parcels or public parks and open space. To the maximum extent possible, all critical areas and any associated buffers

existing on property proposed for cluster development shall be located within the remainder parcel. In order to retain the rural character the remainder parcel should contain to the maximum extent possible forested areas, prominent hillsides, meadows and ridges.

(2) There are two (2) ways of utilizing the maximum density allowed within a cluster development, as follows:

(a) The creation of cluster lots equal to no more than the maximum allowed density, with a remainder parcel that can be used only for the agriculture and forestry uses as listed in Table 40.210.020-1(7)(a), (b) and (d) or as open space. An example of this would be a twenty (20) acre parcel in the R-5 district, where four (4) cluster lots and one (1) remainder are created. All of the allowed density is used on the cluster lots, and the remainder parcel can only be used as open space or for agriculture or forestry uses.

(i) If this option is used, an open space, equestrian, farm or forest management plan is required for the remainder parcel. The plan shall be submitted and approved with the preliminary application. The plan shall identify permitted uses and management of the parcel so that it maintains its open space or other designated functions and provides for the protection of all critical areas. The management plan shall identify the responsibility for maintaining the remainder parcel. The plan shall also include any construction activities (trails, fencing, agricultural buildings) and vegetation clearing that may occur on site. The plan shall include building envelopes for any proposed equestrian facility. This building envelope must be located outside of any critical areas including fish and wildlife habitat areas, riparian corridors, geologic hazard areas, areas of significant natural vegetation, wetlands, prominent hillsides, meadows, ridges and any buffers associated with the above areas. All subsequent activities must be conducted in conformance with the approved management plan. Management plans may be modified through a Type II process.

(ii) A note shall be placed on the plat and a restrictive covenant shall be recorded that clearly states that only the above uses are permitted on the parcel. The note and covenant shall also incorporate the management plan, as described above.

(b) The creation of cluster lots equal to no more than one (1) less than the maximum allowed density with a remainder parcel that can also be developed. If this option is used, the remainder parcel may contain the uses listed in Table 40.210.020-1. An example of this would be a twenty (20) acre parcel in the R-5 district, where three (3) cluster lots and one (1) remainder are created. The allowed density, less one (1), is used on the cluster lots. This permits the remainder parcel to be developed with any of the uses normally allowed in the rural districts. If the remainder parcel is to be residentially developed, a building envelope shall be delineated on the final plat. This building envelope must be located outside of any critical areas including fish and wildlife habitat areas, riparian corridors, geologic hazard areas, areas of significant natural vegetation, wetlands, prominent hillsides, meadows, ridges and any buffers associated with the above areas. This requirement shall not apply to pre-existing residences located on the remainder lot.

4. Lot Requirements. New lots and structures and additions to structures subject to this section shall comply with the applicable standards for lots and building height, and setbacks in Tables 40.210.020-4 and 40.210.020-5, subject to the provisions of Chapter [40.200](#) and the Section [40.550.020](#).

Table 40.210.020-4. Lot Requirements – Rural Cluster Development					
Lot Type	Zoning District	Minimum Lot Area	Maximum Lot Size	Minimum Lot Width (feet)	Minimum Lot Depth (feet)
Cluster Lot	R-20, R-10, R-5	1 acre ¹	None ²	100 ³	140
Remainder Lot	R-5	65% of site	None ²	None	None
	R-20, R-10	75% of site	None ²	None	None

¹ Unless a larger size is required by the Clark County Health Department. Cluster lots can use right-of-way to meet the minimum lot size as permitted by Section [40.200.040\(C\)\(1\)](#).

² The minimum standard for remainder parcels controls the maximum size of cluster lots.

³ Unless a greater width shall be required by the Clark County fire code.

Table 40.210.020-5. Setbacks, Lot Coverage and Building Height – Rural Cluster Development						
Zoning District and Lot Type	Location or Structure Type	Minimum Setbacks			Maximum Lot Coverage	Maximum Building Height (feet)
		Front (feet)	Side (feet)	Rear (feet)		
R-20, R-10, and R-5 – Cluster Lots and Remainder Lots	Abutting a cluster lot	20	20	20	N/A	35 ²
	Abutting a resource district	200 ¹	200 ¹	200 ¹		
	Agricultural structures	50	50	50		
	Vehicle entry gates or garage door openings	20	20	20		
	All other situations	50	20	50		

¹ Except in cases where it can be shown that a lesser setback will provide the same or greater buffering or where requiring the normal setback will result in the location of the building sites within inappropriate

areas such as wildlife habitat or wetland areas or the dimensions of the development site render it unbuildable.

² *Residential buildings only.*

(Amended: Ord. 2007-06-05)

5. Design Requirements. The design requirements for cluster developments are listed below. These requirements shall be recorded on the plat.

a. No entryway treatments, monument or other permanent development signs are permitted. This shall not be construed to prohibit landscaping.

b. Sight-obscuring fences of any height are not permitted within fifty (50) feet of the public right-of-way, nor along cluster lot lines adjacent to the remainder lot. Sight-obscuring fences are at least fifty percent (50%) opaque.

c. To the maximum practicable extent, existing historic rural features shall be preserved as part of the cluster development. These features include but are not limited to rock walls, fences, functional and structurally safe farm buildings, monuments and landscape features.

6. Landscaping Standards. Cluster developments shall be landscaped within the developed portion of cluster lots, so as to reduce views of the development from the public right(s)-of-way so that a filtered view is provided of the cluster and the cluster does not dominate the landscape.

a. At a minimum, proposed or existing landscaping and vegetation shall be of sufficient size and type to provide a buffer of vegetation six (6) feet in height and fifty percent (50%) opaque year round within three (3) years of planting. New landscaping materials shall consist of native vegetation as identified by the Clark Conservation District. A combination of trees and shrubs must be used.

b. All landscaping shall be installed prior to final plat unless financial guarantees are made for its installation prior to any building permit activity. Any required landscaping materials that fail to survive within the first two (2) years shall be promptly replaced.

7. Previously Approved Cluster and Lot Reconfiguration Remainder Lots. Previously approved cluster or lot reconfiguration remainder lots are not eligible to use the provisions of this section.

8. Procedures. Cluster land divisions shall be processed in accordance with the established procedures for land divisions under Chapter [40.540](#).

9. Notice of Resource Activities. Where otherwise undevelopable cluster remainder parcels are designated for commercial timber or agricultural activities the following notice shall be recorded as part of the Developer Covenants to Clark County for each parcel within the cluster:

The subject property is adjacent to commercial agricultural or forest lands on which a variety of commercial activities may occur that are not compatible with residential development. Potential

discomforts or inconvenience may include, but are not limited to: Noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any twenty-four (24) hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.