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March 18, 2024

E-MAIL

Bart Catching
Community Development
Clark County
1300 Franklin Street
Vancouver, WA 98660
E-mail: bart.catching@clark.wa.gov

**Re: PROPERTY OWNER SUBMITTAL
COMPREHENSIVE GROWTH MANAGEMENT PLAN 2025
APN's 230283-000 (35.4 acres) & 986029-395 (0.53 acres)**

Dear Mr. Catching:

Richard and Candace Jones, owners of the above-referenced property, seek Comprehensive Plan amendment and rezone from FR-40 to R-10 in the 2025 plan review.

HISTORY

In 1984, the property was zoned RE (Rural Estate),¹ with a minimum lot size of 2½ acres for residential uses.² Today, the property lies within an FR zone with a minimum lot size of 40 acres.³ Immediately prior to implementation of the Growth Management Act in 1994, most of the current parcelization within this FR-40 zone had already occurred.⁴ Today, parcels within the zone average 18.8 acres,⁵ and only one out of 71 exceeds the 40-acre minimum lot size.⁶

¹Exhibit 1. As noted on the second page of Exhibit 1, the County zoning map includes revisions through May 10, 1993.

²CCC 18.305.060(A).

³Exhibit 2; CCC Table 40.210.010-2.

⁴Exhibit 3 (Metsker's Maps, Clark 1993, at 27-28).

⁵Exhibit 4 at 2.

⁶Map ID 45, Assessor's Parcel No. 230277-000, at 50.08 acres.

The following property owners within the FR-40 planning area have requested that we add their parcels to the request for Comprehensive Plan Amendment from FR-40 to R-10:

<u>Map Id*</u>	<u>Assessor's Parcel</u>	<u>Owner</u>	<u>Parcel Size</u>
2	278583-000	Richard & Lisa Cruanas 19201 NE Gabriel Road Yacolt, WA 98675 E-mail: lafincaalpacas@msn.com	20.00 acres
34	230490-000	Joseph & Gabrielle Massie P.O. Box 2771 Battle Ground, WA 98604 E-mail: 12345@gmail.com	28.02 acres
35	230487-000	Willa Stewart 33716 NE Kelly Mountain Road Yacolt, WA 98675 E-mail: 12345@gmail.com	27.88 acres
65	230286-000	Barri & Kara Halberg P.O. Box 73 Woodland, WA 98675 E-mail: barrih@nellc.net	21.57 acres

*Exhibit 4 at 3. The same arguments apply to the entire FR-40 planning area.

* * *

DEVELOPMENT REGULATIONS

The Growth Management Act mandates that comprehensive plans include a rural element which provides for a variety of rural densities.⁷ Measures to “protect the rural character” include:

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
- (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and

⁷RCW 36.70A.070(5)(b).

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. [⁸]

The FR-40 zone in which the subject property is located is surrounded by FR-80 zoning on all sides, with the exception of a portion of the north boundary approximately 0.66 miles long, that borders an R-10 zone.⁹ Hence, even if a mapping error were recognized for this entire FR-40 zone, rural development would be contained by surrounding FR-80 designations.

This FR-40 zone is already characterized by rural residential development, including 19 properties of five acres or less, and 20 properties five to ten acres in size.¹⁰ As noted above, only one property out of 71 in this FR-40 zone is over 40 acres in size.¹¹ Rezone of the subject property to R-10 would be compatible with the surrounding area.

Rezone to R-10 would not encourage conversion of undeveloped land because the land is already developed to densities permitted under that designation. The Jones Property comprises one tax parcel 35.4 acres, and one parcel 0.53 acres in size. The larger parcel currently dedicates 5.0 acres to residential uses, which is sufficient acreage for three home sites after division.¹²

The remainder of the Jones property, comprising 30.93 acres,¹³ would remain in timber production after conveyance of parcels to the applicants' children. The zoning code prohibition of a natural division among heirs is not essential to the preservation of forest practices. The property is currently valued as timberland for tax purposes,¹⁴ and development of two additional building lots would not be profitable after payment of seven years tax differential, penalties and interest for removal the current use assessment.¹⁵

⁸RCW 36.70A.070(5)(c).

⁹Exhibit 2.

¹⁰Exhibit 4.

¹¹Exhibit 4.

¹²Exhibit 5 at 3, 5, 7.

¹³Exhibit 5 at 3.

¹⁴Exhibit 6.

¹⁵RCW 84.34.108; RCW 84.34.080.

Critical areas are more than adequately protected under the County Habitat Ordinance.¹⁶ Neither will the current proposal “interfere with the continued use, in the accustomed manner and in accordance with best management practices, of [lands] designated . . . for the production of . . . timber,”¹⁷ because timber production will continue on the same 30.93 acres after rezone.

While the September 1, 1991 adoption date was not satisfied in Clark County, the entire FR-40 zone in which the property is located failed to satisfy the Growth Management Act requirement for designation of “[f]orestlands that are not already characterized by urban growth” when the 20-Year Comprehensive Growth Management Plan was adopted on December 20, 1994.¹⁸ Most of the existing parcelization had occurred prior to publication of the 1993 Edition of Metsker’s Maps.¹⁹

In addition the Growth Management Act provides for limited areas of “more intensive rural development,” whether characterized as villages or hamlets:

(A) A . . . residential . . . area [is] subject to the requirements of (d)(iv) of this subsection, but [is] not subject to the requirements of (c)(ii) and (iii) of this subsection. . . .

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. . . .

RCW 36.70A.070(5)(d)(i). No change in building size, scale, use, or intensity is contemplated.

The cited provision “(d)(iv)” includes the following requirements:

A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. . . . Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built

¹⁶Chapter 40.440 CCC.

¹⁷RCW 36.70A.060(1).

¹⁸Ordinance No’s 1994-12-47 and 1994-12-53.

¹⁹Exhibit 3.

environment, but that may also include undeveloped lands if limited as provided in this subsection. . . . [²⁰]

“Existing areas” are defined as of implementation of the Growth Management Act:

For purposes of (d) of this subsection, an existing area or existing use is one that was in existence: . . .

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); . . . [²¹]

In order to meet the goals and requirements of the Growth Management Act, Clark County adopted a 20-Year Comprehensive Growth Management Plan on December 20, 1994.²² As noted above, most of the parcelization within this FR-40 zone occurred prior to adoption of the 1993 Edition of Metsker’s Maps.²³ Clearly, this entire FR-40 zone met the definition of “existing area of more intense residential development” prior to implementation of the Growth Management Act. However, we can avoid discussion of intent and error if we focus upon the actual criteria at issue. The property tax statute defines timberland as a parcel greater than five acres in size, devoted primarily to the growth and harvest of timber for commercial purposes:

“Timberland” means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timberland means the land only and does not include a residential homesite. [²⁴]

The definition includes multiple parcels used jointly, so there is no necessary connection between parcel size and usage. The present proposal

²⁰RCW 36.70A.070(5)(d)(iv).

²¹RCW 36.70A.070(5)(d)(v).

²²Ordinances 1994-12-47 and 1994-12-53.

²³Exhibit 3.

²⁴RCW 84.34.020(3).

contemplates no change in the existing timberland usage. There is no defensible basis to limit lot size in area already characterized by small lots, any more than there is to limit the FR designation to not less than 40 acres. Unfortunately, the limited zoning designation does not account for natural inheritance patterns nor federal tax incentives. The FR designation carries an implicit presumption that division into parcels smaller than 40 acres will result in “sprawling development” antithetical to forest practices, but there is no support for such a conclusion. There is no necessary connection between land use and minimum lot size; to the contrary, the ability to devise timberlands to multiple heirs would encourage the continuity of forest practices by allowing heirs to reside on the lands they manage, while carrying on a family business or tradition.

FOREST PRACTICE APPLICATION / NOTIFICATION

On May 22, 2020, the Department of Natural Resources issued a Notice of Decision approving Forest Practices Application / Notification 2937719 for the Jones Property.²⁵ According to the GIS Property Information Fact Sheet, the issuance of this permit resulted in a “6 Year FPA Parcel Hold.”²⁶ In order to remove the hold, the applicants requested cancellation of the permit.²⁷ FPA/N#2937719 was “[c]losed per written request” on September 14, 2020.²⁸ This “hold” should not affect the present request.

Sincerely,

Mark A. Erikson
Attorney at Law

²⁵Exhibit 7.

²⁶Exhibit 8. An entire GIS Developer’s Packet is also transmitted herewith.

²⁷Exhibit 9.

²⁸Exhibit 10.

Bart Catching
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