

FRIENDS OF CLARK COUNTY
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friendsofclarkcounty@tds.net

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 and 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, 2016¹. 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.

¹ We are unaware of the date this document was stamped received by the County.

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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

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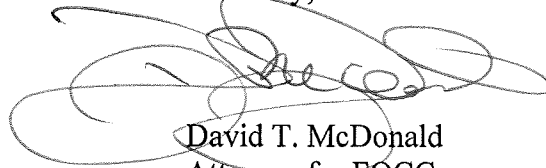
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divisions to go forward, could expose the County to later lawsuits by adjacent landowners and/or taxpayers who are damaged by the allowance of these divisions. Any claim that such land divisions “may” not occur in a “land rush” of applications is contravened 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", with a large, sweeping flourish underneath.

David T. McDonald
Attorney for FOCC