David T. McDonald
Ridgefield, WA 98642
david@mcdonaldpc.com

September 16, 2019

Clark County Councilors
% Dr. Oliver Orjiako
Public Services Building
Franklin Street
Vancouver, Washington

Re: CPZ 2019-0004, CPZ 2019-0002, CPZ 2019-00003,

Dear Councilors:

Please accept these as my comments in my personal capacity, and also on behalf of Friends of Clark County, regarding the above referenced CPZs that come before you on Tuesday night, September 17, 2019. Previously, on September 10, 2019, I provided an e-mail regarding these properties and this is a follow-up supplemental to those comments. Since sending that e-mail, I have reviewed all of the documents that are on the Grid as well as the videos of the Planning Commission hearings.

CPZ 2019-0004:

The Council should reject this application for the reasons stated below.

First, the maps show that this parcel, even though logged under a forest practices application, is still a buffer for Legacy Lands and, with replanting. The larger area is bordered by Allen Canyon on the east, the Ridgefield Wildlife area and

Second, the GMA does provide for a variety of densities and, at a minimum, and, as Sharon Lubantobing stated in response to Commissioner Barca's questions at the PC hearing, there is no lack of R-5 parcels in the rural area but there is no dearth of R-10 parcels. *See* Planning Commission hearing (cvtv) at minutes 7:50-9:30. Further, Ms. Lubantobing stated that the 35 acres to the east are Legacy Lands that, as you can see from the aerial view that is attached, are heavily wooded. She opined that may not be permanently in Legacy Lands. However, the County's website states the following:

> **NW 324th St. and NW Allen Canyon Rd.**
>
> Tucked in the north corner of Clark County is a beautiful canyon with a picturesque lake, Lake Rosannah. This 75-

> acre water body captures Allen Creek before it is released into the Lewis River. Two properties have been purchased to help protect this region. A 58-acre property at the south end of the lake contains the creek canyonland with forested slopes up to a open field and tree rows. In the southeast corner you can park and follow the nature trail into the site. ***Another 120 acres has been purchased south of the lake but has no access at this time.*** (emphasis supplied)
>
> These properties were purchased, in part, with Conservation Futures funds in 2009.

The Legacy Lands webpage says Columbia Land Trust owns the property[1]. Thus, there is nothing to indicate that these Legacy Lands should be compromised by eliminating R10 zone when the express purpose of R10 zone is to buffer lands such as these Legacy Lands.

Third, Ms. Lubantobing told Commissioner Barca that there really is no difference between R5 and R10 designation. However, that does not appear exactly to be the case because, according to the website (and I assume that this is related to a county code provisions), if the property is designated as R5, then it can have 5 new lots rather than 2 under the current zoning:

> The subject parcel is **26.29** and if rezoned to R-5, could potentially be subdivided into **5 new lots** (3 more than the current R-10 zoning allows). https://www.clark.wa.gov/community-planning/cpz2019-00004

I assume this is due to the fact that the 26 acres could be divided into 5/5-acre lots under R5 zone, or it could get five lots through a rural cluster. Either way, in the rural areas, more than doubling the number of homes per lot makes a larger impact than adding 3 lots in the urban area and would diminish, if not eliminate, any realistic buffer to the 35 acres of Legacy Lands to the east and the R10 piece to the south. Plus, given the topography and very shallow aquifer, the parcel, even with 2 houses could still act in concert with all of the environmentally sensitive lands between Allen Creek Canyon and the myriad of lakes and rivers to the north and east (see satellite map that is attached).

Fourth, according to the property information center, the designation of the parcels that

---

[1] Although this is what it says on the County's Legacy lands website, I think the CLT ownership may be limited to the area around Rosannah Lake, not the 35 acre Legacy Lands that are all part and parcel of the same general purpose of protecting this area but I cannot be sure at this point.

are to the northeast, due east and south east of the subject property may be one large 35 acre parcel but it is hard to tell from the County property information center. According the PIC, #210783000 is a 35-acre parcel owned by Clark County Legacy Lands in a Rural 10 zone and was purchased by the County in 2009 to protect the land in the parcel and surrounding area. The purchase price was 2.3 million dollars (this cost may be for the total purchase of all of the Legacy Land parcels in the area but hard to tell from the County PIC). The PIC and maps on line show that this parcel appears to include 210784000 and 21078500. https://gis.clark.wa.gov/mapsonline/?site=SurveyOffice&qlyr=Survey%20-%20Recorded&qval=041196

However, the PIC when looking separately at Parcel #210784000 and Parcel #210785000 shows #210784000 as a 40-acre parcel in a Rural 20 zone and its NW corner abuts the SE corner of the subject property and Parcel #210785000 as a five acre parcel in a designated Rural 10 zone and connects on the SE corner to parcel #210783000 which directly abuts the subject property to the east.

Even though the County may think about doing something with them in the future, other than the stated current stated purpose, the County has to go through a myriad of permit process and procedures, which could, ultimately prevent a sale or other disposition of the property. *See* Clark County Conservation Futures Legacy Lands Program Guidance Manual at https://www.clark.wa.gov/sites/default/files/dept/files/public-works/Parks/Legacy_Lands/legacy_manual_2013(1).pdf. Plus, as they are still Legacy Lands, and R10 parcels are not plentiful and supposed to buffer lands such as these Legacy Lands, there is not a justification for rezoning the subject property, the rezone does not comply with GMA and should be rejected.

Fifth, there is nothing in any of the materials that addresses the issue of water. RCW 19.27.097(1)(b) requires that for WRIAs 27 and 28, the applicant must provide evidence of an adequate water supply must be consistent with the specific applicable instream flow rules for WRIAs 27 (Lewis) and 28 (Salmon-Washougal). This property is in WRIA 28. So the instream flow rules are unchanged. There are already more lots for WRIAs 27 and 28 than the reserves created by the instream flow rule can serve. I believe this is WRIA 27. I have attached an excerpt from a letter dated May 12, 2016 from Mr. Trohimovich to Clark County Councilors and Planning Commission that details the WRIA water issues in Clark County and is incorporated by this reference. I acknowledge that RCW 19.27.097 requires applicants for building permits for buildings that need potable water to provide evidence of an adequate water supply and this project is not yet at the building permit stage. However, if the WRIA data is correct, and the water rights are over allocated in this WRIA, then the County should not allow a subdivision of this parcel.

Finally, it appears that these applicants bought the property for the purpose of cutting the

timber[2] and developing the property. They have no intention of living on the land. Apparently, they bought the R10 from the County to harvest the timber, rezone the property and then develop it into 5 lots. This is not about private property rights for the applicant as the applicant purchased the property knowing it was a 10 acres zone with 2 buildable lots but does implicate the property rights of the long time residents of the area who purchased property with a R10 zone on that parcel that now will increased.

Thus, I would like to reiterate my comments from the e-mail that is just another example of this County looking at a parcel to allow it to upzone against other parcels that then, in turn, more likely than not will state that they should be allowed the same upzone. The County sets these parcels at these densities for a reason and nothing in this application suggests that this is compliant with GMA.

CPZ 2019-00003

The Council should reject this application. To approve such a rezone would be not only inconsistent with, but also antithetical to the actions by the County during the last round of hearings on 179th Corridor. In fact, this land is open and much more ready for BP status than the currently zoned BP areas along the west side of NE Delfel. To allow this to go to ULD with CC would fly in the face of the County's stated goals of economic growth that the Council recently stated was the driving force behind what will ultimately be approximately 200 million dollars in Road Improvements around the 179th Street/I5 area. The staff recommended denial and the PC voted 5-0 to adopt staff's recommendation that this CPZ be denied. Therefore this request should be denied.

CPZ 2019-0002

The Council should similarly reject this application. This is a scenario that has happened with much frequency over the years[3]. Basically an area is zoned for community commercial in an area of residential area and then, once the residential comes into effect, there is a hue and cry from the owner of the commercial property that there is so much residential that commercial is either a) inconsistent with the residential development or that b) the residential development precludes the owner from finding a buyer who wants to develop as commercial. The County should reject this application.

---

[2] I have not been able to review the FPA permit that allowed for the logging but the owners appeared to admit that they were non-compliant with the post logging requirements of the permit.

[3] I believe this could eventually happen in the 179th corridor area based upon the fact that the UH overlay removal will open the floodgates to the development of over 5000 dwelling units without, at least so far, any applications for any real economic based development other than Three Creeks retail. Thus allowing this application would set a bad precedent.

Thank you for your consideration of these matters and, again, my apologies for submitting these comments at the 11th hour.

Best Regards,

David T. McDonald
Ridgefield, WA

Excerpts from Letter from Tim Trohimovich to Clark County Councilors and Planning Commission dated May 12, 2016 regarding Water Availability in Clark County (any attachments referred to in the footnotes are not attached to this excerpt but the excerpt is being provided to emphasize that the WRIA reports show that water resources in WRIA 27 are over allocated)

The Growth Management Act (GMA), in RCW 36.70A.070(1), requires that the "land use element [of the comprehensive plan] shall provide for protection of the quality and quantity of groundwater used for public water supplies." Further, the GMA, in RCW 36.70A.070(5)(c), provides in relevant part that the "rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: … (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources …" In reviewing these GMA requirements, the Washington State Supreme Court has held that "several relevant statutes indicate that the County must regulate to some extent to assure that land use is not inconsistent with available water resources."[1]

When Ecology adopted the instream flow rules for Water Resource Inventory Areas (WRIAs) 27 and 28, Ecology established reserves for future domestic uses in Clark County.[2] Enclosed with this letter are an email and two spreadsheets and, in a separate email, maps that show the status of those reserves as of the end of June 2015. Ecology estimates that the reserves can accommodate another 2,747 domestic wells with each well serving one house and with one household in the house, 1,627 households served by small community water systems, and Clark County Public Utilities can serve another 485 households outside cities.[3] This totals 4,859 new households or occupied housing units.[4] So Clark County should limit the number of currently vacant and new rural, agricultural, and forest land lots to about 4,859 and only in the parts of the county outside cities that have available reserves. After the reserves are exhausted, new permit-exempt wells can only be used if the person proposing to use the well provides in-kind mitigation, which typically requires acquiring a water right senior to the instream flow rules.[5]

However, Clark County currently has 5,042 existing vacant lots in the rural areas and on resource lands as of 2014.[6] Therefore the County already has more lots than can be

---

[1] *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 178, 256 P.3d 1193, 1209 (2011).
[2] Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed, WRIA 27* p. 1 (Publication Number: 11-11-031 August 2012) accessed on Nov. 17, 2015 at: https://fortress.wa.gov/ecy/publications/summarypages/1111031.html and enclosed with the paper original of this letter; Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed, WRIA 28* p. 2 (Publication Number: 11-11-032 August 2012) accessed on Nov. 17, 2015 at: https://fortress.wa.gov/ecy/publications/summarypages/1111032.html and enclosed with the paper original of this letter.
[3] The enclosed spreadsheet WRIA 27-28 Reservations ESTIMATES w Totals for Clark County by Category totals the Ecology data for Clark County.
[4] The Spreadsheet WRIA 27-28 Reservations ESTIMATES w Totals for Clark County by Category.
[5] *Foster v. Washington State Dep't of Ecology*, 184 Wn. 2d 465, 476 – 77, 362 P.3d 959, 963 (2015).
[6] *Clark County Buildable Lands Report* p. 13 (June 2015) accessed on May 12, 2016 at: https://www.clark.wa.gov/sites/all/files/the-grid/061015WS_2015BUILDABLE_LANDS_REPORT.pdf and cited page enclosed with the paper original of this letter.

supported by the surface and ground water resources available in the rural areas and on resource lands. To allow this CPZ would violate the GMA.

Over development outside urban growth areas is already causing agricultural wells to go dry.[7] All of the new lots that the Preferred Alternative allows will make this problem even worse. For the same reason, we recommend that the county not reduce the minimum lot size for 291 parcels zoned Rural 20 (R-20) to Rural 10 (R-10) for some parcels adjacent to AG-10 based zone resource lands. The county does not have the water resources to support these increased densities.

Given the very limited water resources in in Clark County,[8] ensuring that new subdivisions and new buildings have the legal right to use the potable water proposed to support them is just basic consumer protection. When a family buys a lot or house, they should have clean and healthy water that is adequate for the proposed use and they should have the legal right to use the water so it not cutoff in the future.

This is also required by state law. RCW 19.27.097 requires applicants for building permits for buildings that need potable water to provide evidence of an adequate water supply. RCW 19.27.097(1) provides:

> (1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.

That RCW 19.27.097(1) requires as evidence a "water right permit." That a water right application is not sufficient proof of an adequate water supply shows that the legislature intended that building permit applicants must have the legal right to use the water. The Attorney General agreed with this reading writing that:

> In our opinion, an "adequate" water supply is one that is of sufficient quality and sufficient quantity to satisfy the demand created by the new building.

---

[7] Personal Communication from Coyote Ridge Ranch to Tim Trohimovich (April 02, 2015) enclosed with the paper original of this letter.

[8] Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed, WRIA 27* p. 1 (Publication Number: 11-11-031 August 2012); Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed, WRIA 28* p. 2 (Publication Number: 11-11-032 August 2012).

....

> The pertinent exception to the permitting requirements is found in RCW 90.44.050, which allows the withdrawal of up to 5,000 gallons a day of ground water for specified purposes without a permit. If ground water is regularly used beneficially as provided in that statute, then the appropriator will be entitled to a "right equal to that established by a permit issued under the provisions" of chapter 90.44 RCW. *Id.* Consequently, any applicant for a building permit who claims that the building's water will come from surface or ground waters of the state, other than from a public water system, must prove that he has a right to take such water.[9]

RCW 19.27.097 applies to all building permits for buildings necessitating potable water, not just residential building permits.

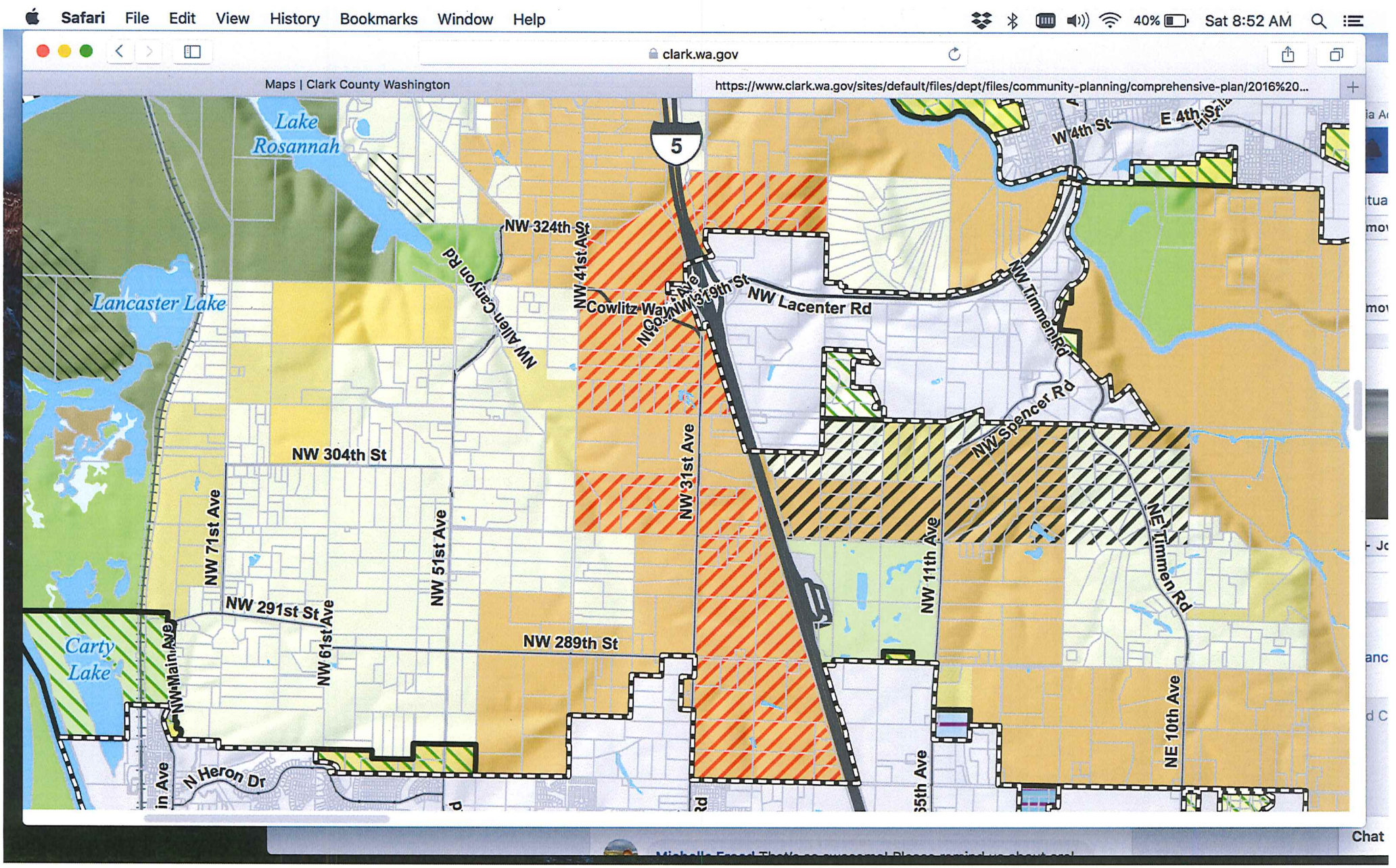
RCW 58.17.110 also requires Clark County to assure adequate potable water supplies are available when approving subdivision applications. Further, the county must assure that development applications proposing to use exempt wells are within the withdrawal limits applicable to those wells. As the Washington State Supreme Court wrote:

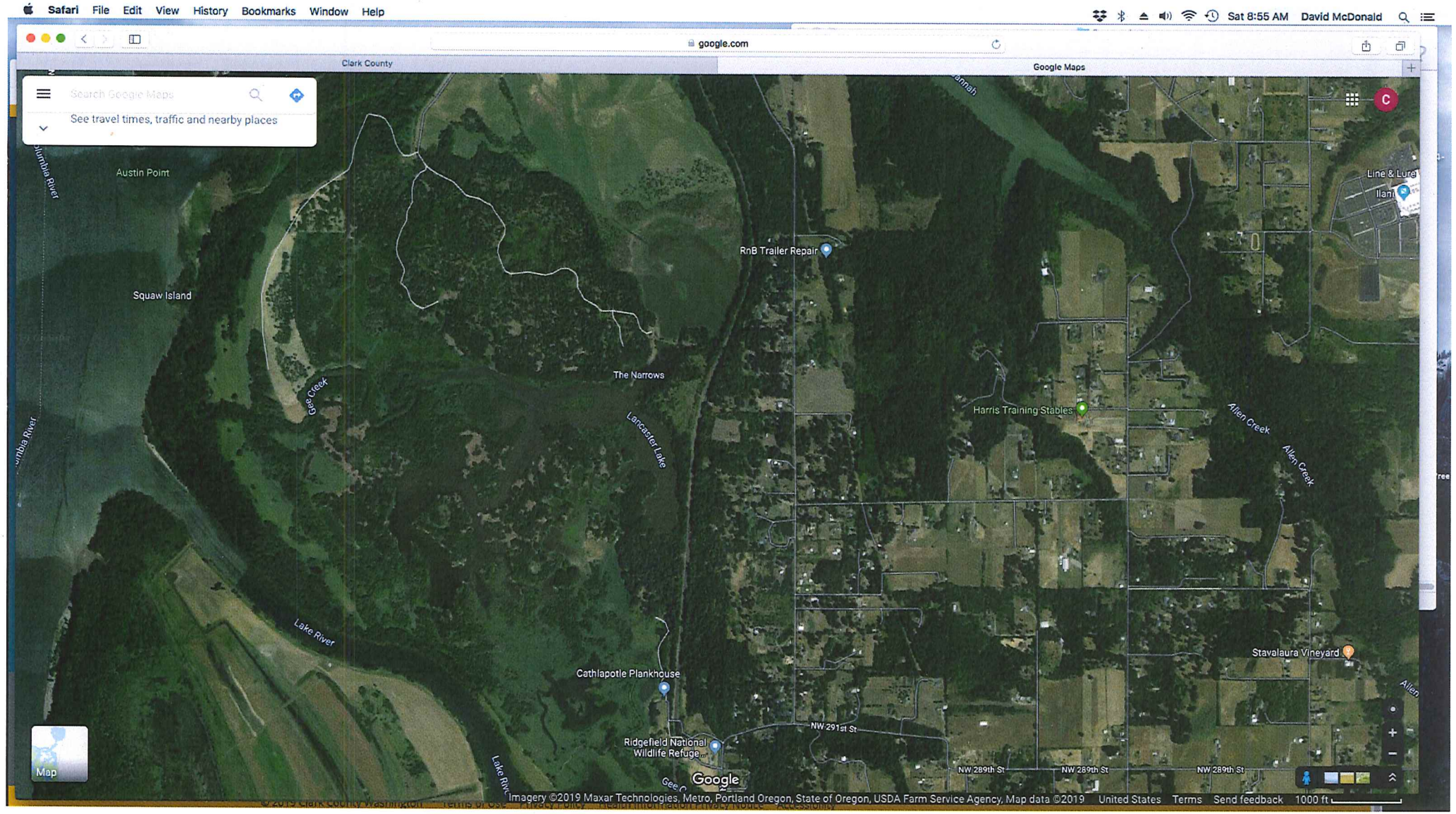
> ¶ 61 Without a requirement that multiple subdivision applications of commonly owned property be considered together, the County cannot meet the statutory requirement that it assure appropriate provisions are made for potable water supplies. Instead, nondisclosure of common ownership information allows subdivision applicants to submit that appropriate provisions are made for potable water through exempt wells that are in fact inappropriate under *Campbell & Gwinn* when considered as part of a development, absent a permit. To interpret the County's role under RCW 58.17.110 to only require the County to assure water is physically underground effectively allows the County to condone the evasion of our state's water permitting laws. This could come at a great cost to the existing water rights of nearby property owners, even those in adjoining counties, if subdivisions and developments overuse the well permit exemption, contrary to the law.[10]

---

[9] AGO 1992 No. 17 accessed on May 13, 2016 at: http://www.atg.wa.gov/ago-opinions/requirement-adequate-water-supply-building-permit-issued and enclosed with the paper original of this letter.

[10] *Kittitas County v. Eastern Washington Growth Management Hearings Bd.*, 172 Wn.2d 144, 178 – 81, 256, P.3d 1193, 1209 – 10 (2011) footnote omitted.


Safari File Edit View History Bookmarks Window Help
40% Sat 8:52 AM
clark.wa.gov
Maps | Clark County Washington
https://www.clark.wa.gov/sites/default/files/dept/files/community-planning/comprehensive-plan/2016%20...
Lake Rosannah
Lancaster Lake
Carty Lake
5
NW 324th St
NW 41st Ave
NW Allen Canyon Rd
Cowlitz Way
NW 379th St
NW Lacenter Rd
NW Timmen Rd
NW Spencer Rd
W 4th St
E 4th St
NW 304th St
NW 71st Ave
NW 51st Ave
NW 31st Ave
NW 11th Ave
NE Timmen Rd
NW 291st St
NW 61st Ave
NW 289th St
NW Main Ave
N Heron Dr
NE 10th Ave
Chat


Safari File Edit View History Bookmarks Window Help
Sat 8:55 AM David McDonald
google.com
Clark County
Google Maps
Search Google Maps
See travel times, traffic and nearby places
Austin Point
Squaw Island
Columbia River
Gee Creek
The Narrows
Lancaster Lake
RnB Trailer Repair
Harris Training Stables
Allen Creek
Line & Lure
Ilani
Stavalaura Vineyard
Cathlapotle Plankhouse
Ridgefield National Wildlife Refuge...
Lake River
NW 291st St
NW 289th St
NW 289th St
NW 289th St
Google
Map
Imagery ©2019 Maxar Technologies, Metro, Portland Oregon, State of Oregon, USDA Farm Service Agency, Map data ©2019 United States Terms Send feedback 1000 ft