

American Forest Land Company, LLC

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BOARD OF KITTITAS COUNTY COMMISSIONERS

May 12, 2008

Kittitas County Board of Commissioners

Mr. Mark McClain
Mr. Alan Crankovich
205 West 5th Ave, Suite 108
Ellensburg, WA 98926

Dear Chairman McClain and Commissioner Crankovich:

On behalf of American Forest Land Company ("AFLC"), I write to briefly comment on the on-going efforts by the County to comply with the Final Determinations and Orders issued by the Eastern Washington Growth Management Hearings Board ("Growth Board") on August 20, 2007 (No. 07-1-0004c) ("2007 FDO"), and March 21, 2008 (Case No. 07-1-0015) ("2008 FDO").

As a member of the Forest Lands Advisory Committee ("Committee"), I especially understand the pressures on the County and its Board of County Commissioners ("BOCC") to comply with the 2007 and 2008 FDOs. As a member of the Committee, I have spent hundreds of hours working on issues related to the Growth Board's FDOs. Accordingly, I appreciate the BOCC's consideration of the Committee's recommendations responding to an issue apparently not under stay.¹ As explained below, the FLAC's recommendations are founded on its determinations of a failed timber industry and the need for flexibility of land use options for areas currently zones Commercial Forest Land of Long-Term Significance ("CFL").

As we all know, the Growth Board found the County out of compliance under the Growth Management Act ("GMA") for numerous reasons, many of which are now under appeal. We also understand that many of these "issues" are now stayed by the Superior Court, relieving the County of its obligations to amend the Comprehensive Plan or Development

¹ The Committee's recommendations largely respond to Issue 3 of the 2007 FDO, which held that the County's Comprehensive Plan violates the Growth Management Act by failing to include mandatory criteria of forest lands of long-term significance. 2007 FDO, at pg. 27-28. Under direction of CDS, the Committee is also proposing de-designation criteria although the committee has previously stated it does not believe the 2007 FDO requires the proposal of such criteria. See Committee Letter to the BOCC, dated February 7, 2008.

Code in response to those issues until they are judicially resolved. We are concerned, however, that the County appears to still be proposing significant changes to its land use planning documents actions that are unnecessary under the Superior Court stays, overly confusing, and divisive. We therefore respectfully ask that the BOCC to temporarily suspend any further compliance efforts until a proper scope of compliance issues not stayed and under appeal are defined for the public, and an articulated compliance proposal is offered to the public for a meaningful opportunity to review and comment. In conjunction with the need for retooling the compliance process and proposal, we would ask the BOCC to consider seeking a second extension from the Growth Board.

I. The Current Process Does Not Provide Adequate Public Participation.

At the BOCC's May 6 hearing, the public testified on the confusing nature of the compliance process, and especially over what is being proposed and why. On its website, the County's Community Development Services ("CDS") has posted four revised documents after the May 6 hearing, along with approximately one hundred fifty-six other documents. CDS has posted several documents apparently prepared by the "Land Use Advisory Committee," but has not made clear whether similar documents by the FLAC and the Agricultural Lands Advisory Committee should be considered by the public.² Accordingly, how are the public reasonably expected to divine what "proposal" is under consideration by the Board and relevant for public review and comment?

Equally problematic is the lack of explanation by CDS as to why sweeping changes are being proposed to the BOCC at this time. CDS has posted the most recent Superior Court stay, which states that "[e]ven though the Board's FDO on the County's Comprehensive Plan and other development regulations is presently awaiting review with the Court of Appeals, the FDO in that case is stayed, thereby relieving the County of the requirement of amending its Comprehensive Plan." Cent. Wash. Home Builders Ass'n, et al. v. E. Wash. Growth Mgmt. Hr'gs Bd., et al., No. 08-2-00195-7, slip op. at 8 (Kittitas County Superior Court, April 24, 2008) (emphasis added). It is thus reasonable for a person to assume there will be no significant changes until the stayed issues are judicially resolved. Yet the County only posted one of the Superior Court's stays, along with the four "revised documents," with no explanation of its importance or impact on the Growth Board's compliance schedule. In sum, the County has provided no real explanation of what is actually being considered by the BOCC and why. See, e.g., RCW 36.70A.035 and RCW 36.70A.140 (County's notice of its proposal must be reasonably sufficient and calculated to allow the public a meaningful opportunity to comment).

II. Even if GMA- compliant, the adoption of sweeping changes to the Comprehensive Code and development regulations are unnecessary, unjustified, and in direct contravention to the Superior Court stays.

At the May 6 hearing, we understood the Board instructed CDS to provide a compliance proposal narrowly tailored to address only those issues not under stay. This is consistent

² Documents from these Committees can be found with a great deal of searching on the CDS webpage, but it is not clear if they are older documents or currently before the Commissioners.

with the position of numerous members of the public, including AFLC. On February 4, 2008, for example, AFLC filed comments explaining that because the Kittitas County Superior Court issued a stay covering issues 1, 10, and 11 of the Growth Board's 2007 FDO (No. 07-1-0004c), the County does not need to make any changes to those three issues in order to comply with the FDO.³ On April 24, the Superior Court agreed with that conclusion, stating that "[e]ven though the Board's FDO on the County's Comprehensive Plan and other development regulations is presently awaiting review with the Court of Appeals, the FDO in that case is stayed, thereby relieving the County of the requirement of amending its Comprehensive Plan."⁴ Cent. Wash. Home Builders Ass'n, et al. v. E. Wash. Growth Mgmt. Hr'gs Bd., et al., No. 08-2-00195-7, slip op. at 8 (Kittitas County Superior Court, April 24, 2008) (emphasis added). The Court also acknowledged in its decision that parties to the case could face irreparable injury should the County unnecessarily proceed with compliance efforts for the FDOs prior to concluding the judicial challenges.⁵ In short, we understand that the County does not need to take any action to address Issues 1, 10 and 11 of the 2007 FDO, including the sweeping changes proposed to the rural element of the Comprehensive Plan.⁶

Yet despite the Board's direction to CDS, and the Superior Court orders largely staying the Growth Board's Compliance Schedule (as relates to the stayed Issues), the County appears to still be proposing sweeping changes to the Comprehensive Plan and development regulations to "comply" with the stayed Issues 10 and 11. In fact, the April 11, 2008 CDS Staff Narrative inexplicably admits that the proposed documents largely relate to Issues 10 and 11. For example, the County has issued proposed significant changes to the rural land use element through new, unprecedented types of rural designations that CDS Staff characterizes as responsive to Issue 11, apparently including one called "Rural Towns" that was just posted without any prior public notice or staff narrative, and various zoning changes in the Development Code. See Staff Narrative, at

³ Issue 1 was whether Kittitas County's comprehensive plan fails to comply with the Growth Management Act because it, in part, allows rural densities greater than one dwelling unit per five acres, lacks policies and designations that protect natural resource lands from incompatible development, and fails to define and protect rural character.

Issue 10 essentially alleged that provisions of Kittitas County Code (KCC) violated the GMA because it allowed densities greater than one dwelling unit per three acres.

Issue 11 alleged the comprehensive plan violated the GMA for failing to provide for a variety of rural densities and for failing to provide a sufficient specificity and guidance on rural densities to prevent a pattern of rural development that constitutes sprawl.

⁴ This second stay covered issues related to the 2008 FDO. For purposes here, it is sufficient to characterize those issues as largely the same as those contained in the 2007 FDO and covered by the first stay.

⁵ In fact, we understand the County recently moved the Superior Court to effectively extend its stay to cover additional issues Growth Board's second Final Determination and Order (No. 07-1-0015). In its briefing, the County itself argued that failure to stay the issues would irreparably harm the County because "it could come into compliance, even with interim measures, which would jeopardize its position in this appeal as those very interim measures could be considered as rendering the appeal moot for a lack of a case or controversy, and result in dismissal of the appeal. The County would thereby lose its appeal rights."

⁶ In fact, the County's description of its rural elements in the 2006 Comprehensive Plan, which includes the rural land use designations, appears to meet the appropriate compliance standards under the GMA. Cent. Wash. Home Builders Ass'n, et al. v. E. Wash. Growth Mgmt. Hr'gs Bd., et al., No. 08-2-00195-7, slip op. at 5.

5. CDS also admits that other changes, such as to the clustering ordinance, KCC 16.09, is responsive to Issue 10. See Staff Narrative, at 4.

III. Committee Recommendations

As you recall, the Committee was charged by the BOCC with assessing the status of the forest industry in Kittitas County and developing criteria for designation of “Commercial Forest Land of Long Term Significance” (CFL) in response to Issue 3 of the 2007 FDO. Even though the term “commercial” implies an economic side of owning forest lands, the Committee recognizes resource lands designated as CFL provide a variety of other benefits for the public good. The Committee has taken a hard look at defining the Timber Industry's past and present status and has concluded that the industry has steadily declined over the last 20 years. And with no infrastructure, such as mills, and prohibitive costs to transport logs, there is no realistic opportunity for change. Based on these findings, the Committee has submitted to you designation and de-designation criteria for your approval. A key question is how much CFL is needed to support local and regional needs of the industry? The land base shows that there is approximately 732,000 acres designated “CFL”, and only about 20% that is actually available for timber production. The remaining has been set aside for recovery of endangered species, and is locked up in federal and state lands. Accordingly, the Committee believes that a portion of the 20% could be considered for de-designation without any cumulative impacts to Kittitas County.

The Committee believes that “CFL” approved for de-designation should be classified into a “land use” that gives landowners the flexibility and incentive to preserve larger portions for open space. The Committee has concerns relying on the alternative and innovative planning tools yet to be developed, as is currently woven into the County's proposed changes, including those to rural lands in the Comprehensive Plan and Development Code. New planning tools should be considered after they have been developed and gone through public vetting the normal land use planning review process. When landowners are given the flexibility for higher density on a smaller foot print, then there will be more of an incentive to maintain working forests.

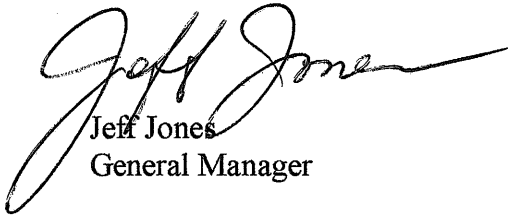
IV. Conclusion

Until the stayed issues under judicial appeal are resolved, we are unaware of any legal or political justification for proceeding with changes responsive to those issues. The County, BOCC and public will have clear direction on how to proceed under the GMA only when these issues are resolved by the courts. Until then, the County should not concede to any special interest group, and should maintain the status quo under the Superior Court stays. If County proceeds to adopt changes without judicial direction, it will only cause unnecessary litigation and division. We therefore respectfully ask the BOCC to suspend any further consideration of changes to the County's Comprehensive Plan and development regulations action until such time as a proper scope and explanation of compliance issues appropriate for public review and comment (i.e., those issues not stayed or under appeal), and an articulated proposal tailored to those issues, can be provided the public. We would also ask the Board to seek a second extension on the Growth Board's compliance order. In light of the comprehensive stays, the

complexity of determining what issues are not stayed and still subject to the 2007 and 2008 FDOs, and the public process conducted to date, which evidences the GMA procedural problems inherent in the current compliance process, it is difficult to see the downside with asking for more time.

If you have any questions, please don't hesitate to call me anytime.

Sincerely

A handwritten signature in cursive script that reads "Jeff Jones". The signature is written in black ink and is positioned above the printed name and title.

Jeff Jones
General Manager